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REPORT ON CITIZENSHIP LAW: AFGHANISTAN

AUTHORED BY

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Report on Citizenship Law

Afghanistan

Abdullah Athayi

1. Introduction

Ius sanguinis (the bloodline principle) has traditionally been the primary criterion for the recognition of Afghan citizenship and is established at the core of the citizenship rules in the Afghan legal system which determine citizens' rights and obligations in domestic and international affairs. The ius sanguinis principle was previously applied for the distribution of the *tazkira* (national identity card) only to male members of families, and this was reflected in the first (hand-written) law on citizenship of 1922. With the establishment of the first parliament on 10 September 1931 and the codification and adoption of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, which greatly affected Afghan national legislation, the legislation in general and the citizenship rules in particular were improved as ius soli (the territorial principle) was introduced for the first time. The law on citizenship was afterwards amended several times in the last century to adapt it to the evolving political requirements of different regimes. Presently, citizenship issues are covered by the 2000 law on citizenship of the Islamic Emirate of Afghanistan. However, on 13 May 2015 President Ashraf Ghani instructed the Ministry of Justice to amend the law on citizenship. Since then, the legislative commission of the Ministry of Justice has held several meetings in which various laws on citizenship have been investigated, including both the previous one and international conventions, in order to improve the process of drafting a new law on citizenship.

Afghanistan citizenship is currently acquired by descent, birth in the territory, naturalisation and on the basis of bilateral and international treaties if there is a conflict between the content of the law and treaties. The modes of acquisition and loss of Afghan citizenship follow international standards for the acquisition, renunciation and restoration of citizenship. The issue of dual nationality was raised post-2001 following the international intervention in Afghanistan, with Afghans who had obtained the citizenship of the United States or European countries and elsewhere and maintained their Afghan citizenship travelling to Afghanistan without a visa and being appointed to senior government positions in the last decade.

Afghanistan has been one of the world's sources of migration since the 1980s and millions of Afghans have left their country of origin and are residing in neighbouring and foreign countries or are seeking asylum. The number of citizens losing their Afghan citizenship is higher than that of people acquiring Afghan citizenship. Voluntary and involuntary renunciation is regulated under the loss of citizenship rules in the law on

citizenship. In order to renounce the citizenship of Afghanistan, a person must meet certain requirements and submit an official letter of renunciation.

The relationship between the individual and the state is important for national and international security. The 9/11 attack on the World Trade Center led the Afghan government to review the status of its citizens and those who acquire Afghan citizenship, together with the modes and rules of acquisition. The government needs to strictly implement the law which allows it to remove the citizenship of those who join insurgencies, fight the government or destroy public infrastructure.

This report will analyse the acquisition and loss of citizenship and discuss dual nationality under Afghan law. The first part of the report explores the historical setting in which citizenship was established. It will relate the development of the citizenship law in parallel with changing political regimes in Afghanistan in three main phases of legislation. The second part discusses the current citizenship regime, and covers the acquisition of citizenship, loss of citizenship and dual nationality. It will set out the requirements under the law for the acquisition of citizenship by descent, birth and naturalisation, and those for people to renounce or be deprived of citizenship. Following this, the report explores the evolving dual nationality policy in Afghanistan, together with the rules and regulations regarding the dual nationality of presidential candidates, parliamentary representatives and appointees, and ministerial candidates.

It is important to note that access to information is difficult in Afghanistan. Data regarding citizenship are either very old or not easily accessible. There are no systematic updated statistics showing the numbers of citizens who acquire or renounce Afghan citizenship. In addition, there are very few articles, essays or analyses on the topic of Afghan citizenship law in English.

2. Historical Background

The development of the citizenship rules in Afghanistan needs to be analysed in three major legislation phases.¹ These are as follows:

- the Nizamnama phase (1920-1929);
- the Osolnama phase (1932-1964);
- the Qanoonnama phase (1964-2016).

¹ In the history of Afghan legislation, various names and titles have been used as the legal regimes changed over the last hundred years. The legislation evolved in three main phases. The first period was called the *Nizamnama* phase, which refers to Amir Amanullah Khan, the first progressive king of Afghanistan in the period 1920-1929. All the laws, including the constitution, in this period contained the title Nizamnama in the subject heading. The second phase, which began under the rule of Nader Khan, is called *Osolnama* and covers the years 1932-1964. In this period, all the laws, including the constitution, had the title Osolnama in the subject heading. Finally, the third phase began with the first democratic constitution in 1964 and continues until now. This period is called *Qanoonnama* and changed the headings of the previous laws to Qanoon, which can easily be translated as 'law' (Ministry of Justice, collection of Afghanistan laws, 2006, available at www.moj.gov.af).

2.1 Citizenship during the Nizamnama phase (1920-1929)

The concept of citizenship and the relative rules were established during the kingship of Amir Amullah Khan (1919-1929), who was/is known as the first progressive king in the history of Afghanistan and who achieved the independence of the country from Great Britain in 1919. He brought concrete reforms to society, politics and the economy. He proposed the first constitution, in which all residents regardless of their race, religion, social status or nationality were recognised as equal citizens before the law, and he abolished slavery, protected personal property and recognised personal freedoms.

In 1922, the king led the first *Loyi-e-Jirga* (Grand Council), to which he invited 872 representatives to discuss the basis of the regime and adopt the constitution of 1922 with the title “Constitution of the Great State of Afghanistan.” Article 8 of this constitution began with the status of Afghan citizens, stipulating that “all persons who are in the country of Afghanistan regardless of any religious discrimination are called citizens of Afghanistan.” The second part of Article 8 stated that affairs relating to citizenship would be regulated in a separate law. The scope of this second part of the article was broad and included both Muslims and non-Muslims as citizens of Afghanistan. However, the formal religion of the Great State of Afghanistan was Islam; other religions could be practised provided that they did not harm Islamic jurisdiction and the public.

