

Pakistan : certificat de mariage *Nikah Nama* et accès à la citoyenneté pakistanaise pour les réfugiés afghans nés au Pakistan

Recherche rapide de l'analyse-pays de l'OSAR

Berne, 20 novembre 2019

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1 Introduction

Le présent document a été rédigé par l'analyse-pays de l'Organisation suisse d'aide aux réfugiés (OSAR) à la suite d'une demande qui lui a été adressée. Il se penche sur les questions suivantes :

1. Quelles sont les conditions d'attribution d'un certificat de mariage *Nikah Nama* ?
2. Un couple d'Afghans, nés au Pakistan de parents afghans réfugiés non-enregistrés, peut-il obtenir ce certificat sans avoir la nationalité/citoyenneté pakistanaise ?
3. Si le certificat *Nikah Nama* est seulement délivré à des personnes de nationalité/citoyenneté pakistanaise, comment font les ressortissant-e-s afghan-e-s, y compris les réfugié-e-s afghan-e-s, pour faire enregistrer leur mariage au Pakistan ?
4. Est-il possible pour des réfugié-e-s afghan-e-s, né-e-s au Pakistan, d'obtenir la nationalité/citoyenneté pakistanaise ? Si oui, quelles en sont les conditions ?
5. Le gouvernement pakistanais accepte-il la double nationalité afghane et pakistanaise ?

Pour répondre à ces questions, l'analyse-pays de l'OSAR s'est fondée sur des sources accessibles publiquement et disponibles dans les délais impartis (recherche rapide) ainsi que sur des renseignements d'expert-e-s.

2 Certificat de mariage *Nikah Nama*

Le *Nikah Nama* est un certificat de mariage pour musulman-e-s émis par un *Nikah Registrar*, une personne autorisée à enregistrer des mariages. Ce certificat est ensuite enregistré par le *Union Council*. Selon la *Commission de l'immigration et du statut de réfugié du Canada* (CISR), les mariages au Pakistan sont célébrés et enregistrés selon l'appartenance religieuse d'une personne. Selon des sources consultées par CISR, le *Nikah Nama* est un certificat de mariage, ou un contrat de mariage, pour les musulman-e-s qui est émis par le *Nikah Registrar* (CISR, 14 janvier 2013). Le *Danish National ID Centre* (NIDC) précise que le *Nikah Registrar* est la personne qui est autorisée à enregistrer le mariage et que celle-ci n'a pas forcément de compétences légales (NIDC, 31 mai 2018). D'après la CISR, le *Nikah Registrar* est nommé par la municipalité, le *Panchayat Committee*, le *Cantonment Board* or le *Union Council*. Ce dernier est présent dans chaque municipalité. En vertu de la *Muslim Family Laws Ordinance* de 1961, qui s'applique à toutes les citoyennes et tous les citoyens pakistanais musulmans, le *Nikah Nama* doit être enregistré auprès d'un *Union Council* local, où une copie du *Nikah Nama* est conservée dans les archives publiques (CISR, 14 janvier 2013).

Selon le NIDC, le *Nikah Nama* est un document de format A3 écrit en urdu et il représente le certificat original de mariage. Ce document contient des informations manuscrites sur le marié et la mariée ainsi que sur le *mahr* (« prix » de la mariée, ou la dot). Il mentionne également le lieu et la date du mariage ainsi que les signatures des témoins. Le *Nikah Registrar* rédige quatre exemplaires du *Nikah Nama*. Les mariés reçoivent une copie chacun, le *Nikah Registrar* garde une copie et la dernière copie est soumise par le *Nikah Registrar* au *Union Council*

local. Le secrétaire du *Union Council* enregistre ensuite le mariage dans le registre manuel et archive le *Nikah Nama*. Une fois que le mariage a été manuellement enregistré au *Union Council*, il peut également être enregistré numériquement dans la base de données CRMS du *National Database and Registration Authority* (NADRA). Le couple peut alors obtenir un *Marriage Registration Certificate* (MRC) émis par le *Union Council*. Cet enregistrement n'est pas obligatoire et le MRC n'est émis qu'à la demande du couple (NIDC, 31 mai 2018).

Le *Nikah Nama* est en principe uniquement délivré à des personnes de nationalité pakistanaise. Toutefois, il serait possible pour des ressortissant-e-s afghan-e-s de l'obtenir quand même. Selon un renseignement par courriel envoyé le 20 novembre 2019 à l'OSAR par une *personne de contact experte des questions de migration au Pakistan*, avoir la nationalité pakistanaise est un prérequis pour obtenir le *Nikah Nama*. En effet, lors de la demande il faut fournir le numéro d'identification d'une carte d'identité nationale. Cette dernière est seulement attribuée aux citoyen-n-e-s pakistanais-e-s. Toutefois, cette source précise qu'elle a connaissance de ressortissant-e-s afghan-e-s qui ont pu obtenir ce certificat et ceci sans avoir la nationalité pakistanaise. Selon une *personne de contact experte de la situation des Afghan-e-s au Pakistan*, le *Nikah Nama* est un document de reconnaissance de mariage pour tout couple musulman qui vit au Pakistan. Même des couples afghans vivant au Pakistan pourraient obtenir ce document (renseignement par courriel envoyé à l'OSAR le 7 novembre 2019).

