Legal Identity and Civil Documentation in Afghanistan

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Afghanistan Protection Cluster

Thematic Note: Legal Identity and Civil Documentation in Afghanistan

Introduction

Legal identity, identity management and civil registration is a historical and complex issue in Afghanistan. The absence of civil documentation continues to be prevalent and is central to the lack of freedom of movement, limited access to services and protection challenges faced by the Afghan population. Forty years of conflict have had significant consequences on governance and administration, including inconsistencies in registration of births and acquisition of key civil documents. Additionally, since the takeover in August 2021, the Afghan Constitution of 2004 and all domestic laws were suspended, including laws relating to civil registration and documentation, leaving a significant legal vacuum. Funding in related public institutions has significantly decreased, many offices have closed and the number of staff in civil registration departments was reduced. This has led to additional challenges to obtain civil documentation such as high costs and longer travel distances to registration centres. There is also a lack of coordination, and confusing procedures. This is compounded by the protracted crisis, displacement including due to natural hazards as well as high poverty levels. Consequently, many Afghans have been unable to acquire legal identity documentation for multiple generations, significantly impacting their access to rights and basic services such as, education, healthcare, and restricted their freedom of movement, access to employment and humanitarian aid. The Herat and Pakhtika earthquakes in 2023 and the recent floods in the Northern, Northeastern and Western regions in May 2024, left many people with damaged or lost key civil documents.

The absence of documentation exacerbates other vulnerabilities, especially for the most vulnerable groups – such as women, children, adolescents, persons with disability, returnees, internally displaced persons (IDPs), ethnic and religious minorities, nomadic and stateless persons. The lack of a Tazkira has a spillover effect, as it is a requirement to acquire other documentation e.g. a passport.[i] Consequently, accessing legal identity, efficient identity management and removing barriers is crucial as a fundamental human right that duty-bearers must diligently safeguard to mitigate protection risks and achieve lasting solutions. Information on civil documentation and registration rates are currently still limited. The latest World Bank report (2015) indicates that merely 42% of the total births are registered in Afghanistan. Data from the Protection Cluster Protection Monitoring tool (December 2023) highlights that 55% of assessed households reported at least one family member lacking documentation, with the majority having never managed to obtain it. This disproportionately affects women and girls. Also, the UNHCR Protection monitoring tool (CPBM 2023) indicates that rural and culturally conservative areas are more affected, such as in Uruzgan and Hilmand Provinces, where 77% of the families reported lacking civil documentation, the majority of those being women and girls.

Most Affected Population Groups

Some minority and vulnerable population groups have for decades faced specific constraints to access identity and civil registration documentation, notably women, displaced persons, nomadic and semi-nomadic communities, children, ethnic and religious minority. According to recent joint research by Samuel Hall, IOM, UNHCR, UNICEF, NRC, and WFP, there are several key factors that limit access to civil documentation, such as gender, displacement status, education and age.[ii]

Women: they are the most affected especially women headed households, women with disability, women returnees and IDPs, women from ethnic and religious minority groups. To obtain any civil document, a women must have a *mahram (male chaperone)* accompanying them. This *mahram* requirement has discouraged some women from initiating procedures to access documentation under the DFA. Some men are also discouraged to escort women due to the slow-lengthy and cumbersome procedures as well as long distance which prevents them from going to work and the consequent loss of income. In addition, women's access to government offices is significantly restricted and all officers are male which also makes them uncomfortable. Furthermore, some men believe that since women are mostly not allowed to work or have a professional career, they do not need civil documents. There are also cultural/societal norms such as husbands not feeling comfortable with male officers taking photos of their wives. This situation is worse for women headed households as they do not account for male family member and must seek representation through a community representative *(malik)* to acquire confirmation to be able to request identity documents.[iii]

Displaced population (Internally Displaced Persons (IDPs) and returnees): forty years of conflict means large-scale displacements. Many people have lost their documentation for generations or never obtained such documentation, especially IDPs and returnees e.g. the almost 600,000 returnees from Pakistan who currently face enormous challenges.[iv] To obtain a Tazkira, they must return to their place of birth, or their host community leader could act as a witness for their application. IDPs and returnees may not have the financial resources required to return to their birthplace. In some cases, if there is a generational lack of documentation in the family e.g. if the grandfather or father doesn't have a Tazkira, it will be difficult or impossible for the IDP or returnee to obtain one. Also, community leaders in the birthplace may refuse to verify the documents as they do not personally know the individual if the person left the community years ago or if there is a new community leader. In some cases, when IDPs have been living in a host community for several years, bought land or a house, they may not be required to go back to their place of birth. However, they must get confirmation from the Maliks/Wakils (host community leader). IDPs and returnees in some host communities face discrimination which limits their ability to access civil documents. Overall, these challenges are compounded for women and girls, specifically women headed households and those living in rural areas. The situation is made worse by low literacy levels, lack of information on procedures and financial constraints. It is reported among returnees from Pakistan that, male relatives are prioritized to obtain civil documents due to the significant costs involved.[v]