The first law on citizenship had the title “Statute of Identity Cards, Passport Principles and Nationality Law” and was a nationwide law enacted on 14 September 1923. It was the only official document regulating citizenship and it distinguished Afghan citizens from aliens by means of the *tazkira* (national identity card). The main principle for the distribution of identity cards was *ius sanguinis* (acquisition by descent). The law mainly focused on the administrative procedure for obtaining and using the *tazkira* rather than setting up specific rules for the acquisition and loss of citizenship. Indeed, article 1 explained that “distributing *tazkira* to the people of Afghanistan is to define the status of their citizenship inside or outside Afghanistan.” According to the law, obtaining a *tazkira* was compulsory for Afghan people and those who did not have one could not apply for a passport or travel abroad. However, the significance of the law was that it established the core of citizenship affairs in the Afghan legal system with the residents of Afghanistan being identified as citizens, and it determined citizens’ rights and obligations at the domestic and international levels.²

During this period, the legislator not only strived to distinguish Afghan citizens from aliens, but also forced them to use their identity cards when enrolling their children in schools, obtaining passports, paying their taxes, applying for a government position and receiving their pensions. The main rationale behind this was, on the one hand, to identify the overall population and have a clear census at the provincial, district and village levels. On the other hand, *tazkira* was a good tool in the context of compulsory military service because each year the Ministry of Defence could submit a long list of people for recruitment to military service.

The *tazkira* was the criterion for recognition of Afghan citizens and to distinguish them from aliens. A citizenship policy was established and the rules for acquisition of citizenship by foreigners were sketched out. A general provision which allowed foreign

² Article 1 stated that “The purpose of granting identity cards to the citizens of Afghanistan inside and outside the country is to determine their nationality status.” Article 3 stated that “Recognition of Afghan citizens is done via their identity cards and if one does not have an identity card he or she cannot obtain a passport to travel to other countries from Afghanistan or from one state to another.”

citizens to acquire Afghanistan citizenship was mentioned in the law,³ but the Great State of Afghanistan had full discretion to grant citizenship to foreigners or not according to national interests. Since this was the first experience with legislating on citizenship matters, a comprehensive law on citizenship could not be expected at that time. Therefore, the law did not elaborate on naturalisation or other grounds for acquisition, or on the relevant conditions and effects. Moreover, the law did not regulate the loss of citizenship.

2.2 Citizenship during the Osolnama period (1932-1964)

Afghan legislation developed greatly during the Osolnama period. The first parliament was established on 10 September 1931, leading to an improvement in Afghan legislation in general and in citizenship rules in particular. The parliament approved laws, treaties and bilateral agreements. Moreover, since one of the main tasks of a parliament is to propose legislation, the legal advisors and lawmakers enriched the laws by examining various national and international sources. At the international level, important steps towards the codification of citizenship law were made by the 1930 Hague Convention,⁴ which affected Afghan national legislation. It is quite clear that, in addition to drawing on the law on citizenship of 1922, Afghan legislators benefited greatly from the 1930 Convention when they approved a new law on citizenship on 7 November 1936. From a legal perspective, the principles adopted in the law on citizenship closely followed the rules and principles of the Hague Convention and enriched the law with international rules and standards.

For the first time in Afghan law, the *ius soli* principle was brought in to complement the *ius sanguinis* principle. The lawmakers distinguished between citizenship through origin and naturalisation and the conditions for naturalisation to Afghan citizenship were determined. Subsequent laws not only laid down the rules for acquisition *iure sanguinis* and *iure soli*, but also contained provisions dealing with naturalisation, loss of citizenship, the status of Afghan women who married a foreigner and vice versa, and the legal age for cases of acquisition and loss of citizenship. Article 2 of the law on citizenship laid down the rules surrounding *ius sanguinis* and stipulated that “all persons born of an Afghan mother and father, whether inside or outside Afghan territory, shall be considered Afghan and shall hold Afghan citizenship.” There were two provisions dealing with *ius soli*. The first of these was restricted to those born in Afghanistan to a parent who was also born there and who continued to live in Afghan territory (Article 4);⁵ the second provided for unconditional *ius soli* (Article 5).⁶ After reaching the age of eighteen, citizens subject to Articles 4 and 5 could obtain their father’s citizenship within one year of their coming of age, provided that they attached a verification letter from their father’s government accepting him or her as a citizen.

Various modes of acquisition of the citizenship of Afghanistan were provided for in the 1936 law on citizenship:

³ Article 4 of the law stipulated that “Foreign citizens can obtain Afghan identity cards according to the law on citizenship.”

⁴ Convention on Certain Questions Relating to the Conflict of Nationality Laws, Hague, 12 April 1930.

⁵ The Article stated that “persons born to foreign parents in Afghanistan, provided that one of the parents was born and has continuously lived in Afghanistan, shall be considered Afghan citizens.”

⁶ It stated that “persons born in Afghanistan of a foreign father or mother or two foreign parents, and who continue to live in Afghanistan until their coming of age, shall be considered citizens of Afghanistan.” “Children of foreign ambassadors, ministers, members of the diplomatic corps, consular officers and other official representatives shall not be subject to the provisions of Articles 4 and 5 above.”

- Automatic naturalisation applied to foreign citizens who had hidden their citizenship of origin during their stay in Afghanistan and had conducted transactions regarding property or real estate as Afghan citizens, bought properties which were restricted to Afghans, or owned assets, livestock, a business or agricultural interests;⁷
- Foreign citizens who were recruited abroad to serve the Afghan government for more than five years or contributed to Afghan public interest could obtain Afghan citizenship, regardless of the time consideration stipulated in Article 7;⁸
- The common method for naturalisation, which is still applicable today, was that foreign citizens who had resided in Afghanistan for five years either consecutively or cumulatively, and had not committed any crimes during their stay, could apply for naturalisation (Article 9).

The law made renunciation of citizenship dependent on confirmation by the High Council of Ministers. The person needed to have reached the legal age of eighteen years, and was obliged to sell all his or her real estate within one year of the time of loss of citizenship (Article 16).⁹ If regardless of the consideration under Article 16 Afghan citizens obtained a foreign citizenship, their Afghan citizenship could not be withdrawn but they would be deprived of any government position they may have held. This meant that the government could not arbitrarily remove the citizenship of an Afghan citizen, but the choice was left to the citizen to decide whether to renounce or maintain Afghan citizenship.