La corruption généralisée au Pakistan facilite l'obtention de vrais et faux documents à l'aide de pots-de-vin. Des documents d'état civil à l'authenticité douteuse. Selon le NIDC, qui se base sur plusieurs sources, la corruption est un problème généralisé au Pakistan et il est facile, et presque sans risques, de soudoyer des fonctionnaires à tous les niveaux de l'administration, y compris pour ce qui relève de l'émission de documents. Selon des sources diplomatiques consultées par le NIDC, il y a en général peu ou pas de risques liés à l'acquisition de documents falsifiés ou de documents authentiques contenant de fausses informations. Selon le NIDC, les documents d'état civil pakistanais doivent donc être considérés comme peu crédibles (NIDC, 31 mai 2018).

Selon le courriel envoyé à l'OSAR le 6 novembre 2019 par la *personne de contact experte des questions de migration au Pakistan*, il est tout à fait possible qu'un *Nikah Nama* soit délivré à un couple sans que leur identité ou leur statut légal soit vérifié. Selon cette source, il est également fréquent que des couples afghans enregistrent leur mariage de manière informelle, à l'aide de pots-de-vin.

3 Conditions d'attribution de la nationalité/citoyenneté pakistanaise et double nationalité

Une citoyenneté qui s'acquiert en principe automatiquement pour toute personne née au Pakistan. Selon la *Direction générale de l'immigration et des passeports* du Pakistan, les

lois et les règlements qui gouvernent la politique et les procédures relatives à l'immigration sont les suivantes :

- Le *Pakistan Citizenship Act* de 1951
- Le *Naturalization Act* de 1926
- Les *Pakistan Citizenship Rules* de 1952

Il existe trois catégories de citoyenneté pakistanaise : la citoyenneté par naissance, la citoyenneté par descendance et la citoyenneté par migration. Selon la première catégorie, toute personne née au Pakistan après l'entrée en vigueur du *Pakistan Citizenship Act* de 1951 est considérée comme un-e citoyen-ne du Pakistan (*Gouvernement du Pakistan*, pas de date, dernier accès le 6 novembre 2019). Selon un rapport de *Faryal Nazir*, un expert sur la question de la citoyenneté au Pakistan, le *jus soli*, ou citoyenneté par naissance, est reconnu par le *Citizenship Act de 1951* dans les sections 3 et 4. Ainsi, une personne née au Pakistan est considérée comme un-e citoyen-ne de ce pays (*Faryal Nazir*, décembre 2016).

Obtention de la citoyenneté par naturalisation. Selon *Faryal Nazir*, il est également possible d'obtenir légalement la citoyenneté pakistanaise par naturalisation. Pour cela, une personne doit d'abord obtenir un certificat de naturalisation du gouvernement fédéral, sous la *Naturalisation Act* de 1926. Pour pouvoir demander ce certificat, une personne doit avoir résidé au Pakistan au moins quatre des sept années précédant la demande et une année entière au moment de la demande. Par ailleurs, cette personne ne doit pas être citoyen-ne d'un pays dont un-e citoyen-ne pakistanaise ne serait pas autorisé-e à légalement obtenir la naturalisation. Après avoir obtenu un certificat de naturalisation, la personne peut demander un certificat de citoyenneté et le gouvernement fédéral, à sa discrétion, accorde le statut de citoyenneté (*Faryal Nazir*, décembre 2016).

Une pratique relative à la citoyenneté qui ne correspond souvent pas aux dispositions légales. Selon des informations obtenues par l'OSAR, la pratique relative à la citoyenneté ne correspond souvent pas aux dispositions légales. Dans un rapport de mars 2018, l'OSAR note que selon *Alessandro Monsutti*, professeur d'anthropologie et de sociologie au *Graduate Institute* (HEID) de Genève, la citoyenneté au Pakistan n'a pas forcément la même signification qu'en Europe. Même pour les citoyen-ne-s pakistanaise-s, la pratique relative aux documents d'identité ne respecte pas toujours la loi. Ainsi, même des personnes nées au Pakistan de parents pakistanaise-s peuvent avoir du mal à obtenir des documents prouvant leur identité et nationalité. Pour obtenir des documents, il faut parfois payer des pots-de-vin (OSAR, 12 mars 2018).

L'obtention de la citoyenneté pakistanaise par voie légale est très difficile, voire impossible, pour les Afghan-e-s, y compris ceux et celles né-e-s au Pakistan de parents réfugiés. Selon *Faryal Nazir*, il n'existe pas de dispositions légales qui traitent expressément de la question du statut de citoyenneté des personnes réfugiées, notamment des réfugié-e-s afghan-e-s au Pakistan. Ce statut n'est pas octroyé à ces réfugiés, même si ceux-ci ou celles-ci sont né-e-s au Pakistan. Les enfants nés au Pakistan de parents réfugié-e-s afghan-e-s, même s'ils résident au Pakistan depuis plus de trois décennies, n'obtiennent pas de certificat de citoyenneté car leurs parents sont considérés comme des étrangers en vertu des lois pakistanaise-s sur la citoyenneté (*Faryal Nazir*, décembre 2016). Dans un article publié en mai 2019 dans le journal *Foreign Policy*, *Siddiqui Zuha* confirme que malgré les dispositions légales pakistanaise-s, notamment la section 4 du *Citizenship Act of 1951*, les Afghan-e-s, en

