IRAN: DISCRIMINATION THROUGH CITIZENSHIP

By Semira N. Nikou

INTRODUCTION

Iran is one of twenty-seven countries that still limit the ability of women to pass citizenship to their children. Under Iranian law, children receive the citizenship of their fathers regardless of their birthplace. As a result, thousands of children born in Iran to Iranian mothers and foreign fathers do not have the opportunity to attain Iranian citizenship until they are at least eighteen years old. Subsequently, these children often cannot access basic social services available to citizens. The hardest hit are the poor, particularly those living in provinces bordering Afghanistan. The foreigners in these areas tend to be Afghani refugees or migrant laborers who, perhaps out of fear of deportation or unfamiliarity with the law, do not officially register their marriages to Iranian women, thereby imposing further barriers to citizenship. Without an official marriage certificate, children born from such marriages have little hope of ever acquiring Iranian citizenship under existing laws.

The Iranian government has recognized this problem, but has not done enough to address it. In 2012, the Iranian Parliament (Majles or Parliament) ratified a bill (2012 Amendment) that would have provided residency rights to children with Iranian mothers and foreign fathers, enabling them to access social benefits, including state subsidies, before becoming citizens. However, the Guardian Council, whose approval is required for all legislation, scrapped the law due to Majles’ failure to specify the source of funding for the amenities suggested. Though the issue has remained largely dormant since then, there are signs that the Parliament might once again attempt to address the problem. Despite a desire to modify the law, however, Majles has not introduced any legislation that goes so far as to allow Iranian women equality in their ability to automatically pass on their citizenship.

Iran’s discriminatory nationality law violates its obligations under international law, but international attention on the issue has remained relatively limited. Notably, the nationality law leads to inequalities that undermine principles set forth in the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC), both of which Iran has ratified. The law also falls short of standards set forth in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), but Iran has yet to ratify CEDAW. The lack of international attention is perhaps due to the fact that Iran’s human rights record has been marred with more pressing issues, such as Iran’s high rate of executions or the low minimum age of marriage for girls. However, the Iranian government has recognized this problem, but has not done enough to address it. In 2012, the Iranian Parliament (Majles or Parliament) ratified a bill (2012 Amendment) that would have provided residency rights to children with Iranian mothers and foreign fathers, enabling them to access social benefits, including state subsidies, before becoming citizens. However, the Guardian Council, whose approval is required for all legislation, scrapped the law due to Majles’ failure to specify the source of funding for the amenities suggested. Though the issue has remained largely dormant since then, there are signs that the Parliament might once again attempt to address the problem. Despite a desire to modify the law, however, Majles has not introduced any legislation that goes so far as to allow Iranian women equality in their ability to automatically pass on their citizenship.

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the negative impact of the nationality law on some of Iran’s most vulnerable populations should not be underestimated.

This article is limited to circumstances in which Iranian women marry foreign nationals (either officially or unofficially) and reside inside Iran. It does not discuss women who marry foreigners and have children outside Iran, since the law does not permit these women to ever pass on their Iranian citizenship to their children. Additionally, a host of unique problems that may arise when a father is stateless, the child is born out of wedlock, and/or the father takes his children to his home country, are also outside the scope of this article.

BACKGROUND ON THE LAW

Iran’s nationality law predates the Iranian Revolution. Though modified over time, the law was first enacted in 1929 during the monarchy of Reza Shah Pahlavi. The paternalistic law likely has religious and tribal origins that became codified, despite the Shah’s push toward the establishment of a secular state.

Most provisions with respect to citizenship are found in Book 2 – On Nationality of the Iranian Civil Code. This section sets forth the categories of people considered Iranian citizens, which include the following four categories: (1) those whose fathers are Iranian (regardless of where the child is born); (2) children with unknown parentage; (3) children born in Iran to foreign parents, one of whom was born in Iran; and (4) children born in Iran whose fathers are foreigners and who reside in Iran at least one year immediately after they turn eighteen years old.