Children, including unaccompanied minors: legal identity of children depends on their father's Tazkira. Thus, children whose fathers lack a Tazkira will not be able to obtain one. Women headed households often face additional barriers to acquire a Tazkira for their children. Consequently, this prevents children from enrolling in school. Unaccompanied minors and child heads of households who do not have any type of identification (Tazkira, e-Tazkira, birth certificate) also face additional barriers, as they do not account on their father's Tazkira to be able to access documentation. In case their father is deceased, another male family member can act as a next of kin to prove lineage of the child. Nevertheless, there are cases where the next of kin is unwilling to support the child's application for such documentation. Unaccompanied minors may not be able to pay the required fees, may be unaware of the procedures or illiterate to follow through the entire process. IDP and returnee children are significantly impacted, as their parents must travel back to their place of birth to obtain their Tazkira and most of them also face economic hardships. Under the DFA, parents are less inclined to apply for a Tazkira for their daughters, since girls are not allowed to stay in school beyond 6th grade.[vi]

Ethnic and religious minorities: these groups face more challenges accessing documentation in certain communities. Cases of discrimination against minority groups have been reported, due to ethnicity favouritism. Perceptions on this issue may differ – there are views contesting any discrimination and others that would acknowledge that discrimination exists. Further, these minority groups have expressed concerns over their ethnicity and religion being disclosed in the e-Tazkira, fearing it may result in violence and discrimination.[vii]

Nomadic/semi-nomadic groups: there is a generational lack of documentation, especially among parents, due to constant moving which in turn is affecting children. Some may therefore not have a link to a specific location to trace parentage, limiting opportunities for referees. In the absence of parental documentation one needs a witness, elderly from the community of the place of linkage to confirm their lineage. The elder community member must be officially registered as a representative of the community to which the individual claims affiliation. Nevertheless, many elders from nomadic communities are not officially registered which creates additional obstacles.[viii]

Key Challenges to Access Identity Documentation and Civil Registration

Legal obstacles: Since August 2021, the Afghan Constitution of 2004, all domestic laws including laws related to civil registration and documentation were suspended. Some laws are still unofficially applied on ad-hoc basis and variations exist between provinces, creating confusion and unclear procedures. The current situation poses challenges for the most vulnerable. Worst of all, private lawyers are very few, and almost there are no practicing women lawyers who would facilitate access to civil documentation for women and other vulnerable people.

Access barriers: There are significant variation in the functionality of the offices handling legal identification processes across the country leading to unequal access.[ix] Many offices have closed and few that exist, are far from the majority of the people which has increased travel distance often to provincial capitals, which is compounded by the poor road infrastructure. The absence of women officials limits women's ability to process civil documents worsened by the mahram requirement. Printing of essential documents, such as e-Tazkiras and issuance of passports, are now centralized in Kabul, resulting in longer waiting times, processing costs as well as travel and other related expenses. Relatedly, there are administrative challenges including poor quality and limited availability of equipment, technical failures of the online system forcing people to apply in-person.

Financial constraints: Due to decreasing public financial resources multiples civil registration offices have closed and the number of staff reduced. Also, since the takeover, the fees for essential documents such as e-Tazkiras and passports, have significantly increased and unaffordable for many Afghan people. Previously a paper Tazkira cost 10 AFN, while today it costs 100 AFN and 300 AFN for e-Tazkira.[x] Variations in prices have been reported across provinces. Obtaining a passport currently cost between 10,000 to 12,000 AFN, an estimated 50 percent increase limiting people's ability to acquire these documents.