particulier les Afghan-e-s né-e-s de parents réfugiés afghans, ne peuvent obtenir la nationalité pakistanaise (*Sidiqqi Zuha*, 9 mai 2019). Selon le courriel envoyé à l'OSAR le 6 novembre 2019 par la *personne de contact experte des questions de migration au Pakistan*, il est très difficile, voire impossible pour des Afghan-e-s d'obtenir la citoyenneté pakistanaise en suivant des voies légales. La naturalisation n'est pas souhaitée, ni soutenue par le gouvernement pakistanais ou par l'*Agence des Nations unies pour les réfugiés* (HCR). Dans un rapport de mars 2018, l'OSAR confirme qu'il n'existe pratiquement aucune possibilité légale pour un-e Afghan-e d'obtenir la citoyenneté pakistanaise. Une personne de contact citée dans ce rapport a indiqué que les Afghan-e-s ne pouvaient pas bénéficier du processus de naturalisation au Pakistan et que ce processus était par ailleurs réputé difficile. Toujours selon l'OSAR, en août 2016, le ministre de l'Intérieur pakistanais Chaudhry Nisar Ali Khan a informé l'Assemblée nationale pakistanaise que les enfants de réfugiés afghans au Pakistan ne pouvaient pas obtenir la nationalité pakistanaise, même si leur mère était de nationalité pakistanaise (OSAR, 12 mars 2018).

Un refus de la citoyenneté pakistanaise pour les réfugié-e-s afghan-e-s confirmé par une Haute Cour. Selon *Faryal Nazir*, les demandes de naturalisation et de citoyenneté formulées par des réfugié-e-s afghan-e-s ont toutes été rejetées aussi bien au niveau administratif que judiciaire. *Faryal Nazir* cite notamment le cas d'un jeune réfugié afghan, né et élevé au Pakistan et qui, arrivé à l'âge de 18 ans, s'est vu refuser l'octroi d'une carte d'identité nationale pakistanaise. Suite au recours déposé par ce jeune homme contre cette décision administrative devant la Haute Cour, cette dernière a confirmé que les enfants de réfugié-e-s afghan-e-s ne pouvaient pas obtenir la citoyenneté par naissance en raison du fait que les parents avaient un statut de réfugié et étaient ainsi reconnus devant la loi comme des étrangers. La loi qui s'applique à ces personnes est le *Foreigners Act* de 1946 (*Faryal Nazir*, décembre 2016).

Une tentative de réforme en 2018 qui s'est heurtée à une forte opposition politique. Selon *Siddiqui Zuha*, en septembre 2018, le premier ministre pakistanais *Imran Khan* a suggéré de réformer le système et d'octroyer la citoyenneté pakistanaise aux enfants de réfugié-e-s afghan-e-s. Toutefois, face aux nombreuses critiques de l'opposition, de son propre camp et de la population pakistanaise, le premier ministre a dû rapidement faire machine arrière. Selon *Muhammad Saad*, un ancien militaire pakistanais interrogé par *Siddiqui Zuha*, les réfugié-e-s afghan-e-s et la question de leur statut sont un précieux outil de marchandage pour le gouvernement pakistanais. Lorsque les relations avec l'Afghanistan sont tendues, le gouvernement pakistanais menace alors de ne pas renouveler les *Proof of Registration Cards* (PoR) des réfugié-e-s afghan-e-s et de les renvoyer en Afghanistan. Lorsque les relations sont meilleures, le gouvernement pakistanais renouvelle la validité de ces cartes (*Sidiqqi Zuha*, 9 mai 2019). Selon le journal *The Guardian*, ce sont près de 1,5 million d'enfants de réfugié-e-s afghan-e-s au Pakistan à qui l'on refuse la citoyenneté (*The Guardian*, 18 septembre 2018).

Certain-e-s réfugié-e-s afghan-e-s auraient obtenu des cartes d'identité nationale pakistanaise en fournissant de fausses informations ou au moyen de paiements informels. Seule une minorité d'Afghan-e-s, à revenu moyen/supérieur, et bénéficiant de soutiens politiques pourrait obtenir la citoyenneté pakistanaise. Selon *Faryal Nazir*, certain-e-s réfugié-e-s afghan-e-s auraient pu obtenir les cartes d'identité nationale pakistanaise en s'installant dans de petites villes et en fournissant de fausses informations à des officiels pakistanais (*Faryal Nazir*, décembre 2016). Selon le courriel envoyé à l'OSAR le 6 novembre

2019 par la *personne de contact experte des questions de migration au Pakistan*, certain-e-s Afghan-e-s auraient obtenu la citoyenneté pakistanaise par des moyens informels, mais depuis que le gouvernement a commencé à émettre des cartes d'identité informatisées au début des années 2000, cela est devenu beaucoup plus difficile. Citant un article publié en septembre 2016 par *Sanaa Alimia*, une chercheuse travaillant pour la *Friedrich-Ebert-Stiftung* (FES), l'OSAR indique que « certain-e-s Afghan-e-s [auraient] obtenu la citoyenneté pakistanaise, soit légalement, soit par des voies informelles. [L]'accès (légal) à la citoyenneté est cependant très limité et la majorité des citoyen-ne-s afghan-e-s qui ont acquis la citoyenneté pakistanaise proviennent de groupes à revenu moyen supérieur et ont certainement bénéficié du soutien des acteurs politiques au Pakistan» (OSAR, 12 mars 2018).

