



Institute on Statelessness and Inclusion

&

Global Campaign for Equal Nationality Rights

Joint Submission to the Human Rights Council at the 34th Session
of the Universal Periodic Review

(Third Cycle, November 2019)

Iran

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The Institute on Statelessness and Inclusion and Global Campaign for Equal Nationality Rights

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Introduction

1. The Institute on Statelessness and Inclusion (ISI) and Global Campaign for Equal Nationality Rights make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Iran.
2. This submission focuses on gender discrimination in Iran's nationality law, the situation of the Baluchi population in the Sistan and Baluchistan Provinces, and challenges related to civil registration, which increase the risk of statelessness in the country.
3. The Institute on Statelessness and Inclusion¹ is an independent non-profit organisation dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 38 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 33rd UPR Sessions.
4. The Global Campaign for Equal Nationality Rights² mobilises international action for the removal of gender discriminatory provisions from all nationality laws through its coalition of national and international organisations and activists.

Previous UPR of Iran under the First and Second Cycle

5. Iran was previously reviewed during the 7th and 20th sessions of the UPR, in 2010 and 2014 respectively. During the first cycle, Iran received one recommendation by Mexico to "facilitate for all children born to Iranian mothers access to a birth certificate and Iranian nationality, regardless of the nationality of the father", which it accepted. During the second cycle, Iran noted two recommendations that were relevant to nationality and statelessness. Bosnia and Herzegovina recommended that Iran "take additional steps to improve gender equality and enhance women's position in marriage, divorce, nationality, custody of children

¹ For more information about the Institute on Statelessness and Inclusion, see: www.institutesi.org.

² For more information about the Global Campaign for Equal Nationality Rights, see: www.equalnationalityrights.org.

and inheritance". Guatemala recommended to "continue working so that Iranian women have the right to transmit their nationality to their children".

Iran's International obligations

6. Iran is not a signatory to the *1954 Convention on the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*. Furthermore, Iran is not party to the Convention on the Elimination of All Forms of Discrimination Against Women. Nonetheless, Iran has international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include the International Covenant on Civil and Political Rights (see article 24.3), the International Covenant on Economic, Social and Cultural Rights (see articles 2.2 and article 3), the Convention of the Rights of the Child (see articles 2, 3, 7 and 8) the International Convention on the Elimination of All Forms of Racial Discrimination [see article 5(d)(iii)] and the Cairo Declaration on Human Rights in Islam (see articles 5 and 19).
7. In addition and on the basis of the articles mentioned under the CRC, in 2016, the Committee on the Rights of the Child recommended that Iran take measures to ensure the birth registration of all children, and to

"review the provisions of the Act on Determination of the Nationality of Children Born into Marriages of Iranian Women with Men of Foreign Nationality amending the Civil Code, and to ensure that all children who are born to Iranian mothers, including children born out of wedlock, are entitled to Iranian citizenship on the same conditions as children born to Iranian fathers".³

National Law

8. Iran's nationality law is primarily based on the principle of *jus sanguinis*, according to which nationality is based on descent, with additional provisions based on the principle of *jus soli*, according to which nationality is based on birth on the territory. However, the *jus sanguinis* provisions, according to which, children born from Iranian fathers obtain Iranian nationality by birth; whereas children born from Iranian mothers can apply for Iranian nationality after they reach the age of 18, are gender discriminatory. The additional *jus soli* provisions grant Iranian nationality to children born in Iran of unknown parentage and persons born in Iran of foreign parents, one of whom was also born in Iran—although the latter provision is not functional.
9. According to the *Iranian Nationality Law Article 976 (2)*, a child obtains Iranian nationality regardless of where the child is born, if they are born to an Iranian father. Iranian nationality is granted to foundlings and children born in Iran to foreign parents, one of whom was born

³ Committee on the Rights of the Child, Concluding observations (2016) CRC/C/IRN/CO/3-4.

in the country can acquire nationality.⁴ Thus, although the nationality law contains safeguards against specific causes of statelessness, significant gaps persist, meaning that every child born in Iran will not be guaranteed their right to acquire a nationality.

10. The 2016 census data shows that the population of Iran is 79.9 million.⁵ However, there is no accurate data on how many persons are stateless or at risk of statelessness in the country.

Gender Discrimination

11. Iran is one of 25 countries in the world, which continues to deny women equal rights as men in conferring nationality on their children.⁶ Further, Iran is not party to the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, which stipulates, in Article 9, that women and men have equal rights to pass their nationality onto their children. The gender discrimination in Iran's nationality law, heightens the risk of statelessness for children born of an Iranian mother and a stateless or undocumented foreign national father. The children of Iranian women and undocumented Afghan men in particular are often at risk of statelessness.⁷ As a result, these children are by birth excluded from full participation in society. In turn, they are unable to pass a nationality to their children, creating an inter-generational cycle of risk of statelessness.
12. Women are also denied the right to confer nationality on non-national spouses, a right that is reserved for men. Every woman of foreign nationality who marries an Iranian husband is considered an Iranian national. Non-national men who are married to an Iranian woman and have a child with the Iranian national may apply for governmental approval to become a national.
13. According to the law, Iranian women are stripped of their nationality if they marry and automatically acquire their spouse's nationality, according to the laws of the spouse's country.
14. Women's inability to confer nationality on children and non-national spouses, and to retain their nationality on an equal basis with men, inhibits women's ability to freely choose a