Waiting times and unclear procedures: Processing times remains a major barrier characterized by long waiting periods. Many applicants have reported that it takes several months to acquire paper Tazkiras and e-Tazkiras and passports, and variations exist between Kabul and other provinces. Besides, the procedures for obtaining documents are complex and involve multiple steps. Paper Tazkiras or marriage certificates, still require the presence of witnesses to be approved. [xi]

Protection Risks-related to the Lack of Civil Documentation:

- ***Restriction to freedom of movement:*** people without civil documents are unable to move across villages, districts, and provinces as well as to travel abroad. The situation is worse for women.
- ***Limited access to basic services leading to adoption of negative coping mechanisms:*** to receive certain services like health care, humanitarian assistance, bank account, or loans, a civil document is a prerequisite which leads to some people resorting to negative coping mechanisms increasing vulnerabilities and reducing capacities to overcome shocks.
- ***Limited access to education:*** children are unable to enroll in schools without a Tazkira.
- ***Discrimination and stigmatization:*** other community members may perceive a non-holder of a civil document as stateless and treat him/her in an undignified manner.
- ***Gender-based violence:*** women and girls are particularly vulnerable to harassment while moving with no documentation as well in case of sexual violence girls cannot prove that they are minors and perpetrators may take advantage of this.
- ***Child abuse, exploitation, and violence:*** children who are not registered and, therefore, cannot "prove" their age, are more vulnerable and exposed to age-related abuses, such as early marriage, child labour, sexual exploitation, recruitment in non-state armed groups, military conscription, detention in adult prison facilities and adult conviction.
- ***Insecurity of tenure and property rights:*** without documentation people's rights to housing, land and property are curtailed, creating a significant barrier to tenure. This increases the threats of eviction and exacerbates vulnerabilities, such as marginalisation and discrimination of the most vulnerable groups.
- ***Harassment:*** individuals that cannot provide personal documentation may be subjected to harassment, extorsion, physical violence. This could worsen during conflict and displacement.
- ***Difficulties in cases of family separation and reunification:*** the absence of a birth registration could mean that the reunification of children with their families becomes more difficult.
- ***Risk of statelessness:*** the lack of documentation and other means to prove one's identity can trigger or increase the risk of statelessness.

Recommendations to the Humanitarian Coordinator (HC) and Humanitarian Agencies

- Engage the DFA to reduce the cost of civil documents for the most vulnerable especially women, children, minorities, and persons with disability.
- Work with the DFA to develop and implement a nationwide registration programming in line with humanitarian principles with the view of enabling the most vulnerable to access civil documents.
- Initiate a detailed assessment on civil registration and documentation to deepen understanding of the situation in Afghanistan to support programming, fundraising and advocacy.

Recommendations to donors

- Provide dedicated funding and sustained funding for civil documentation including birth registration and civil registration for the most vulnerable as an affirmative action.

After participating in an awareness meeting organized by UNHCR through its partner, OSED, which was on importance of civil document, Shaiqa, a 28-year old woman previously returned from Iran, realized the importance of civil documents and became interested to get them. As a result of a joint effort and with the guidance and assistance of OSED's legal team, she proceeded application.

In consequence, the four kids of Shaiqa were able to obtain citizenship certificates.

Annex 1: Type of Documentation in Afghanistan[xii]

Tazkira: refers to the official national identity document in Afghanistan. There are two versions, the paper Tazkira, commonly referred to as the "older version" and the E-Tazkira, commonly referred to as "new version". Under the 2014 Law on Registration of Population Records, all Afghan citizens must possess a Tazkira, it is required to receive variety of services, as well as to acquire other documents, such as passports and drivers' licences. Applications are processed in the applicant's hometown or in Kabul if a letter of permission is provided by local authorities in the hometown.

Electronic Tazkira (e-Tazkira): refers to an "official document that is printed on polycarbonate cards." It includes biometric information, such as nationality, ethnicity, and religion. Applications may be filled in online, but an in-person appointment is also required at the registration office.

Passport: this document enables travels abroad and is regulated by the Passport Act of 2015. A paper Tazkira or an e-Tazkira is required to acquire a passport. Applications must be processed at the Kabul Central Passport Department.

Birth certificate: is issued upon registering a birth at the hospital validated by the civil registry. For those born out of hospital, they obtain a vaccination card from a government hospital, passport photos and the parent's identify card. For Afghans over six years, they must acquire the birth certificate in Kabul.

Death certificate: refers to the official document issued by the government to establish or legally prove the death of an individual, including information on the time, location, and cause of death. It calls for a confirmation from community leaders, two witnesses, a Tazkira from a close relative, and confirmation letter from district authorities.

Marriage certificate: it establishes proof of marriage, upon registration by the competent authority of an official marriage contract (*nikahnam*). To obtain a marriage certificate, a valid Tazkira is required. Married women must provide a marriage certificate to obtain a passport for their children if their husband is not present, and if travelling out of the country with her husband, a marriage certificate must be provided.

