

COMMENTARY

UNDOCUMENTED CHILDREN IN IRAN: A REVIEW OF RECENT LEGAL PROGRESS

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I INTRODUCTION

Children are among the most vulnerable groups to suffer the consequences of a lack of documentation. A lack of legal documentation identifying citizenship precludes children from rights and privileges accorded to their documented peers. While a lack of documentation is usually the result of immigrants or asylum seekers entering another country without legal documentation or not renewing their visas after entry, it may also occur when a female national of a country cannot pass her nationality to her child because she is married to a non-national without valid documentation. According to the United Nations High Commissioner for Refugees, as of March 2021, equality between men and women relating to the conferral of nationality upon children has not yet been attained in 25 countries worldwide, including Iran.¹ This commentary aims to provide brief explanations of the legal procedures regarding nationality in Iran, the different undocumented groups and the legal advocacy to address the issue of lack of documentation, in light of new progress addressing the inequality in conferring nationality between men and women.

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¹ *Background Note on Gender Equality, Nationality Laws and Statelessness 2021* (UNHCR Report, 5 March 2021) 2, 6–7.

II THE LEGAL SITUATION IN IRAN CONCERNING OBTAINING NATIONALITY

Article 976 of the *Civil Code of the Islamic Republic of Iran* ('*Civil Code*'), initially adopted in 1935, establishes the criteria for Iranian nationality, including the requirements of birth and residence in Iran and the Iranian nationality of the father — paternal *jus sanguinis*. Articles 976(4) and (5) specifically address children born in Iran to foreign parents. Article 976(4) grants Iranian nationality to children born in Iran to foreign parents if one of the parents was also born in Iran. Article 976(5) grants nationality to children born in Iran if their father is a foreign national but has resided in Iran for at least one year after reaching the age of 18.² Despite the clear text of these articles, these criteria have not always been easily applied to eligible people.

Before 1985, Iranian mothers were able to apply for Iranian nationality for their children if the father was declared 'absent'.³ However, in 1985, art 45 of the *Civil Registration Law* was modified to stipulate that, when the nationality of the newborn is not certain and supporting documents cannot be provided, the nationality case will be sent to the Police Department and Intelligence Service of the province.⁴ One of the supporting documents required was a marriage certificate. Many parents whose marriages were not registered could not apply for the nationality of their children. This revision to art 45 created a large population of undocumented children.⁵

In 2006, the Islamic Consultative Assembly passed new legislation that banned the previous interpretation of art 976(4) of the *Civil Code*.⁶ This 2006 *Law on Determination of Nationality of Children Born from Iranian Mothers and Fathers* ('2006 Law') stated that children of Iranian mothers and non-Iranian fathers who were born inside Iranian territory or will be born, at most, one year after the passing of the 2006 Law, can apply for Iranian nationality when they are 18 years old. If they do not have any criminal or security records and they renounce any other nationalities, their nationality claim may be accepted.⁷

Article 976(5) of the *Civil Code*, which allows children below 18 years of age born of Iranian mothers and non-Iranian fathers to be Iranian nationals, was discussed again by the Islamic Consultative Assembly in 2015 but was considered out of order because of its 'encouragement of immigration to Iran and financial burden on the government'.⁸ In May 2019, the 2006 Law was discussed again by the Assembly and amended.⁹ Under the revised legislation, children born to

² *Civil Code of the Islamic Republic of Iran*, arts 976(4)–(5) (Islamic Republic of Iran) ('*Civil Code*').

³ Ahmad Meydari, 'An End to the Undocumented Children: Will the Tenth Parliament Correct the Mistake of the Seventh Parliament?', *Pupils Association News Agency* (online, 5 November 2019) <<http://www.pana.ir:80/news.aspx?id=914248>>.

⁴ *ibid*; *Civil Registration Law 1986–1364*, art 45 (Islamic Republic of Iran).

⁵ Meydari (n 3).

⁶ *Law on Determination of Nationality of Children Born from Iranian Mothers and Non-Iranian Fathers 2006* (Islamic Republic of Iran).

⁷ *ibid*.

⁸ Darioush Jahanbin, 'The Citizenship Law for Children of Iranian Mothers: A Step Towards Solving a Ninety Year Old Problem', *Islamic Republic News Agency* (online, 13 May 2019) <<https://www.irna.ir/news/83312579/>>; 'The Issue of Undocumented People Is Not Solved Yet', *Shargh Newspaper* (online, 17 July 2018) <<https://www.magiran.com/article/3773025>>.

⁹ Nahid Hajikhani, 'Warm Welcome to Children with Iranian Mothers', *Islamic Republic News Agency* (online, 11 August 2020) <<https://www.irna.ir/news/83903222/>>.