Pas d'accord de double nationalité/citoyenneté entre l'Afghanistan et le Pakistan. Selon *Faryal Nazir*, la double citoyenneté n'avait pas été admise par le *Citizenship Act* de 1951. En 1972, la loi a été amendée pour permettre la double citoyenneté avec le Royaume-Uni et tout autre pays spécifié par le gouvernement à l'aide d'une notification. Selon les termes des accords de double citoyenneté négociés par le Pakistan avec un certain nombre de pays, les ressortissant-e-s des pays contractants ne sont pas tenu-e-s de renoncer à leur nationalité pour acquérir la nationalité de l'autre pays (*Faryal Nazir*, décembre 2016). Selon la *Direction générale de l'immigration et des passeports* du Pakistan, le gouvernement du Pakistan a des accords de double nationalité avec 19 pays. L'Afghanistan ne figure pas sur la liste de ces 19 pays. Les ressortissant-e-s de ces pays ne sont pas tenu-e-s de renoncer à leur nationalité pour acquérir la citoyenneté pakistanaise (*Gouvernement du Pakistan*, pas de date). L'absence d'accord de double nationalité entre le Pakistan et l'Afghanistan est par ailleurs confirmée par la *personne de contact experte de la situation des Afghan-e-s au Pakistan* (6 novembre 2019).

4 Sources

CISR, 14 janvier 2013:

« **Marriages are registered and performed according to a person's religious group** (*Evangelical Asian Church Toronto* 12 Dec. 2012; *US* 2012, 7). However, sources indicate that religious minorities face problems when registering their marriages (*Jinnah Institute* 27 July 2011; *UN* 14 May 2012, 34-36). *Jinnah Institute*, an NGO and think tank based in Pakistan (*Jinnah Institute n.d.*), states that without a marriage registration certificate, individuals are not entitled to receive [Computerized National] Identity Cards (CNIC), vote or obtain state entitlements (*ibid.* 27 July 2011). The US Department of State's International Religious Freedom Report for 2011 also reports that in the absence of marriage registration, women "faced difficulties in getting a share of their parents' and husbands' property, accessing health services, voting, obtaining a passport, and buying or selling property" (*US* 2012, 16). [...]

3. Marriage Registration

Sources indicate that Nikah Nama, a "marriage certificate" for Muslims (US n.d.; BBC 17 Feb. 2011) or "marriage contract" (Academic 5 Dec. 2012; Pakistan Jurist 5 Apr. 2012), is issued by Nikah Registrar (US n.d.; Academic 5 Dec. 2012). Nikah Registrar, or "marriage registrar" (Lahore n.d.), is appointed by the municipality, Panchayat Committee,

Cantonment Board or Union Council (US n.d.; BBC 17 Feb. 2011). The Union Council is located in every municipality (Belgium n.d.; Academic 5 Dec. 2012). The Pakistan Jurist, a website created by Pakistani legal firm AHS - Advocates & Legal Consultants (Pakistan Jurist n.d.a), explains that Nikah Nama is a "legal document certifying the solemnization of marriage between a husband and a wife" (ibid. 5 Apr. 2012). The Pakistan Jurist points out that, according to the Muslim Family Laws Ordinance 1961, which applies to all Muslim Pakistani citizens (ibid. n.d.b), Nikah Nama must be registered with a local Union Council, where an original copy of Nikah Nama is kept as public record (ibid. 5 Apr. 2012).

According to the Pakistan Jurist, individuals may obtain a copy of the Nikah Nama at the Union Council by paying a prescribed fee (ibid. n.d.b). A Nikah Nama form, obtained by the academic from the Nikah Registrar in Lahore in December 2012, includes the following: address where the marriage took place, names of bride and groom and their addresses, names of their fathers and their addresses, age of the bride and her National Identification Card number, information on whether the bride and the groom have been married before and whether they have any children, names of the representatives of the bride and the groom, if any, and of the witnesses of the appointment of the representatives, date of the marriage registration, name of the person who solemnized the marriage and his or her signature, registration fee paid, signatures of the bride, the groom and their representatives and their witnesses, and seal and signature of the Nikah Registrar (Lahore n.d.). Information on whether the same form is used across the country could not be found among sources consulted by the Research Directorate within the time constraints of this Response. » Source: Commission de l'immigration et du statut de réfugié du Canada (CISR), Pakistan: Information on marriage registration, including mixed marriages, 14 janvier 2013: www.refworld.org/docid/51222d762.html.

Faryal Nazir, décembre 2016:

« 3.1.1. *Citizenship by Birth*

Jus soli or citizenship by birth is recognized in the Act (Section 3 and 4). At the time of commencement of the Act, a person born in Pakistan could claim nationality if he was residing in Pakistan. Every person born in Pakistan after the commencement of this Act is deemed to be citizen of Pakistan by birth. The law denies citizenship to a person born in the country, if his father enjoys diplomatic immunity in Pakistan or if his father was an enemy or alien in Pakistan. Therefore, the children born to aliens in Pakistan are not accorded the privilege of citizenship.

3.1.2. *Citizenship Claims by Afghan Refugees*

No statutory provision of law expressly deals with status of citizenship of refugees and especially, Afghan refugees in Pakistan. With regards to citizenship by birth the case of Afghan Refugees is of special importance, as the status of citizenship is not extended to them even if a child of a refugee is born in Pakistan. After Soviet invasion in Afghanistan in 1979, around five million Afghan Nationals fled the country and took refuge in neighbouring countries. Pakistan alone housed around three million refugees (Noorani 1988, Shahi 1988). On 14 April 1988, four agreements, known as the Geneva Accords, were signed by four High Contracting Parties namely, Afghanistan, Pakistan, Soviet Union and United States of America. The purpose of Geneva Accords was withdrawal of Soviet forces and restoration of peace in