The law also reserved the right for the government to forcefully remove Afghan citizenship from the following categories of persons: 1) persons who served in the armed forces or civil services of foreign states; 2) persons who conducted their business in Afghanistan and failed to meet their social and public obligations; 3) persons who resided in a foreign country and had no contact nor interest in ensuring relations with Afghan embassies and consulates; 4) persons who committed treason and had fled the country; and 5) persons who issued propaganda which was against the general and national interests of Afghanistan (Article 18).

The 1936 law on citizenship applied the ‘dependant principle’ of citizenship¹⁰ to the citizenship of married women. Thus, when an Afghan woman married a foreigner she lost her Afghan citizenship. However, she was readmitted as an Afghan citizen after divorce from her foreign husband or after his death. In both cases, she had to present a document of proof of separation. The same provision applied to an alien woman who married an Afghan citizen,

⁷ Article 6 stipulated that “persons who entered Afghanistan from foreign countries, who concealed their original citizenship, who have been treated as Afghan citizens, who have purchased property in Afghanistan reserved for Afghan citizens, who own herds, or who have been engaged in trade or agriculture in Afghanistan shall be considered citizens of Afghanistan.”

⁸ Article 7 provided that “foreign nationals who have been in the services of the Afghan government abroad for five years or people who have rendered considerable service to the cause of Afghanistan shall be accepted as Afghan citizens provided that they make the necessary application and meet the residence requirement defined in article 9 herein.”

⁹ Article 16 stipulated that “no Afghan national can renounce his citizenship until he has reached the adult age and the Council of Ministers has approved his renunciation. He should also have undertaken to sell all immovable property that he may own or inherit within one year of his renunciation.”

¹⁰ Article 7 stated that “An Afghan woman who marries an alien man according to religious rules will not be recognised as an Afghan citizen, but if she is separated either by divorce or the death of the husband and upon presenting documents of proof, she can be counted as an Afghan citizen.” Article 12 provided that “An alien woman who marries an Afghan man will be an Afghan citizen. If the woman is a widow or divorced and has children from a previous husband, her children will be Afghan citizens, unless they present an application within six months after reaching the legal age indicating that they accept their father’s citizenship, in which case they will be deprived of Afghan citizenship.”

even if the alien woman was a widow and had children. The children were also recognised as Afghan citizens, but they lost this citizenship if they applied for their foreign father's citizenship within six months of reaching the legal age. If the alien woman's husband died she could also regain her citizenship of origin. In this case, she could submit an application to the Ministry of Foreign Affairs and her citizenship of origin could be restored. However, her children retained their Afghan citizenship until they reached the legal age of eighteen.

With the adoption of the 1936 law on citizenship, fundamental improvements were made to the Afghan citizenship provisions and rules, which then served as a basis for subsequent legislation in Afghanistan.

2.3 Citizenship during the Qanoonnama phase (1964-2016)

Afghanistan has been known as a land of coups and political conspiracies where exchanges of power have always been bloody and painful. There was never a democratic structure in which power was peacefully transferred until the post-2001 era. In 1973, Mohammad Duad Khan launched a coup against the regime of his cousin, Mohammad Zaher Shah. Duad Khan gained power, ended the monarchy and established a republic. As a result of the coup, the parliament, which was in its 13th period of legislation, was abolished. The constitution of 1976 under Duad Khan's presidency was never ratified. During Dr. Najeebullah's regime, the parliament began its work again in 1988,¹¹ but it only continued for one period. When Dr. Najeebullah's government was overthrown in 1992, Afghanistan did not have a legislative body for 14 years. Therefore, during this period there were no fundamental changes to Afghan laws. This was either due to lack of expertise, the lack of a proper legislative body, or rapid changeovers of regimes. However, some restrictive provisions were added to the laws which allowed the government to remove the citizenship of opponents of the regime.

For the acquisition and loss of citizenship, the constitution of the Democratic Republic of Afghanistan¹² refers to a particular law. As a result, the law on citizenship of the Democratic Republic of Afghanistan was enacted on 5 May 1986. During this phase, minor developments with regard to citizenship occurred. Citizenship was legally defined in Article 2 as "the legal and political relationship between a national and the state of the Democratic Republic of Afghanistan." The law ensures equality of citizenship for all Afghanistan's citizens and allows foreign citizens to apply for naturalisation regardless of their race, language, gender and education. For the first time, the legislator codified the prohibition of dual citizenship for Afghan citizens.¹³ The *ius soli* principle was applied to persons born in Afghan territory. As for naturalisation, in addition to the common conditions, according to Article 14 a person who applies for naturalisation should believe and trust the social and political basis as well as the structure of the Democratic Republic of Afghanistan. This was the main criterion which the communist regimes in the 1980s applied when granting Afghan citizenship because they had many opponents inside Afghanistan and did not want to grant citizenship to persons who were opposed to the structure, principles and basis of the regime. The law also provided support to Afghan citizens who resided outside Afghanistan. It applied the 'independent principle of citizenship' to married women. Article 16 therefore stipulated

¹¹ Dr. Mohammad Najibullah Ahmadzai was the fourth President of Afghanistan during the period of the communist Democratic Republic of Afghanistan.

¹² Constitution of the Democratic Republic of Afghanistan, Ministry of Justice, Official Gazette, 14 April 1980.

¹³ Article 7 stipulated that "People who according to this law acquire the nationality of the democratic government of Afghanistan cannot maintain dual citizenship."

that “acquisition of the citizenship of the Republic of Afghanistan by one of a couple does not affect the citizenship of the other or of children who have reached the age of eighteen.”

Voluntary and involuntary loss of citizenship were also outlined in the law. According to Article 33, involuntary deprivation could take place in the following cases:

- If a person harmed the interests, credibility, reputation and security of Afghanistan through hostile acts;
- If treason was committed against the people and country;
- If the person served in the armed forces or a civilian organisation of a foreign state without permission from the Afghan authorities.