In 2006, Majles amended the Civil Code to clarify the conditions under which children born in Iran to marriages between Iranian women and men of a foreign nationality could attain Iranian citizenship. Majles ratified a single-clause bill (2006 Law), which added a single article and two notes to Article 1060 of the Civil Code, under Book 7 – On Marriage and Divorce. The amendment was initiated out of a concern for a category of children that, though born in Iran, were left in a citizenship limbo—at the time, Majles estimated that there were 120,000 such children in Iran—rather than a desire for women’s equality. The new text provides:

**Single Article** – Children who are the result of marriage between foreign men and Iranian women, who have been born in Iran, or are born in Iran within one year from the date of the ratification of this law, will be able to apply for Iranian citizenship when they reach the full age of 18. These persons will be accepted as Iranian citizens if they lack criminal records or security violation backgrounds and renounce their non-Iranian citizenship. The Interior Ministry obtains evidence of the birth of the child in Iran as well as the issuing of marriage permit as stipulated in Article 1060 of the Civil Law, and the Law Enforcement Forces after being informed by the Interior Ministry issue the residence permit of the foreign father stipulated in this article. Children concerned

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8 Interview with Mehrangiz Kar, former human rights attorney in Iran (Washington, DC) (Nov. 5, 2014).

9 QANUNE MADANI [CIVIL CODE], supra note 3, arts. 976-91.

10 QANUNE MADANI [CIVIL CODE], supra note 3, art. 976.


12 QANUNE MADANI [CIVIL CODE], supra note 3, art. 1060 (providing, “[m]arriage of an Iranian woman with a foreign national is dependent, even in cases where there is no legal impediment, upon special permission of the Government.”).

The 2006 Law contains several positive changes. Firstly, it provides the only provision in the Civil Code that explicitly recognizes the ability of Iranian women to pass on their citizenship, albeit not automatically. Iranian law does offer other citizenship opportunities to people whose fathers are not Iranian, but a woman’s Iranian citizenship is not a criterion for any of these alternative naturalization means. For example, Article 979 sets forth several naturalization criteria through which individuals can acquire Iranian citizenship irrespective of their parents’ nationalities, or Article 976(3)-(5) identifies as Iranian citizens three categories of people whose fathers are not Iranian. Ironically, Article 976(4) recognizes as citizens individuals “born in Iran of foreign parents, one of whom was also born in Iran.” This means that a child born in Iran to a foreign mother, who was also born in Iran, and father automatically becomes an Iranian national, whereas another child born in Iran to an Iranian mother and foreign father does not. The 2006 Law is distinct from these existing provisions because it applies only to children (born in Iran) who have Iranian mothers.

Secondly, children qualifying under the 2006 Law are not subject to the five-year residency requirement under Article 979. Lastly, the 2006 Law makes citizenship a right for those who satisfy all its conditions. In contrast, the naturalization criteria listed in Article 979 are merely minimum conditions that an individual must satisfy before being considered for citizenship, subject to the government’s discretion.17

However, the 2006 Law also contains some noteworthy limitations. Most importantly, the law applies only to children born in Iran. These children can be naturalized if they do not have a criminal background, renounce the citizenship of their foreign fathers, and if they apply for citizenship within one year after their eighteenth birthday—or within one year after the law is approved for those who were already older than 18 years of age at the time of its approval. Additionally, for the naturalization process to begin, the Interior Ministry must already have the marriage permits of a child’s parents; meaning, the child’s parents must have officially registered their marriage.18 As discussed in the next section, many marriages between Iranian women and foreign nationals go unregistered, leading to complications in proving a child’s birth in Iran and ultimately acquiring citizenship for him or her.

**Parliament’s Efforts to Change the Law**

Under the 2006 Law, the government does not issue national identification papers to noncitizens, including children with Iranian mothers and foreign fathers. Without these documents, children generally cannot access basic social benefits available only to citizens.19 In 2012, the Eighth Majles attempted to address the issue by ratifying an amendment to the

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14 Id.