⁴ **Article 976** of Iran Nationality Law states: "The following persons are considered to be Iranian subjects: 1) All persons residing in Iran except those whose foreign nationality is established; the foreign nationality of such persons is considered to be established if their documents of nationality have not been objected to by the Iranian Government. 2) Those whose fathers are Iranians, regardless of whether they have been born in Iran or outside of Iran; 3) Those born in Iran of unknown parentage; 4) Persons born in Iran of foreign parents, one of whom was also born in Iran. 5) Persons born in Iran of a father of foreign nationality and have resided at least one more year in Iran immediately after reaching the full age of 18; otherwise, their naturalization as Iranian subjects will be subject to the stipulations for Iranian naturalization laid down by the law. 6) Every woman of foreign nationality who marries an Iranian husband. 7) Every foreign national who has obtained Iranian nationality."

⁵ https://www.amar.org.ir/Portals/1/census/2016/Census_2016_Selected_Findings.pdf.

⁶ Background Note on Gender Equality, Nationality Laws and Statelessness, 2019,

⁷ <http://www.icana.ir/Fa/News/386247>.

spouse; threatens family unity; can inhibit women's ability to remove themselves abusive marriages; and further undermines women's status in society and the family.

15. The constitutional amendment passed in 2006 to *Book 7, On Marriage and Divorce, Chapter 3: On Impediments to Marriage*,⁸ states that

*“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 with this article are permitted to reside in Iran prior to obtaining citizenship.”*⁹

16. This law reform clearly has not eradicated gender discrimination in the nationality law. It also fails to protect the child's right to a nationality, does not protect against discrimination and does not serve as a safeguard against statelessness. Consequently, the law has been critiqued as follows:

*“The amendments potential to reduce statelessness is limited by criteria that are difficult (if not practically impossible) for those with stateless children, or those rendered stateless by gender discrimination, to meet. This includes the requirement of proof that the child was born in Iran, a marriage certificate between the parents, proving the foreign father's legal residence in the country and proving they have renounced their non-Iranian nationality - which the stateless do not have. ...The criteria set out in the legislation to acquire Iranian nationality, most notably the need to provide the father's documents and proof of marriage, means that children born out of wedlock cannot benefit from this amendment”*¹⁰

17. In its 2016 review of Iran, the UN Committee on the Rights of the Child recorded its concern that:

⁸ Act on Determination of the Nationality of Children Born into Marriages of Iranian Women with Men of Foreign Nationality, 2006.

⁹ **Note 1**– If persons to whom this Articles applies, are older than 18 years of age at the time of the approval of this article, they must, within a period of one year, apply for Iranian citizenship. **Note 2** – Persons who after the date of the ratification of this law are born in Iran, are the result of marriage between a foreign man and an Iranian woman, and the marriage of their parents has been registered from the inception of the marriage in compliance with Article 1060 of the Civil Law, will be accepted as Iranian citizens within one year after reaching the full age of 18 and without meeting the residence requirement stipulated in Article 979 of the Civil Law. <http://irandataportal.syr.edu/nationality-law> [Accessed March 09, 2019].

¹⁰ Tucker, Jason (2014): Exploring Statelessness in Iran. Gaps in the Nationality Law, Populations of Concern and Areas for Future Research. Online available: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2441850.

Under the amendment, such naturalisation is only possible upon reaching 18 years of age and thus does not address childhood statelessness. In addition, the Act establishes difficult eligibility requirements for naturalisation, including the proof of father's documents and proof of marriage, which excludes automatically children born out of wedlock.¹¹

On this basis, the Committee recommended that Iran:

review the provisions of the Act ... and ensure that all children who are born to Iranian mothers, including children born out of wedlock, are entitled to Iranian citizenship on the same conditions as children born to Iranian fathers. The Committee also recommends that the State party provide information on the number of children born to Iranian mothers who have been naturalised in its next periodic report.¹²

18. In a recent development, President Hassan Rouhani's cabinet drafted and proposed a bill to Parliament on 4 November 2018, that will allow Iranian mothers married to foreigners to apply for Iranian nationality for their children upon their birth. The bill received Parliamentary approval on 20 January 2019 and is awaiting approval of the Guardian Council.¹³ The spokesperson for the Legal Commission of the Parliament stated that:

"According to this single article, the children of such marriages (either born before or after the adoption of this law) can acquire Iranian nationality at Iranian mother's request before age of 18, and at their request above the age of 18. Iranian nationality will be granted if there is no security issue involved, which the Ministry of Intelligence will determine. The security verification should be carried out within 3 months and the police should proceed with the residence permit for the non-Iranian father. If there exists ambiguity, the relationship shall be proved by the court. The note to this article states if the applicant's parent is not alive or available, in the case of ambiguity, the relationship shall be proved to the court."¹⁴

19. As is evident from the above quote, while presenting an improvement, this law reform will still not eradicate gender discrimination in the law, nor guarantee the child's right to acquire a nationality. Conditions such as those to establish that there is no security threat, and establishing the relationship between the parents, are particularly problematic in this regard.