The 1986 law on citizenship of the Democratic Republic of Afghanistan was abolished in 1992 and replaced by the law on citizenship of the Republic of Afghanistan on 15 March 1992. In this law there were no major changes except for some formalities and administrative procedures for the renunciation of citizenship and conditions for voluntary renunciation and involuntary deprivation of citizenship. Under this law, an application for renunciation of citizenship was to be approved by parliament and signed by the president, while deprivation of citizenship could be decided through a final court verdict. Article 25 set out the cases in which an application for renunciation of citizenship could be rejected: 1) the applicant did not fulfil his or her obligations and responsibilities towards the government; 2) the applicant had financial responsibilities towards government institutions, social organisations and citizens, and non-fulfilment could harm these institutions and citizens; 3) the applicant was accused and convicted of a crime; and 4) renunciation of citizenship could harm national security.

As for deprivation of citizenship, in Article 31 the law stipulated that deprivation of citizenship could take place in the case of persons who: 1) were convicted of a crime or treason against the homeland and people; and 2) were in the service of armed forces of a country which was at war with Afghanistan.

The 1992 law was subsequently abolished and replaced with a law on citizenship of the Islamic Emirate of Afghanistan on 11 June 2000, which will be in force until a new draft law on citizenship is approved by parliament, signed by the president and published in the Official Gazette. Therefore, it is important to note that no major changes occurred during the period 1964-2016. Afghan citizenship legislation still followed the legal principles adopted in the various previous legislative periods. The content of the current law is described below.

3. The current citizenship regime

Cultural commonalities, social relations and political trends provide the grounds for foreign citizens to obtain a country’s citizenship through specific rules. Most states have developed rules and regulations for the acquisition and loss of citizenship because the issue of citizenship is at the core of the functioning of a modern state. As a member of the international community, Afghanistan updated its modes of citizenship and the rules for the acquisition and loss of it with the 1936 law on citizenship soon after its adoption of the 1930

Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws. Just as international borders form the most critical geographical means of delineating the physical limits of a state, the notion of citizenship determines who the legitimate residents within that defined space are (Partha, 2016).

The modes of acquisition and loss of Afghan citizenship are important not only from a legal perspective but also from a national security and order perspective. The terrorist attack in the United States in September 2001 led the Afghan government to re-analyse its citizenship rules and regulations, as since 1995 government officials had pointed out that many foreigners, including Arabs, Pakistanis, Uzbeks and Chechens, who had a criminal background in their country of origin and currently were actors in terrorist networks obtained Afghan passports. Ali Shah Paktiyawal, Chief of Interpol Police in Kabul, has stated that “among the thousands of foreign citizens who have obtained Afghan passports, currently at least eight hundred of these people are active members of terrorist networks.”¹⁴ Reports indicate that a considerable number of foreign citizens are interested in acquiring Afghan citizenship. The administration under former president Karzai approved the citizenship of 20 foreign citizens and 20 applications were pending in 2007. It is interesting that while hundreds of thousands of Afghan citizens have migrated to Europe since 2015, a number of foreign citizens are still seeking the citizenship of Afghanistan.

Due to a lack of available data, it is not possible to indicate the number of foreign citizens who have acquired or renounced Afghan citizenship.

3.1 The main modes of acquisition and loss of nationality

3.1.1 Acquisition of Afghanistan citizenship

Afghan citizenship is acquired by descent, birth, naturalisation and on the basis of international treaties. *Ius sanguinis* has always been the primary ground for granting Afghan citizenship. On the basis of the principle of descent, a child who is born in or outside the territory to a father and mother holding Afghan citizenship automatically acquires Afghan citizenship (Article 9(2)). Article 11 also explains that “a child will be considered a citizen of Afghanistan regardless of whether he or she was born inside or outside the territory of Afghanistan if one of his or her parents is a citizen of Afghanistan and the other is not or his or her citizenship is not established.” If at the time of the child’s birth one of the parents holds the citizenship of Afghanistan and the other holds the citizenship of another country, the child is considered a citizen if s/he is born 1) in the territory of Afghanistan; 2) outside the territory of Afghanistan but one of his or her parents permanently resides in Afghanistan; 3) outside the territory of Afghanistan and the parents also live outside the territory of Afghanistan and by mutual consent they select the citizenship of Afghanistan for the child. These provisions mean that a child who is born in Afghan territory to Afghan parents or Afghan-foreign parents acquires Afghan citizenship without any further conditions. The article seems to have been adopted to prevent statelessness in the children of Afghan women who marry a foreign citizen, because according to Article 28 of the law on citizenship Afghan women maintain their Afghan citizenship on marriage to a foreigner.

Citizenship is granted to a legitimate baby whose parents married according to Sharia jurisprudence because the Afghan Civil Code relates a child to the husband in cases where

¹⁴ Available at http://www.bbc.com/persian/afghanistan/story/2006/02/060218_s-afg-pass.shtml (accessed 2/1/2017).

the child is born via a “true marriage.”¹⁵ This means that if a child is born outside of a marriage relationship and if the marriage does not occur according to Sharia jurisprudence, the baby can acquire neither Afghan citizenship nor a national identity card unless the parents prove that the marriage was conducted according to Sharia and the child is that of the parents. Thus, according to the law on citizenship of Afghanistan, being a legitimate child is the basis for citizenship by origin. The law on citizenship does not explicitly provide for the acquisition of citizenship by adoption.

Ius soli was formally recognised in the 1936 law on citizenship, which was enacted after the United Nations adopted the 1930 Hague Convention. The ius soli principle applies in cases of children born or found in Afghan territory with unknown or stateless parents, as well as to children born to foreign parents.

Citizenship of a person born to foreign citizens: children who are born to foreign parents in Afghanistan can obtain the citizenship of Afghanistan provided that: 1) the child intends to permanently reside in Afghanistan after reaching the age of eighteen; and 2) the child does not apply for his or her parents’ citizenship within six months of reaching the age of eighteen.¹⁶ Apart from this conditional application of the ius soli principle, there is an exceptional rule covering children born in Afghanistan to persons working in diplomatic missions, foreign consulates and international organisations. The second clause of Article 13 stipulates that children of delegates, heads and members of foreign diplomatic and consular missions and international organisations are excluded from acquisition iure soli.