Iranian mothers and non-Iranian fathers can apply for Iranian nationality before reaching 18 years of age through their mothers.¹⁰ Persons 18 years of age and above can apply independently.¹¹ The revised legislation was approved by the Guardian Council in October 2019 and submitted to the Government for implementation.¹² The most recent data, published in July 2021, reports that, since the beginning of the implementation of the new law in July 2020, more than 90,654 cases have applied for Iranian citizenship, around 62% of them under 18 years old, while 1,808 cases have received their ID cards.¹³

III HISTORY OF THE PROBLEM IN IRAN

In general, there are three populations of concern in Iran who have been affected by the nationality laws and are undocumented: (1) people of Iranian origin with no access to Iranian citizenship; (2) Afghans without documentation; and (3) children of Iranian mothers and non-Iranian fathers without documentation.

IV PEOPLE OF IRANIAN ORIGIN WITH NO ACCESS TO IRANIAN CITIZENSHIP

The first group consists of persons of Iranian origin who have lived in Iran for a long time but have no identification documentation due to poverty or cultural barriers, such as lack of knowledge about the importance of documentation. This population is estimated to number up to 1 million.¹⁴ The majority live in the provinces of Sistan-o-Baluchestan, Kordestan, Khuzestan and Lorestan. Due to the lack of understanding about the benefits of birth registration, the desire to avoid conscription, the high incidence of home births and the population's remoteness from large cities and civil registry offices, people in this community have not registered their births and, consequently, have not received any identity documentation. This problem has passed from generation to generation, with the most recent generation unable to obtain identity documents; often, children do not have a parent who is a documented citizen or proof that both they and their parent(s) were born in Iran.¹⁵ Another group within this category are those children who are born out of wedlock, whose father is unknown and whose mother does not have identification documents, especially in cases where the mother has a

¹⁰ *Amendment to the Law on Determining the Nationality of Children Born from a Marriage of Iranian Women and Foreign Men 2006* (Islamic Republic of Iran) ('*Amending Law 2006*').

¹¹ 'Iranian Women Marry Foreign Men; Citizenship was Granted to Children', *Euronews* (online, 3 June 2020) <<https://fa.euronews.com/2020/06/03/granting-iranian-citizenship-from-mother-to-child-under-18-years-of-age-were-implemented>>.

¹² *ibid*; Hajikhani (n 9).

¹³ 'Factsheet of Ministry of Interior: Review of the Main Activities of the Security and Disciplinary Affairs Department in the 11th and 12th Administration', *Iranian Ministry of Interior* (26 July 2021) <<https://moi.ir/fa/155136>>. This link is only available through an Iranian IP address.

¹⁴ Masoud Rezaei, 'There Are One Million Unidentified Persons in the Country/Unidentified Persons Are Deprived of All Government Facilities', *Islamic Consultative Assembly News Agency* (online, 5 May 2017) <<https://www.icana.ir/Fa/News/332614>>; Fatemeh Shiri, 'Unidentified Families After Four Generations', *Islamic Republic News Agency* (online, 16 July 2020) <www.irna.ir/news/83846128/>.

¹⁵ Nasrin Hazareh-Moghaddam, 'The Challenge for Iranians without Identity Cards Remains', *Iran Labor News Agency* (online, 16 May 2019) <<https://www.ilna.news/fa/tiny/news-763514>>.

substance use disorder.¹⁶ Because of the gaps in the aforementioned laws, these children cannot obtain Iranian nationality and have difficulty accessing social services, including public education.¹⁷

V AFGHANS WITHOUT DOCUMENTATION

It is estimated that around 2 million undocumented Afghans are living in Iran,¹⁸ many of whom fear arrest, detention or deportation by not having Iranian lawful residence documents. This population has limited access to the job market and no access to bank accounts, health and social security insurance, the right to acquire property and, until very recently, primary or secondary education.¹⁹ Within this population, some individuals have no proof of Afghan nationality. While many were born and have lived in Iran for years, they are not able to obtain Iranian nationality despite art 976(4) and, at the same time, they have lost their ties with Afghanistan and are sometimes unable to meet the requirements for obtaining an Afghan identification card (*Tazkira*), making them undocumented in both countries.²⁰ In addition to the difficulties in obtaining *Tazkira*, home births and non-registration of births (due to financial reasons or cultural beliefs) are other challenges that makes it difficult for some Afghans to obtain documentation.