Afghanistan. One of the four agreements was the Bilateral Agreement between Republic of Afghanistan and Islamic Republic of Pakistan on Voluntary Return of Refugees. Under the terms of the agreement, the Afghan refugees were to be repatriated peacefully to their home country, however, due to continued instability in Afghanistan up to now, very few refugees have returned. **Over time, an increasing number of Afghan refugees made efforts to naturalise in Pakistan as citizens, however, their claims have been denied both at administrative and judicial levels. The problem of undocumented refugees exacerbated due to porous and unregulated border between Afghanistan and Pakistan.** Most of the Afghan refugees are of Pashtun ethnicity and have familial links with people in the adjoining northern province of Pakistan. **Some of the Afghan refugees reportedly have obtained Pakistani Identity Cards by settling in smaller towns and providing incorrect information to Pakistani officials. The refugees have been settled in Pakistan for more than three decades, the children born to such refugees in Pakistan are not issued with the citizenship certificates as their parents are considered aliens under the citizenship laws of the country.**

In one such case a child of Afghan refugee who was born and raised in Pakistan was denied the issuance of national identity card when he attained the age of 18 years. He challenged the decision of the administrative authority before the High Court, claimed the citizenship by birth and prayed that the administrative authority should be directed to issue him an identity card. The record showed that his father obtained the National Identity Card and passport by providing false information to government officials. While refusing the petition, the court pronounced that the children of Afghan refugees cannot claim citizenship by birth as their parents have a recognized refugee status and they would be deemed foreigners and aliens under the law. The Afghan refugees were provided temporary refuge in the country and the governing law for them is the Foreigners Act, 1946. The opinion stressed that long stay of a foreigner in a foreign country would not automatically convert him to be the citizen of that country unless he acquires the nationality by process of law. [...]

3.1.5. Citizenship by Naturalisation

The law in Pakistan allows for citizenship through naturalisation. For this purpose, a person must first obtain a naturalisation certificate under the Naturalisation Act, 1926 from the Federal Government. One of the pre-requisites for applying for the certificate is residency in Pakistan. The applicant must live in Pakistan for a continuous period of one year before application and a period of four out of seven years prior to the one year period before the application. Other requirements include that the applicant must not be a minor, must be of good character, must have adequate knowledge of at least one vernacular language of Pakistan and must not be a citizen of a country of which a citizen of Pakistan is prevented by or under any law from becoming a subject of naturalisation. Lastly, the applicant must intend to reside in Pakistan, or enter service of Pakistan if the certificate of naturalisation is granted. After obtaining a certificate of naturalisation, the person can apply for a citizenship certificate and the Federal Government in its discretion grants the status of citizenship. The distinction has been drawn by the courts between the permanent residence certificate issued under the administrative provincial rules and the domicile certificate issued under the Pakistan Citizenship Rules, 1952. The court has elucidated in a series of cases that the two certificates are entirely different concepts of law. The permanent residence certificate is issued under provincial rules by District Magistrate and is colloquially called the domicile certificate. The other is issued under the Pakistan Citizenship Rules by the

Federal Government and is called a domicile certificate. The District Magistrate can only refuse to issue a permanent residence certificate of a particular district but not the domicile certificate of the country. The issue has been disputed in various cases where the provincial quota for students of a particular district has been reserved for admission in professional degree colleges as part of affirmative action for underprivileged areas of the country. It has been explained by the court that the citizenship certificate and the domicile certificate cannot be used for this purpose. [...]

3.3. Dual Citizenship

Dual citizenship was not allowed in 1951, under the terms of the Act. The Act was amended in 1972 to allow for dual citizenship with the United Kingdom and any other country that the Federal Government may specify through notification. The Government of Pakistan negotiates bilateral dual nationality agreements with a state party to allow dual citizenship with that particular country. According to the terms of these agreements, the nationals of contracting countries are not required to renounce their nationality while acquiring citizenship of the other country. Currently, Pakistan has dual nationality agreements with following 18 countries and is in process of negotiating another one:

- a. United Kingdom
- b. France
- c. Italy
- d. Belgium
- e. Iceland
- f. Australia
- g. New Zealand
- h. Canada
- i. Finland
- j. Egypt
- k. Jordan
- l. Syria
- m. Switzerland
- n. The Netherlands
- o. United States of America
- p. Sweden
- q. Ireland
- r. Bahrain
- s. Denmark (in process)

While dual nationality is allowed under the law, the rights of dual nationals are limited. Dual nationals are not allowed to contest the elections of the Parliament or Provincial Assembly in Pakistan. [...]

When delivering these judgments the court confirmed that dual citizens are entitled to all rights enshrined in the chapter on Fundamental Rights in the Constitution. The right to vote in the general elections was recognized by the Supreme Court of Pakistan. Every citizen including a dual national whose name is entered in the electoral roll is eligible to cast a vote, this being a right protected in the Constitution. In the same way, other civic rights of

association, profession, trade etc. are also available to dual citizens as well. » Source: Faryal Nazir, Report on citizenship law : Pakistan, décembre 2016, p.4-6, 15-17: https://cadmus.eui.eu/bitstream/handle/1814/44544/EudoCit_2016_13Pakistan.pdf.