Citizenship of a baby with unknown parents found in Afghan territory: under Article 15(1) of the Universal Declaration of Human Rights (UDHR) “everyone has the right to a nationality,” and Article 24(3) of the 1966 International Covenant on Civil and Political Rights (ICCPR) states that “every child has the right to acquire a nationality.” As Afghanistan has acceded to the ICCPR and has recognised the UDHR, the legislator formulated a provision to avoid statelessness. Thus, under Article 12 of the law on citizenship, if a child is found in the territory of Afghanistan and his or her parents’ documents prove that their citizenship is not available, the child is considered a citizen of Afghanistan. Afghanistan does not have a well-structured system of registration of births among its population. Most people do not apply for a *tazkira* for their children until they reach the age of 7 years or are enrolled in school. Moreover, the method for proving your identity in Afghanistan is normally to prove your relationship with your father or grandfather. Therefore, in order to prevent statelessness and to confirm the identity of stateless children, the legislator has made a reference to the child’s parents. The 1954 Convention relating to the Status of Stateless Persons provides guiding principles for countries to support stateless persons. According to this convention, stateless persons are entitled to equal rights in relation to religious practice and the right to education of their children. In order to support stateless persons, the Afghan legislator considers them to be Afghan citizens so that they can enjoy equal rights and opportunities as provided to all citizens.

Naturalisation is another way of acquiring the citizenship of Afghanistan. All foreign persons who meet the requirements can apply through the regular procedure for naturalisation. To avoid any kind of discrimination based on sex, education or race, the Afghan legislator allows applications by both foreign male and female applicants. People

¹⁵ Article 218 literally provides that “the child of a spouse via a true marriage depends on the husband.”

¹⁶ Article 13 of the law on citizenship stipulates that “a child born to foreign parents in the territory of Afghanistan will, after reaching the age of eighteen and having the intention to permanently live in Afghanistan, be considered a citizen of Afghanistan unless he or she asks for the citizenship of a foreign country up to six month after reaching the age of eighteen.”

without citizenship or foreign citizens who are interested can apply for Afghan citizenship, but the government may accept or reject their applications based on its national interest. Article 15 of the law on citizenship lays down the following conditions: the applicant must 1) have reached the age of eighteen years; 2) have forwarded an application to acquire the citizenship of Afghanistan; 3) have lived for five years in the territory of Afghanistan; and 4) have not committed any crimes during his or her stay in the territory of Afghanistan.

From a security point of view, it is very important to scrutinise and assess the background of applicants before approving their applications, especially because Afghanistan is located in the heart of Asia, enabling people to enter Afghan territory and pursue goals which may harm the national security of Afghanistan. It is difficult for the government to check people's backgrounds and prove the status of their citizenship due to a lack of documents and of a proper system to track them.

3.1.2 Modes of loss of citizenship

Over three decades of conflict in Afghanistan have led citizens to leave the country and many have renounced their Afghan citizenship. Afghanistan has been one of the world's sources of migration since the 1980s, with millions of Afghans leaving their country of origin, residing in neighbouring and foreign countries and seeking asylum there. Consequently, the number of citizens losing their citizenship is higher than that of those acquiring it. In 2016, the Ministry of Justice announced that around 412 applications for renunciation of citizenship were assessed and sent to the Council of Ministers for approval.¹⁷ On 12 May 2016, the Minister of Justice reported 1773 applications, including from Hindu and Sikh communities, to the Council of Ministers and the President asked the Commission on Assessing Citizenship Affairs to facilitate the process.¹⁸ When renunciation of these people is approved, the government will normally submit a renunciation letter to the consulate or embassy abroad through the Ministry of Foreign Affairs, or inform the applicant if he or she is in Afghanistan.

Voluntary renunciation takes place at the request of citizens who wish to abandon their Afghan citizenship. In order to do this, the person must meet certain requirements. He or she must submit a written application for renunciation, fill out a renunciation of citizenship form, provide fingerprints, present his or her *tazkira*, document a lack of criminal responsibility, and pay an amount equivalent to €25.¹⁹ Furthermore, he or she must not have obligations and financial responsibility towards government institutions, companies or other citizens, and not be accused of and/or indicted for criminal acts. Under article 25 of the law on citizenship, a renunciation of Afghan citizenship will not be accepted in the following situations: the applicant 1) has not fulfilled his duties and obligations towards Afghanistan; 2) has financial responsibilities towards government institutions and service-oriented organisations, joint corporations or other citizens and not fulfilling these would harm them; and 3) is accused of or indicted for criminal acts.

If the applicants are abroad they can apply to an Afghan embassy or consulate and present a renunciation application together with their Afghan identity card and documents from the foreign country. If parents abandon their Afghan citizenship it does not affect their

¹⁷ Available at <http://afgrefugees.com/11672>.

¹⁸

<http://aop.gov.af/english/1699/Islamic+Republic+of+Afghanistan%E2%80%99s+Cabinet+Meeting+Report+on+13+May+2015>

¹⁹ <http://embassyofafghanistan.se/english/renounce-of-citizenship/>.

children's citizenship. If one of the parents abandons Afghan citizenship while the other maintains it, their children retain their Afghan citizenship.

For married women and men the law indicates that they can maintain their citizenship unless the law of the spouse's nationality does not let him or her maintain it. Article 28 stipulates that "if an Afghan marries a foreigner, he or she maintains his or her Afghan citizenship." Afghanistan is party to the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the citizenship law therefore follows the 'Independent Citizenship Principle.' Whether an Afghan man marries a foreign woman or a foreign man weds an Afghan woman, the marriage does not affect his or her citizenship.

Afghan citizens who abandon their citizenship have to sell their real estate. Article 29 stipulates that "Anyone abandoning the Afghan nationality is bound to sell his or her unmovable property within the country. If he or she fails to sell his or her property within one year of the approval of his or her request to abandon his or her nationality, the government will sell his or her property and assets and the money will be paid to him or her."