VI CHILDREN OF IRANIAN MOTHERS AND NON-IRANIAN FATHERS WITHOUT VALID DOCUMENTATION

The last category includes those born to an undocumented non-Iranian father and an Iranian mother. Until very recently, Iranian law did not allow nationality to pass through the mother until the child turned 18 years old.²¹ This legal constraint created a challenging situation for many children who did not have access to the basic rights enjoyed by Iranians and many of whom lived in poverty. In 2017, the Ministry of Welfare conducted a survey of Iranian women married to non-Iranian men and found that there are about 15,000 Iranian women married to non-Iranian men and 49,096 undocumented children.²² The survey also indicated that 60% of husbands were Afghan, 12% Iraqi and 28% were from other nationalities. This

¹⁶ ‘The Chairman of the Social Committee of the City Council Stated That the Negligence of the Officials on the Issue of Addicted Women is Harmful/Most of the Addicted Children and Mothers Are without Identity Cards’, *Islamic City Council of Tehran* (Blog Post, 18 November 2016) <<https://shora.tehran.ir/default.aspx?tabid=68&ArticleId=7056>>.

¹⁷ Hamideh Aminifard, ‘Finding the Root of the Phenomenon of “Children without Identity” in a Conversation with Fatemeh Daneshvar’, *Magiran* (online, 18 September 2017) <<https://www.magiran.com/article/3630202>>.

¹⁸ ‘Refugees in Iran’, *United Nations High Commissioner for Refugees* (Web Page) <<https://www.unhcr.org/ir/refugees-in-iran/>>.

¹⁹ ‘Start of a New Phase of the Census Plan for Illegal Afghan Citizens in Iran/Ten Day Deadline to Receive a Scholarship’, *Shafaqna* (online, 5 July 2017) <<https://af.shafaqna.com/FA/211136>>; ‘Regulation on How to Educate Foreign Nationals’, *Research Center of the Islamic Consultative Assembly* (Web Page) <<https://rc.majlis.ir/fa/law/show/963800>>.

²⁰ ‘Essential Points for Receiving ID Cards and Electronic Passports of Afghan Immigrants in Iran’, *Shafaqna* (online, 13 October 2017) <<https://af.shafaqna.com/FA/230242>>; ‘Absentee ID’, *Consulate General of the Islamic Republic of Afghanistan* (Web Page) <<https://www.bonn.mfa.af/fa/consular-affairs/absentee-tazkira.html>>.

²¹ *Amending Law 2006* (n 10).

²² ‘With the Approval of the Guardian Council, Passing Nationality through Mother is Now Possible in Iran’, *BBC News* (online, 2 October 2019) <<https://www.bbc.com/persian/iran-49903142>>; Meydari (n 3).

group benefitted the most from the new nationality legislation passed in October 2019 in Iran. Many believe the revised law was inspired by the case of Maryam Mirzakhani,²³ an Iranian mathematician.²⁴ She was married to a Czech man and had a daughter who was denied Iranian nationality because of the gaps in the Iranian nationality laws. Dr Mirzakhani died of cancer at the age of 40 in July 2017, wishing that her child could benefit from Iranian nationality.²⁵ This became one of the key advocacy points at the time of the parliamentary debates to amend the *2006 Law*.²⁶

VII CONCLUSION

This brief commentary addresses three current causes for the deprivation of the right to have identification documents in Iran. New legal developments have only addressed one cause: being born to an Iranian mother and a non-Iranian father. This is still an important step to address the right to have a documentation. However, the large number of applicants and the bureaucratic administration are two main barriers that slow the process of acquiring documentation.

States play a crucial role in reducing and preventing lack of documentation. With some changes in law or its enforcement, states can reduce the number of undocumented children. Being undocumented not only affects a certain individual, community or group, but also has potential social, economic and health effects for everyone within a state — particularly since these children are a nation's future adults.

Although the role of states in passing new laws or enforcing existing laws is undeniable, civil society also has a key role in raising its collective voice so that policy change can happen. One way to do this is by disseminating personal stories, such as those of Dr Mirzakhani, which can have an emotional effect on the decision-making process. Figures and numbers can show the severity of the subject matter, but personal stories can highlight aspects of humanity that cannot be indicated through numbers: they create the empathy that can lead to change.

²³ Hajikhani (n 9); Meydari (n 3).

²⁴ See Martin L White, 'Maryam Mirzakhani', *Encyclopedia Britannica* (Web Page) <<https://www.britannica.com/biography/Maryam-Mirzakhani>>.

²⁵ Leila Alikarami, 'The Will of Maryam Mirzakhani: Solving the Incomplete Equation of Citizenship for Children Born to Iranian Mothers', *BBC News* (21 July 2017) <<https://www.bbc.com/persian/blog-viewpoints-40685457>>.

²⁶ *ibid.*