15 QANUN-e MADANI [CIVIL CODE]. supra note 3, art. 979.

16 QANUN-e MADANI [CIVIL CODE]. supra note 3, art. 976(3)-(4) (considering persons born in Iran of unknown parentage and persons born in Iran of foreign parents, one of whom was also born in Iran, as Iranian citizens).

17 Hamid Silavi, supra note 13.

18 QANUN-e MADANI [CIVIL CODE]. supra note 3, art. 1060.

2006 Law.\textsuperscript{20} The amendment added a third note to existing provisions under Article 1060, providing that children subject to the 2006 Law would have a right to education, free health treatment, social services, and state subsidies, in addition to permanent residency rights in Iran.\textsuperscript{21}

However, the Guardian Council (Council) rejected the bill on budgetary grounds.\textsuperscript{22} The Council is an influential twelve-person body, composed of six Islamic theologians and six jurists.\textsuperscript{23} Under the Iranian Constitution, it must approve all laws passed by the Parliament to ensure that they are compatible with Islamic principles and the Constitution.\textsuperscript{24}

This time, the Council did not deny the law for being “un-Islamic.” Rather, in justifying its decision, the Council explained that Majles had failed to satisfy Article 75 of the Iranian Constitution, which requires that new bills involving additional expenditures specify the means for compensation.\textsuperscript{25} Citing unofficial figures—due to an unavailability of official data—the Council found that the amendment would extend social benefits, including cash handout subsidies, to more than one million people.\textsuperscript{26} According to the Council, the subsidies alone would cost the government more than 540 billion tounmans (approximately $155 million at the current exchange rate) annually, a hefty sum for which the government had not allocated for in its 2012–13 budget.\textsuperscript{27}

As of January 2015, the 2006 Law still stands, and there has been no major push in the Parliament to change it. But, there are signs that the issue might once again creep into the Parliament’s agenda. In October 2014, for example, the Office of Women’s and Children’s Affairs, a department in the executive branch, published a report on the status of women and children in Iran in the previous year, recognizing the urgency in amending the nationality law.\textsuperscript{28} The Office stated that, after discussions with the President and various government bodies, including the Interior Ministry, it had prepared a report on creating a task force to investigate and develop a new amendment.

**MAJOR CHALLENGES AND POLICY CONSIDERATIONS**

The Iranian government has so far been unwilling to make the law truly equal for both men and women. The law is not only discriminatory against women on its face, but it also fails to protect the most vulnerable strata of society in practice. In turn, the social injustices that flow from the law undermine both Iran’s constitutional guarantee of

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\textsuperscript{25} Id. at art. 75.


\textsuperscript{27} Id.

equal protection for all citizens as well as its international obligations. Though Iran has fiddled with the law to address some of its side effects, it has never attempted to change it based on the principle of equality.

The law makes it difficult for children of Iranian women to attain citizenship even after they are eighteen, often as a result of other social realities in Iran. For starters, the 2006 Law only applies to children born inside Iran. Thus, those born outside of Iran—or those whose parents did not register their birth and who subsequently cannot prove they were born in Iran—must pursue citizenship through other naturalization procedures in the Civil Code, a difficult task. This limitation, combined with the requirement that parents of children applying for citizenship have officially registered marriages, deprives some otherwise suitable candidates of Iranian citizenship. Compounding the problem is a lack of precise data on the extent to which families are negatively affected by the nationality law.

Iranian law requires that all births inside Iran be registered with a representative of the Personal Status Registry Office. However, in order to register their child’s birth, parents must submit their identity card numbers or their residence permit or passport numbers to the Registry Office—information that illegal residents do not have. Thus, it is likely that at least some parents do not register the births of their children out of fear that the foreign father might be subject to deportation. Additionally, because marriages between Iranian women and foreign nationals (inside Iran) tend to occur among the poor and uneducated, these individuals often do not have knowledge of the relevant laws or lack access to birth registration offices. Without a record of their birth, affected children will later have difficulty proving that they were born in Iran, a prerequisite for their eligibility under the 2006 Law.