Under article 15(2) of the UDHR, "no one shall be arbitrarily deprived of his or her nationality nor denied the right to change his or her nationality." The principle of prohibition of arbitrary deprivation of citizenship is respected in Afghan laws and Afghans cannot be deprived of their citizenship except in the cases mentioned in the law. Article 4 of the constitution stipulates that "no individual of the nation of Afghanistan shall be deprived of citizenship."

Deprivation of citizenship only happens if citizens are engaged in activities which pose a threat to the national security of Afghanistan or commit treason. According to Article 31 of the law on citizenship, a person's citizenship can be forfeited in the following cases: 1) if they are involved in treachery against the country and the nation; or 2) if they serve in the army of a government engaged in war against Afghanistan. In 1979, the Revolutionary Council of the Democratic Republic of Afghanistan released a decree ('decree (5)') which negated the citizenship of 23 people, including members of Nader Khan's family, their brothers and affiliated persons, and particularly the previous king of Afghanistan, Mohammad Zahir Shah, due to their cooperation with aliens, foreign enemies of the regime, treason against national independence, sovereignty and national interests, and for misusing public properties.²⁰ The king and his family could not travel to Afghanistan and therefore stayed in Italy until the international intervention in Afghanistan in 2001. However, decree (5) was abolished when Dr. Najeebullah, President of the Republic of Afghanistan, gained power in 1992. The President released another decree in relation to the revocation of decree (5).²¹ This new decree indicated that in consideration of the necessity of national unity, ending the conflict and bloodshed and accepting that Afghans could contribute to the reconstruction of their country, decree (5) was abolished and the citizenship of king Mohammad Zaher Shah and the members of his family and affiliated persons was restored.

²⁰ Decree (5) of the Revolutionary Council of the Democratic Republic of Afghanistan (1979) in relation to involuntary renunciation of the citizenship by betrayers of the country.

²¹ Decree of the President of the Republic of Afghanistan (1992) in relation to revocation of decree (5) and restoration of citizenship.

3.1.3 Dual citizenship

In 2001, when the Taliban regime was overturned, a conference held in Bonn, Germany led to a framework for the transformation and stabilisation of the Afghan political system. The Bonn Process marked the start of a new political situation for Afghanistan which enabled the political elite and actors to take advantage of the opportunity for socio-political changes and for an end to the long decades of conflict which had put the country in turmoil. With the adoption of a constitution in 2004 and the inauguration of parliament in 2005, together with the subsequent installation of administrative and political institutions, important steps towards the establishment of a broad-based, gender-sensitive, multi-ethnic and fully representative government were taken.

To pursue the government's objectives, there was a dire need for educated people. President Karzai agreed with Western countries to allow Afghan citizens who had resided in the Western world (the United States and Europe in particular) to come to Afghanistan without losing their citizenship. The President also released a decree which stipulated that Afghans who had left the country either by force or due to threats to their persons or family, and as a result of this migration had renounced their Afghan citizenship, could travel to Afghanistan as Afghan citizens while maintaining their second country's citizenship. Moreover, they could purchase real estate and could be employed by government institutions, apart from the presidential palace or by the vice president and cabinet ministers (Farooq Bashar; 2007). Therefore, dual nationality entered the Afghan legal system in 2001 following the international intervention. Afghans who had obtained the citizenship of the United States or a European country maintained their new citizenship, could travel to Afghanistan without a visa, and could be appointed to senior government positions including attorney general, in the parliament, the supreme court, ministries and other government institutions in the last decade.

Dual nationality in Afghan law. The 2004 constitution was adopted under the influence of Afghan foreign citizens and therefore contains various provisions regarding dual nationality. There are three articles in the constitution which set out the conditions for three significant positions, namely those concerning the presidency, parliament and cabinet ministers. The constitution prohibits dual citizenship for presidential candidates, is silent about dual citizens obtaining a parliamentary seat, and hands over the authority to parliament to approve or reject the dual citizenship of candidate ministers.

Article 62(1) of the constitution stipulates that "An individual who becomes a presidential candidate shall be a citizen of Afghanistan, a Muslim, born to Afghan parents, and shall not be the citizen of another country." This article explicitly bans dual nationality for presidential candidates. Therefore, the Independent Election Commission (IEC) and the Electoral Complaints Commission (ECC), among other criteria, evaluate whether the candidates hold single or dual nationality. In the 2009 and 2014 presidential elections, the dual nationality candidates who wished to nominate themselves for the presidential palace either withdrew or were disqualified as a result of lack of eligibility for not bearing single citizenship.

Article 85(1) of the Afghan constitution, which lays down the conditions for parliamentary candidates or appointees, stipulates that "An individual who becomes a candidate or is appointed to membership of the national assembly, in addition to winning the election, shall be a citizen of Afghanistan or shall have obtained citizenship of the state of Afghanistan at least ten years prior to the candidacy date or appointment." The legislator

therefore neither prohibits nor explicitly allows members of parliament to have dual nationality. However, the silence of the legislator does not mean that those with dual nationality cannot run in parliamentary elections, because in the 2010 parliamentary election the Electoral Complaints Commission dealt with some cases in which the individuals concerned were dual nationals. The commission investigated the cases of dual nationality candidates and decided that since dual citizenship for parliamentary candidates is not explicitly prohibited either in the constitution or in the electoral laws candidates who have dual nationality were eligible to run for election.

Article 72 of the constitution, which deals with the eligibility criteria regarding candidate ministers, stipulates that a person who is appointed as a minister “must only have the citizenship of Afghanistan. Should a nominee for a ministerial post also hold the citizenship of another country, the *Wolosi Jirga* (House of Representatives) shall have the right to confirm or reject his or her nomination.” This Article thus opens the way towards dual nationality and even gives authority to the executive branch to nominate dual nationality candidates for ministerial positions, but the *Wolosi Jirga* retains the right to approve or reject the eligibility of candidate ministers.