Gouvernement du Pakistan, pas de date (accès le 6 novembre 2019):

« *Laws and Rules which mainly govern the Policy and Procedures pertaining to Immigration are:*

Pakistan citizenship Act 1951. (PCA 1951)

Naturalization Act 1926. (NA 1926)

Pakistan citizenship Rules 1952. (PCR 1952)

Citizenship of Pakistan

There are three categories of declared citizens of Pakistan including citizens by birth, by descent and by migration, which are briefly mentioned below. (Please see relevant sections of Pakistan citizenship Act, 1951 for details)

(i) ***Citizens by Birth.***

(ii) *Citizens by Descent.*

(iii) *Citizens by Migration.*

(i) *Citizen by Birth:*

Persons who or any of their parents or grand parents were born in the territories now included in Pakistan before the commencement of citizenship Act, 1951 are citizens of Pakistan.

Any person born in Pakistan after the commencement of Pakistan Citizenship Act, 1951 is citizen of Pakistan. *Children of foreign diplomats and children of enemy alien born in Pakistan are not included in this category. Persons, who migrated from territories of Pakistan to other areas of Indo-Pakistan sub-continent for permanent stay after March, 1947 shall also be not considered citizens of Pakistan.*

(ii) *Citizen by Descent:*

Children of Pakistanis who are born outside of Pakistan are citizens by descent. If the parent of such child is a citizen by descent himself/herself (as born outside of Pakistan) the child is required to be registered in the nearest consulate or Pakistani mission.

Children born to Pakistani mother and foreign national father, after 18.04.2000, are treated as citizens of Pakistan.

(iii) *Citizen by Migration:*

The persons who migrated to Pakistan from the territories in the indo-Pakistan subcontinent before the commencement of Pakistan Citizenship Act, 1951 are declared citizens of Pakistan.

[...]

Dual Nationality

Government of Pakistan has dual nationality arrangements with following 19 countries.

Sr.#	Name of Country	Sr.#	Name of Country
1	United Kingdom	10	Egypt
2	France	11	Jordan
3	Italy	12	Syria
4	Belgium	13	Switzerland
5	Iceland	14	Netherland
6	Australia	15	United States of America
7	New Zealand	16	Sweden
8	Canada	17	Ireland
9	Finland	18	Bahrain
		19	Denmark

The nationals of these countries are not required to renounce their nationality while acquiring Pakistan Citizenship. » Source: Government of Pakistan, Directorate General of Immigration & Passports, Immigration, pas de date (accès le 6 novembre 2019): www.dgip.gov.pk/files/immigration.aspx.

NIDC, 31 mai 2018 :

« According to the Muslim Family Law Ordinance 1961, registration of marriage and divorce is mandatory. The manual registration takes place at Union Council level, and registration is only done automatically, if the person solemnising the marriage is also the person licensed to register the marriage.

Marriages, which are solemnised according to Islamic rules, are considered valid in Pakistan. With the presence of two witnesses, a written contract and a fixed mahr (bride price) any religious knowledgeable person can solemnise a marriage. This person is known as a Nikah Khawan and is often a local imam.

The Union Council is obligated to grant license to one or more persons to be a Nikah Registrars, who is the person authorised to register marriages. The Nikah Registrar is not employed or paid by the state or by the Union Council and can never be chairman or any other function in the Union Council. The Nikah Registrar will often, but not necessarily, be the same person as the Nikah Khawan, and has not necessarily any legal competencies.

During a wedding ceremony a marriage contract will most often be drafted, also when the person performing the ceremony is not the authorised Nikah Registrar. In any case, according to the Muslim Family Law Ordinance, the marriage still needs to be registered at the Union Council.

The Nikah Registrar completes the nikahnama - the original marriage certificate. The Nikah Registrar is then obligated to ensure that the nikahnama is registered at the relevant Union Council, which is always the Union Council where the bride is registered as resident. The following registration in the handwritten register in the Union Council as well as the registration in NADRA's database is done by the Union Council secretary. The Nikah Registrar is not authorised to do the actual registration in the Union Council's register.

The nikahnama

The nikahnama is an A3 sized piece of paper written in Urdu and is the original marriage certificate. The nikahnama contains handwritten information about the bride and the groom, the mahr (bride price), place and date of issue and the signatures of the witnesses.

The Nikah Registrar drafts four copies of the nikahnama. One copy goes to the bride and one to the groom, one copy stays with the Nikah Registrar and the last copy is submitted to the relevant Union Council by the Nikah Registrar. The Union Council secretary then registers the marriage in the manual register and files this nikahnama in the archive. [...]

Marriage Registration Certificate (MRC)

When a marriage has been manually registered at the Union Council, it can also be digitally registered in NADRA's CRMS database and the couple can have a Marriage Registration Certificate (MRC) issued at the Union Council. This registration is not mandatory by law, and the MRC is only issued by request of the couple.

The MRC is written in both Urdu and English, and contains information about names and CNIC numbers of the bride and groom and date and place of marriage. The MRC contains three dates: date of the solemnisation, date of data entry and date of issuance. These dates are not necessarily the same but the entry and issuance dates most often will be. The MRC is printed on NADRA security paper and is stamped by the Union Council but not by the Nikah Registrar. [...]