Annex 2: General Procedures to Access Civil Documentation in Afghanistan

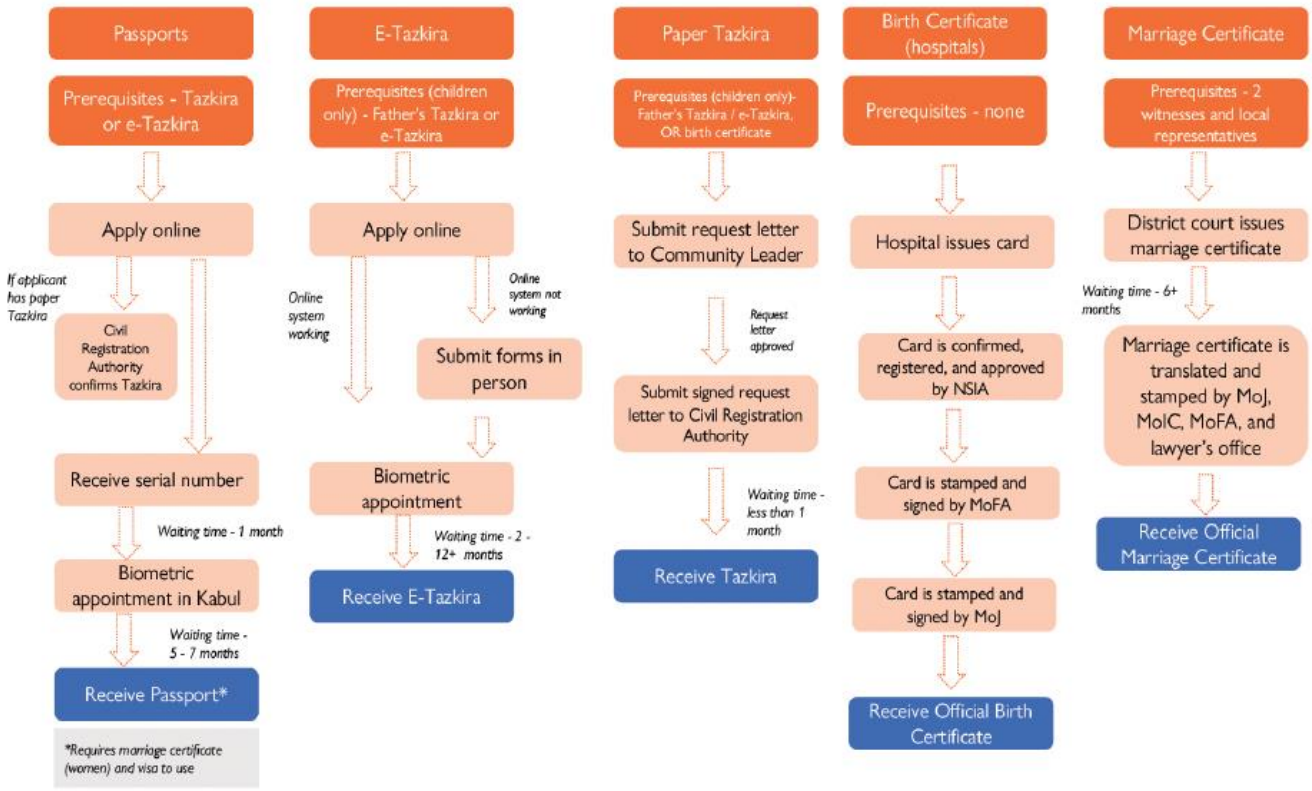

Figure 1: *Steps to obtain documentation under the DFA* [xiii]

Endnotes

[i] *NRC, Samuel Hall, 2016, Access to Tazkira and other civil documentation in Afghanistan*
[ii] *Ibid.*
[iii] *Ibid.*
[iv] *UNHCR-IOM Pakistan Flash update #20, Arrest and Detention/Flow Monitoring, 15 Sep 23 to 18 May 2024*
[v] *GiHA, 2023, Gender update #2,Forced Returns from Pakistan*
[vi] *IOM, NRC, Samuel Hall, UNHCR, UNICEF, WFP, Research Report, 2023, Documentation and Legal Identification in Afghanistan*
[vii] *Ibid.*
[viii] *Forced Migration Review, May 2014, Afghanistan's displaced people: 2014 and beyond "Stateless in Afghanistan."*
[ix] *IOM, NRC, Samuel Hall, UNHCR, UNICEF, WFP, , Research Report, 2023, Documentation and Legal Identification in Afghanistan.*
[x] *Ibid.*
[xi] *Ibid.*
[xii] *IOM, NRC, Samuel Hall, UNHCR,UNICEF, WFP, Research Report, 2023, Documentation and Legal Identification in Afghanistan*
[xiii] *Ibid.*

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https://www.globalprotectioncluster.org/emergencies/82/Afghanistan