Dual nationality of candidate ministers is a significant issue in Afghanistan because during the 15th round of parliament (2006-2010) many candidates who held dual nationality obtained the necessary votes and were appointed as ministers. A conflict over dual nationality between the legislative branch and executive branch *inter alia* concerned the Minister of Foreign Affairs, with parliament giving its vote of confidence on the condition that the Minister of Foreign Affairs renounce his foreign citizenship within three months. However, the minister ignored this request and did not abandon his foreign citizenship. In May 2007, parliament summoned him and gave him a vote of no confidence based on his inability to avoid the deportation of migrants from Iran, along with other reasons such as his dual citizenship, but the president and some European countries (especially Germany) backed the minister and he continued in his position until the end of the presidential period. A survey conducted by the Pajhwok news agency indicates that the population has different perspectives with regard to the dual nationality of candidate ministers. Those opposed argued that dual nationality for candidate ministers provided them with the possibility of seeking asylum and entailed a risk of lack of loyalty and spying. Therefore, they proposed using local talent or forcing dual nationals to renounce their second citizenship. According to the survey, 27 per cent of the respondents argued that ministers with dual nationality involved in corruption could escape and seek asylum in other countries, while 24 per cent said ministers with dual nationality could not work efficiently due to a clash of interests between the countries they belong to. However, the respondents who supported dual nationality argued that candidate ministers with dual nationality could attract assistance for Afghanistan and that they had international experience, professionalism and honesty. According to the survey, 33 per cent of the respondents supported candidate ministers with dual nationality.²²

Ordinary Afghan laws have never allowed dual nationality for Afghan citizens. When an Afghan man and woman marry the law stipulates measures to prevent them from acquiring dual nationality. Article 7 of the law on citizenship prohibits dual nationality and stipulates that “Anyone who, according to the orders of this law, is a citizen of Afghanistan cannot hold double nationality.”

In order to prevent dual nationality, the Ministry of Justice intends to make the acquisition and loss of citizenship more simple. Article 9 of the draft citizenship law (2017) provides for voluntary renunciation by stipulating that “Afghan citizens who obtain the

²² <http://www.elections.pajhwok.com/en/2015/01/26/64pc-afghans-against-ministers-dual-nationality>.

citizenship of another country can abandon their Afghan citizenship.” A citizen who obtains the citizenship of another country would in that case submit his or her application to renounce Afghan citizenship to Afghan embassies or consulates abroad or to relevant sections of the Ministry of Foreign Affairs inside the country. Clause 3 of Article 9 of the draft law provides the means for re-acquisition of Afghan citizenship and stipulates that “A person who according to the orders of this law abandons the citizenship of Afghanistan can apply for re-acquisition of the citizenship of Afghanistan.”

3.2. Specific rules and statuses for certain categories of persons

According to Article 2 of the law on citizenship, “ the citizenship of Afghanistan is equal and similar for all citizens.” However, citizens who obtain the citizenship of Afghanistan other than by birth may enjoy limited rights in certain respects. For example, a person who acquires citizenship cannot become president but he or she can engage in political activities and be nominated or appointed to senior elected bodies after completion of a specific time period.

The presidency is the highest authority of a country, representing the will of the nation inside and outside the country. Therefore, national constitutions stipulate strict eligibility conditions. The Afghan constitution not only dictates that candidates can only have one citizenship but also that they should be born to Afghan parents. Article 62 (1) states that “an individual who becomes a presidential candidate shall be a citizen of Afghanistan, Muslim, born to Afghan parents and shall not be a citizen of another country.”

Article 85 (1) of the Afghan constitution, which sets out the conditions for obtaining a parliamentary seat, stipulates that “an individual who becomes a candidate or is appointed to the membership of the national assembly, in addition to winning an election, shall be a citizen of Afghanistan or shall have obtained citizenship of the state of Afghanistan at least ten years prior to the candidacy date or appointment.” To exercise political rights and vote in elections, and to receive nominations to provincial, district and village councils and for municipal elections, the electoral laws of Afghanistan only require the person to hold the citizenship of Afghanistan. Article 12 (1), which sets out the requirements for voters, indicates that eligible voters should have the citizenship of Afghanistan, as do articles 15, 16, 17 and 18 of the election law, which stipulate the conditions for candidates to provincial, district and village councils and in municipal elections. Therefore, when a person acquires the citizenship of Afghanistan, he or she can present his or her *tazkira* to the relevant institutions and not only obtain a voting card but he or she can also nominate himself or herself as a candidate in provincial council elections, district and village council elections and municipal council elections.

It is important to note that the new draft law on citizenship (2017) bans political activity by persons who have obtained Afghan citizenship for a certain period of time. Article 28 stipulates that “foreign citizens who acquire the citizenship of Afghanistan shall not have the right to establish political parties for ten years.”

3.3. Special institutional arrangements

3.3.1. *The administrative procedure for acquiring citizenship by naturalisation*

In Afghanistan, an ad hoc commission composed of representatives of the Supreme Court, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Interior Affairs and the Directorate General of Intelligence under the leadership of the Deputy Minister of Justice is established to investigate and analyse any applications pertaining to the acquisition, restoration or loss of citizenship. According to current legislation, the procedures for the acquisition, restoration and release from citizenship are relatively simple. When an application is submitted a standard administrative process is followed from the beginning to the end. Applications by children under the age of eighteen can be forwarded by their representatives.

There are two main ways in which an applicant can submit an application: a) to the Ministry of Foreign Affairs if the applicant resides in Afghanistan; and b) if the applicant resides outside Afghanistan, to the nearest diplomatic or consular mission of Afghanistan (Articles 36 and 38). Once an application for the acquisition or restoration of citizenship has been submitted to the Ministry of Foreign Affairs or an embassy or consulate abroad together with a completed citizenship form (Engate) and testimonials proving his or her identity, the applicant receives a receipt and the Ministry of Foreign Affairs forwards the application to the authoritative commission established under the supervision of the Ministry of Justice. According to the law on citizenship, the commission accurately and comprehensively evaluates the application and submits its findings and proposals to the president for a final decision. Decisions by the Afghan president with regard to naturalisation are released by special decree (Article 40).

Applications pertaining to the restoration, renunciation and deprivation of citizenship follow almost the same procedure. However, there is a sharp distinction in that applications for restoration, renunciation and deprivation of citizenship are first evaluated by the commission and later submitted to the Council of Ministers. If the Council of Ministers approves the application for restoration or renunciation, it is a mere formality that the president will sign.