Corruption and trustworthiness of civil status documents

According to several sources, corruption is a widespread problem in Pakistan and it is easy as well as almost risk-free to bribe officials at all levels of the Pakistani administration, including in relation to the issuance of documents. A local lawyer elaborated that it is very easy to bribe the secretary at a Union Council and the lawyer explained that one of the reasons is that the secretary is often poorly paid. The same lawyer added, that the type of corruption where a person pays a bribe to speed up the issuance process of a document in which the person is legally entitled to, is endemic. Furthermore, **according to a diplomatic source, there is, in general, little or no risk associated with acquiring forged documents or genuine documents with false content. [...]**

Trustworthiness of civil status documents

*According to a diplomatic source, the control routines at the Union Councils are catastrophic and when this is combined with widespread corruption and different local registration practises, **Pakistani civil status documents must be regarded to have low credibility.***

The civil status documents from NADRA are always issued on the basis of a corresponding breeder document issued by the Union Council, meaning that every NADRA document has a related Union Council document. The documentation required when applying for a MRC is the nikahnama. The Union Council secretary registers the marriage in NADRA's database based on the nikahnama, why the information on the Marriage Registration Certificate (MRC) should be consistent with the information on the nikahnama.

According to Union Council 25 in Islamabad, the MRC is often used as documentation in visa applications. This is, according to a local lawyer, problematic as **the nikahnama is more trustworthy than the MRC**. This notion is consistent with the administrative procedure of the embassy of one of the consulted diplomatic sources who explained that they always require the submission of relevant breeder documents together with the NADRA document when processing visa applications. If the breeder documents are not submitted, the visa application is automatically rejected. » Source: Danish National ID Centre (NIDC), Pakistan: Marriage registration and related civil status documents, 31 mai 2018, p.2-8: www.nidc.dk/-/media/nidc/Dokumenter/Notatbibliotek/06062018-Pakistan--Marriage-registration-and-related-civil-status-documents-May-2018.pdf?la=en&hash=57A11ED6AF83AB233F9F41098463DD091A88E387.

OSAR, 12 mars 2018:

« La pratique relative à la citoyenneté et aux documents d'identité ne correspond pas aux dispositions légales. Selon un renseignement envoyé par courriel à l'OSAR le 8 Mars 2018 par Alessandro Monsutti, professeur d'anthropologie et de sociologie au Graduate Institute (HEID) de Genève, la citoyenneté au Pakistan et dans les pays voisins n'a pas forcément la même signification qu'en Europe. Même pour les citoyen-ne-s pakistanais-es, la pratique relative aux documents d'identité ne respecte pas la loi. Ainsi, les personnes nées au Pakistan et dont les parents ont la nationalité pakistanaise ont elles aussi des difficultés à obtenir des documents d'identité. Les demandes de documents impliquent ainsi parfois le versement de paiements informels.

Pratiquement aucune possibilité légale pour les Afghan-e-s, y compris les Hazâra afghan-e-s, d'obtenir par voie légale la citoyenneté pakistanaise. Selon les informations transmises le 8 mars 2018 par téléphone à l'OSAR par une personne de contact au Pakistan experte sur le système juridique pakistanaise, il est impossible pour les citoyen-ne-s afghan-e-s vivant au Pakistan – y compris pour les membres du groupe ethnique des Hazâras – d'obtenir la nationalité pakistanaise par voie légale. Selon Alimia / FES (septembre 2016), « certain-e-s Afghan-e-s [auraient] obtenu la citoyenneté pakistanaise, soit légalement, soit par des voies informelles. [L]'accès (légal) à la citoyenneté est cependant très limité et la majorité des citoyen-ne-s afghan-e-s qui ont acquis la citoyenneté pakistanaise proviennent de groupes à revenu moyen supérieur et ont certainement bénéficié du soutien des acteurs politiques au Pakistan. » Alimia a par ailleurs indiqué le 9 mars 2018 par courriel à l'OSAR que les Afghan-e-s ne pouvaient pas obtenir la naturalisation au Pakistan. La naturalisation au Pakistan serait un processus réputé difficile. Le journal pakistanaise Dawn a rapporté le 11 août 2016 que le ministre de l'Intérieur pakistanaise Chaudhry Nisar Ali Khan avait informé l'Assemblée nationale pakistanaise que les enfants de réfugiés afghans au Pakistan ne pouvaient pas obtenir la nationalité pakistanaise, même si leur mère était de nationalité pakistanaise. » Source: OSAR, Pakistan: Les Afghanes et Afghans de l'ethnie hazâra et la citoyenneté, 12 mars 2018, p.2: www.osar.ch/assets/herkunftslander/mittlerer-osten-zentralasien/pakistan/180312-pak-afgh-hazara-staatsbuergerschaft-f.pdf.

Siddiqui Zuha, 9 mai 2019:

« Pakistan is among the 30 countries in the world that offer unconditional birthright citizenship—meaning that a child born on its soil will automatically receive a passport. Section 4 of the Citizenship Act of 1951 confirms citizenship by birth: Every person born in Pakistan after the commencement of this act shall be a citizen of Pakistan.

Over time, a number of Afghan refugees have tried to naturalize in Pakistan as citizens, but these claims have always been denied. In 1999, a young man named Ghulam Sanai applied for a Pakistani national identity card when he turned 18, citing Section 4. The Peshawar High Court refused his petition, ruling that despite being born in Pakistan, Sanai could not get a national identity card since his parents were Afghan refugees and their stay in Pakistan was meant to be temporary. As a result, a child born to Afghan parents in Pakistan is neither a Pakistani citizen nor can he or she legally claim asylum in Pakistan. In other words, such children have no way to live in Pakistan legally.

Pakistani Prime Minister Imran Khan has suggested that he would reform the system. In September 2018, he announced that his government would grant citizenship to children of Afghan refugees. But opposition parties quickly lashed out. A senior opposition party leader, Taj Haider, remarked on a local TV show one day after Khan's announcement that Pakistan belongs to Pakistanis and that refugees should be given refugee status. One of Khan's key allies, Jam Kamal, the chief minister of the province of Baluchistan, also expressed his reservations, arguing that there was proof of refugees being involved in terrorist activities. Others, such as Akhtar Mengal of the Baluchistan National Party, cited demographic concerns. "If we are unable to provide jobs to our own people, how can we lift the load of surplus refugees?" he said.