Additionally, another limitation in the law is the requirement that the parents of children seeking naturalization have a registered marriage. In reality, marriages between Iranian women and foreign nationals are not always registered, though the precise number of unregistered marriages is unavailable. According to the Iranian government’s census in 2010, there were 32,000 unofficial marriages between Iranian women and Afghan men (a figure that does not include marriages to other foreign nationals in Iran), but the real number is likely higher. These couples pursue religious matrimony—which is legal—without going through civil formalities and registration with the Ministry of Foreign Affairs. The Ministry’s approval is

![Afghan children living in the city of Yazd, Iran in 2007. Photo credit: Paul Keller (Flickr: paulk).](image)

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30 Qanun-e Madani [Civil Code], supra note 3, art. 983.

31 Id. (noting that the Council of Ministers has discretion in approving naturalization applications. It is not clear how often the Council of Ministers approves the application of individuals born outside of Iran, or those who do not have the birth registration documents to prove their birth in Iran).

32 Id. at 1060.

33 Qanun-e Sabt-e Ahval va Cart-e Melli [Registry Act] Tehran, 1355 [1976], art. 13 (Iran).


35 See Ezhar Nazar-e Karshenasi Darbareye: Tarih-e Eslah-e Qanun-e Tayin-e Taklif-e Tabe’iyat-e Farzandan-e Hasel az Ezdevaj-e Zanan-e Irani ba Mardan-e Khareji [Expert Commentary on: The Plan for Amending the Law on Determining the Nationality of Children Born as the Result of Marriage Between Iranian Women and Foreign Men], supra note 22 (noting that the Guardian Council, in rejecting the 2012 Amendment, recognized that it did not have official figures on how many people would be subject to the 2012 Amendment).

36 Human Rights Watch, supra note 19.

37 Interview, supra note 8.
necessary for a marriage to be officially recognized, and, in turn, official recognition is a prerequisite for a couple’s child to become a citizen under the 2006 Law.

Even within the context of registered marriages, the law leads to social injustices. Children affected by the law usually cannot receive national identification papers, including birth certificates, until they become Iranian citizens. Without these papers, the children often cannot access primary education, health benefits, and other social services. According to Ali Akbar Mahzoon, head of the Office of Information Statistics, Population, and Migration (Daftar-e Etela‘at-e Amār va Jam‘iyāt va Mohājerāt) of the National Organization for Civil Registration (NOCR), in 2013 there were 749 registered marriages inside Iran between Iranian women and foreign men. In contrast, the NOCR registered 30,000 marriages between Iranian women and Afghani men in 2011. Most of these marriages occurred on border provinces such as Khuzestan, Khorasan Razavi, and West Azerbaijan. A large chunk (164 marriages) was also recorded in Iran’s capital of Tehran.

Failing to Meet International Obligations

Every individual has a right to nationality under international law, but states have discretion in how they confer nationality. In Iran’s case, the nationality law has led to social inequalities that violate Iran’s international obligations, particularly under the ICCPR and the CRC. The law is also inconsistent with CEDAW. While Iran has not ratified this convention, its principles are worth noting.

International Covenant on Civil and Political Rights

Iran ratified the ICCPR in June 1975. Since the ratification occurred before the 1979 Revolution that led to an Islamic-based legal system, the Iranian government at the time did not include a reservation that it would comply with the covenant only to the extent that it was consistent with Islamic laws (as it did with the CRC in 1994).

Iran’s nationality law violates the principle of equality inherent to the ICCPR. Article 26 of the ICCPR provides that everyone is entitled to equal protection of the law, and that the law should prevent discrimination based on sex, among other grounds. However, the nationality law discriminates against women by preventing them from automatically passing on their citizenship to their children, whereas men can do so, even when they marry foreign women and their children are born outside of Iran. By extension, this discrimination then flows to children of Iranian mothers and foreign fathers, who are denied the rights of citizens, including the right to access certain basic social services. In any case, Article 24 specifically prohibits discrimination against children. In its general comment to Article 21, the Human Rights Committee, the body responsible for overseeing implementation of the ICCPR, states that parties to the ICCPR should take “every possible measure” to provide children with a level of education that would enable them to enjoy the rights that the covenant provides them.