Two important points remain vague in the laws. First, in cases where the requesting party is not satisfied with the decision, recourse to an institution like an appeal committee on citizenship, which is common in other countries, is not included in the law. Such a committee could easily be established under the structure of the Ministry of Foreign Affairs. Second, the regulations do not specify a specific timeframe for the application process, either for the Ministry of Foreign Affairs or for embassies and consulate sections abroad.

4. Current political debates and reform plans

Over the past fifteen years, the law on citizenship of the Islamic Emirate of Afghanistan enacted in 2000 has dealt with the citizenship of Afghan citizens. Over the last three decades of conflict in Afghanistan, the base of the Afghan legal system has been destroyed. As soon as a regime change took place, all laws, decrees, treaties and agreements were changed

according to the ideological foundation of the new regime. After the international intervention in Afghanistan after 2001, it was many years before the parliament was reinstalled. Since the formation of a parliament in 2005, two rounds of legislation were held in which the parliament was overloaded with thousands of laws, agreements and treaties. So far, parliament has not been able to prioritise the law on citizenship.

During the meeting of the Council of Ministers of the National Unity Government held on 13 May 2015, President Ashraf Ghani assigned the Ministry of Justice the task of amending the law on citizenship.²³ The legislative commission of the Ministry of Justice held several meetings in which various laws on citizenship were investigated, including the previous one and international conventions,²⁴ in order to improve the process of drafting a new law on citizenship. The bill will need to pass through a lengthy legislation process, meaning that the draft law will be sent to the legal commission of the Council of Ministers, which will discuss the content of the law and present it to the meeting of the Council of Ministers to obtain the opinions of cabinet members and thereby enrich the law. After approval by the cabinet members, the bill will be sent to parliament, where representatives of the people will discuss the law in both a specialised commission and other non-specialised commissions. The law will finally need to be approved during plenary sessions of the *Wolosi Jirga* (House of Representatives) and the *Meshrano Jirga* (House of Elders). It will then return to the presidential palace for signature and will subsequently be sent to the Ministry of Justice for publication in the Official Gazette.

There are no major innovations in the draft law on citizenship except Article 9, which regulates dual nationality. As explained above, dual nationality of Afghan citizens who obtain senior positions in government is a contentious issue in Afghanistan. The Ministry of Justice, however, makes the acquisition and loss of citizenship very simple in order to prevent multiple citizenship, but it does not compel Afghan-foreign citizens to renounce their foreign citizenship if they are interested in working in or obtaining any position in government. The draft law on citizenship does not provide a concrete solution for Afghans holding dual citizenship. Article 9 of the draft law stipulates that “Afghan citizens who obtain the citizenship of another country can abandon their Afghan citizenship.” The law also obliges Afghan citizens who obtain the citizenship of another country to submit an application to renounce their Afghan citizenship to an embassy or consulate abroad or to relevant sections of the Ministry of Foreign Affairs in Afghanistan. Clause 3 of Article 9 of the draft law on citizenship provides the means for the re-acquisition of citizenship of Afghanistan and stipulates that “A person who according to the orders of this law abandons the citizenship of Afghanistan can apply for re-acquisition of the citizenship of Afghanistan.” Honorary citizenship granted to foreign citizens who make donations in the public interest or serve the Afghan people will probably be the most important focus of discussions in the legislation cycles.

²³<http://aop.gov.af/english/1699/Islamic+Republic+of+Afghanistan%E2%80%99s+Cabinet+Meeting+Report+on+13+May+2015>.

²⁴ Convention on Certain Questions Relating to the Conflict of Nationality Laws; Convention on Elimination of all Forms of Discrimination against Women; Convention on the Rights of the Child; Covenant on Civil and Political Rights, Convention on Citizenship of Married Women; Convention on Certain Questions relating to the conflict of Nationality Laws.

5. Conclusions

The geographical division of the world and the existence of independent states bind individuals to specific states. The legislator in each state employs different systems and modes to regulate the issue of citizenship in order to determine the rights and obligations of its citizens whenever they travel and cross its border, reside in foreign countries, marry a foreigner, or need the support of their government abroad.

In order to distinguish citizens from aliens and determine their rights and obligations, the Afghan legislator traditionally used citizenship as the main criterion and conferred it by distributing the *tazkira* (national identity card) to Afghan citizens via *ius sanguinis*.

International codification in relation to citizenship greatly affected Afghanistan's national legislation, and the law on citizenship of 1936 fully followed the standards of the time relating to citizenship. Afghanistan's current principles applied to the acquisition and loss of citizenship are also in compliance with international principles. The law attempts to prevent statelessness, and children born in Afghanistan to an Afghan and a foreign citizen or to two foreign parents automatically acquire Afghan citizenship. *Ius sanguinis* and *ius soli* are appropriately used in parallel to prevent statelessness.

The post-2001 international intervention which established the democratic regime raised controversy over dual nationality. Acceptance of dual nationality is a consequence of the long conflict in the country, which led to the migration to and naturalisation in the United States, Europe and elsewhere of many Afghans. By agreement with Western and other foreign countries and through the subsequent issuance of a decree by the Afghan president, these dual citizens are permitted to travel to Afghanistan, purchase real estate, and work or be appointed in various positions within the executive, judicial and legislative bodies.

In sum, with progressive intentions and ambitious vision, and honouring Afghanistan's international commitments, the Afghan legislator codified the grounds for acquisition and loss of citizenship in compliance with international principles and standards without consideration of the social and economic realities of Afghanistan. The approach of the lawmakers in various phases of legislation has been to encourage foreign citizens to obtain Afghan citizenship, despite the fact that Afghanistan is a poor backward landlocked country with a growing population. It faces serious challenges, both socially and economically. Moreover, in the last 15 years the Afghan government has not been able to bring about the repatriation of its citizens from Pakistan and Iran, with three million Afghan citizens living illegally in each country, or the hundreds of thousands of Afghans who have fled to Western countries since 2015.

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