And there was opposition within the general public, too. On Sept. 22, 2018, the local Express Tribune published a report quoting analysts and university professors in Islamabad stating that issuing passports to Afghans born in Pakistan posed "threats to Pakistan's national security." "Some of them fall trap of terrorist elements," the report stated. Or they may "get involved into anti-Pakistan activities." Unsurprisingly, this report corroborated a 2016 Gallup opinion poll according to which 90 percent of Pakistani citizens supported blocking Afghans without visas from entering the country in order to help counterterrorism efforts.

Two days after Khan made his statement, he backtracked, saying that his words were only meant to "stir debate" around the refugee crisis. It seems unlikely, then, that citizenship for Afghans born in Pakistan is in the offing. According to Muhammad Saad Khan, a retired military brigadier and former Pakistani defense attaché in Kabul, they're too valuable a bargaining tool with Afghanistan. "The ups and downs in the relationship between the two countries are reflected in the status of Afghan refugees," he said. "When relations between the two countries go south, Pakistan usually says they won't renew PoR cards, threatens to send refugees back. And when they are slightly better—like right now—the government extends the validity of these cards." [...]

The lack of clarity about the future of the PoR cards motivates some Pakistan-born Afghan refugees to apply for Afghan passports. But that means increasing their chances of being driven away from Pakistan. In 2005, for example, Nazneen's family decided to apply for Afghan passports. "What they didn't tell us, when we were being given these passports, was that eventually we would have to go all the way to the border at Torkham every month to get our visas renewed," Nazneen said.

Torkham is two hours away by road, and for a family of five to gather the money to spend on a four-hour journey—back and forth—every single month is asking the impossible. And there are no exceptions. Everyone has to go to the border to get their passports stamped: the elderly, the sick, infants. And there is never any guarantee of getting back in. “I’ve never lived in Afghanistan,” Nazneen added. “I’ve spent my life in Pakistan. I was born here, my husband was born here, my baby was born here. This is my home. And yet I wake up every morning thinking today is going to be our last day here.” » Source: Zuha Siddiqui, in Foreign Policy (FP), For Afghan Refugees, Pakistan Is a Nightmare—but Also Home, 9 mai 2019: <https://foreignpolicy.com/2019/05/09/for-afghan-refugees-pakistan-is-a-nightmare-but-also-home/>.

The Guardian, 18 septembre 2018:

« Imran Khan, Pakistan’s prime minister, has appeared to drop his promise to grant citizenship to hundreds of thousands of Afghan refugees living on the margins of Pakistani society.

*On Sunday Khan announced that he would start work immediately to provide passports to the children of refugees born in the country. However, **after a backlash from politicians and supporters of the country’s powerful military, he said on Tuesday that no decision had been made.***

About 2.7 million Afghan refugees have crossed the border into Pakistan since the Soviet invasion in 1979. Without official documentation they are shut out of schools and employment. As many as 1.5 million children born to refugees in Pakistan are denied citizenship.

After a strong push-back, Khan said he had raised refugee citizenship “just to initiate a debate”. The founder of the Pakistan Tehreek-e-Insaf (PTI) party, which swept to power in July, has a reputation for retracting his words.

However, Khan reiterated his own desire to grant citizenship to Bengali and Afghan refugees as he addressed parliament before leaving on a trip to Saudi Arabia and asked ministers for their suggestions on the issue.

“I will keep asking what will happen to these human beings ... if we don’t decide on their rights now, when will we decide?” he said.

Parliament will offer stiff resistance, though. The PTI holds a slim majority and Khan’s announcement on Sunday was condemned by politicians in Pakistan’s Sindh and Balochistan provinces, who fear the impact of enfranchising new voters.

One of Khan’s key coalition partners, the army-supporting chief minister of Balochistan, Jam Kamal, said Pakistan should not alter its policy of seeking to send refugees home. The military has long called for repatriation of Afghan refugees, blaming them for terrorist attacks.

Local journalists, whose work is often censored to avoid displeasing the armed forces, said their stories on Khan’s original speech had not been published.

Hajji Abdullah Shah, head of the Afghan refugees in Sindh, told the Guardian he was anxious about the change in tone. "We hope he will not take the light, he has shown to us, back," he said.

Mosharraf Zaidi, a columnist, while praising the sentiment behind Khan's original offer as "really admirable" said the reversal was due to political inexperience and it was "quite upsetting".

The prime minister was this month criticised for a U-turn on the appointment of Atif Mian, a world-leading economist, under pressure from Islamists who objected to his Ahmadi faith. »
Source: The Guardian, Pakistan's Imran Khan skirts issue of Afghan refugees' citizenship, 18 septembre 2018: www.theguardian.com/world/2018/sep/18/pakistan-imran-khan-afghan-begali-refugees-citizenship-passports.

L'OSAR est l'association faîtière nationale des organisations suisses d'aide aux réfugiés. Neutre sur le plan politique et confessionnel, elle s'engage pour que la Suisse respecte ses engagements en matière de protection contre les persécutions conformément à la Convention de Genève relative au statut des réfugiés. Les activités de l'OSAR sont financées par des mandats de la Confédération et par des dons de particuliers, de fondations, de communes et de cantons.

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