39 Human Rights Watch, supra note 19; UNICEF, supra note 34 at 7.
40 Human Rights Watch, supra note 19 (noting that Afghan refugees registered through the Amayesh system can generally access primary education and other benefits).
41 Chand Nafar Az Zanan va Mardan-e Irani ba Gheyre Irani Ezdevaj Mikonand? [How Many Iranian Men and Women Marry Foreigners?], supra note 38.
42 Id. (stating that it is not clear whether this figure includes all marriages, or only those that took place in Iran, though the article suggests that it only includes marriages in Iran).
43 Id.
**CONVENTION ON THE RIGHTS OF THE CHILD**

Iran ratified the CRC in March 1994, adding a reservation that “[t]he Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect.”\(^{50}\) The reservation’s generality offers Iran much flexibility in how it complies with the CRC, but Iran has considered amending the reservation to further its commitment to the CRC.\(^{50}\)

Though Iran has taken steps to comply with the CRC, the nationality law’s discrimination against the relevant category of children violates the CRC. Notably, Article 2 provides that States Parties must ensure that children within their jurisdiction (not necessarily citizens) are offered the rights set forth in the CRC without discrimination with respect to, inter alia, the child’s or his or her parent’s national origin.\(^{51}\) As explained, Iran’s nationality law makes it difficult for children born to Iranian mothers and foreign fathers to access education, health, and other social benefits. The 2012 Amendment would have gone far to reduce some of this discrimination, but only in the context of registered marriages. Children from unregistered marriages would have continued to face the same disadvantages.

Article 7 of the CRC provides that children must be registered immediately after birth. Iran has complied with this requirement to the extent that the law requires that all births be registered within fifteen days.\(^{52}\) But, because the birth registration requires that a child’s parents disclose their identity to state authorities,\(^{53}\) it is likely that undocumented fathers, fearing deportation, will not register their children. Additionally, there seems to exist a general lack of understanding of the registration law and its benefits.\(^{54}\)

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50 UNICEF, supra note 34 at 4.


52 UNICEF, supra note 34 at 3.


54 UNICEF, supra note 34 at 3.

**CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

Iran is one of only a handful of countries that still have not ratified CEDAW.\(^{55}\) Thus, the convention is not binding on Iran. However, it is worth noting that Iran’s discriminatory nationality law is outright inconsistent with Article 9 of CEDAW, which provides that, “States Parties shall grant women equal rights with men with respect to the nationality of their children.”\(^{56}\)

**LIMITED INTERNATIONAL ATTENTION**

Though the international community has advocated for greater rights for women in Iran, it has focused relatively little attention on the country’s discriminatory nationality law. For example, the U.N. Special Rapporteur on the situation of human rights in Iran, Ahmed Shaheed, did not express any concern about the nationality law’s discriminatory impact on women and a certain category of children.\(^{57}\) One possibility for the lack of attention is that there has not been robust civil society advocacy on this specific issue in Iran—which is an important driver for bringing matters to the attention of the international community.\(^{58}\) Other human (including women’s) rights issues, such as the minimum age of marriage and discriminatory family laws, have taken precedence.\(^{59}\) The reality is that the nationality law, compared to other problematic laws, negatively affects only a limited population that tends to be poor, uneducated, and living in remote areas of the country.

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56 Id.

57 Id.

58 Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, supra note 6.

CONCLUSION

Iran’s nationality law discriminates against women and children with Iranian mothers and foreign fathers, violating Iran’s obligations under the ICCPR and CRC. The Iranian government has attempted to tackle some of the social injustices that the law leads to, but it has never fully addressed the gender discrimination that is at the core of the law. Piecemeal measures, such as the failed 2012 Amendment, will only scrape at a deeper problem. To effectively address the injustices that the citizenship law perpetuates, Iran must amend it based on the principle of equality—and enable both Iranian men and women to automatically pass on their citizenship to their children. Otherwise, some of the most vulnerable populations in Iran will continue to bear the brunt of this law.