¹¹ CRC/IRN/CO/3-4, para 45.

¹² Ibid, para 46.

¹³ Islamic Consultative Assembly News Agency, 20 January 2019. <http://www.icana.ir/Fa/News/415896> [Accessed March 09, 2019].

¹⁴ Islamic Consultative Assembly News Agency, 20 January 2019. <http://www.icana.ir/Fa/News/415896> [Accessed March 09, 2019].

20. According to the Ministry of Cooperatives, Labour, and Social Welfare, 14,618 Iranian women married to foreign national men registered during a national campaign conducted by this ministry in 2017. The data gathered by the ministry showed that 49,096 children born to these marriages were undocumented. According to this survey 60% of these women married Afghan men and 12% married Iraqis. 29% of these children are out of school due to lack of documentation.¹⁵ It is noteworthy that this survey only covered those Iranian mothers that had Iranian ID. The total number of children born to Iranian mothers and foreign national fathers is not clear, but various parliament members have stated that the number is around 1 million.¹⁶

Risk of Statelessness of children of Iranian women and Afghan men

21. In August 2018, the Directorate General of the Bureau for Aliens and Foreign Immigrants' Affairs (BAFIA) stated that currently, about 3 million Afghans reside in the country.¹⁷ Other sources state that about 1.5 to two million undocumented Afghans live in the country.¹⁸ The Afghan refugee situation is one of the largest and most protracted in the world, with many having been in the country for as long as 40 years (since 1979). This means that many young refugees are third generation, born and raised in Iran.¹⁹ Studies show that 70% of Afghans residing in Iran are second-generation migrants.²⁰

22. Although under the 2000 Afghan nationality law, children born of a woman of any or no nationality and an Afghan man in Iran, automatically gain Afghan citizenship, many of these children are unable to acquire Afghan nationality, if they cannot prove their tribal and familial ties.²¹

23. The *tazkera* is the primary Afghan personal identification document. Afghans living abroad must complete a complex and time-consuming procedure to obtain a *tazkera*. When a person's identity cannot be verified in a standard manner, they can receive a *tazkera* only after two Afghan citizens possessing *tazkera* as well as the local police department attest

¹⁵ The impediments of ratifying the bill on *granting citizenship* to children born to *Iranian mothers* and *foreign fathers*, Nov 2018, ISNA: <https://www.isna.ir/news/97081407048>.

¹⁶ 1 million and 300 stateless persons exist in Iran, 2018, ICNA: <http://www.icana.ir/Fa/News/415896>.

¹⁷ Iranian Students News Agency (ISNA), August 2018, See: <https://www.isna.ir/news/97052613495> (In a context of mixed migration the lines between refugees and migrants are blurry, particularly when there is no clear functional Refugee Status Determination procedure in place.)

¹⁸ Iran Needs Help to Support Afghan Refugees, 2018, UNHCR: <https://www.unhcr.org/news/latest/2018/9/5b8e9f414/iran-needs-help-support-afghan-refugees-unhcr-chief.html>.

¹⁹ Iran Needs Help to Support Afghan Refugees, 2018, UNHCR: <https://www.unhcr.org/news/latest/2018/9/5b8e9f414/iran-needs-help-support-afghan-refugees-unhcr-chief.html>.

²⁰ The impediments of ratifying the bill on *granting citizenship* to children born to *Iranian mothers* and *foreign fathers*, Nov 2018, ISNA: <https://www.isna.ir/news/97081407048>.

²¹ Article 11 of the 2000 Nationality Law states, that a child is considered an Afghan citizen regardless of where the child is born or the statelessness of one of the child's parents, as long as one parent is an Afghan. Law on Citizenship of the Islamic Emirate of Afghanistan, <https://www.refworld.org/docid/404c988d4.html> [Accessed March 09, 2019].

that they are an Afghan national. In situations where they cannot complete this process, a commission consisting of authorized representatives shall assess the application and decide.²² Although the embassy and consulates of Afghanistan in Iran facilitate the process of obtaining *tazkera* for those who have a father, brother, paternal grandfather or paternal uncle with *tazkera*, others have to return to their family's place of residence, or to Kabul, to apply for *tazkera*.²³ Refugee Status Determination (RSD) has not been practiced since 2005 and only those whose refugee status were determined prior to this, can renew their refugee card (*Amayesh*) every year, and only children of documented parents will receive documentation in Iran.²⁴

24. Inter-generational lack of documentation, regarding both cases of registration in Iran and Afghan civil registration, as well as weakening ties to the "country of origin" over the course the past four decades are the main barriers to providing proof of Afghan citizenship for children of Iranian mothers and undocumented Afghan fathers. If the first generation who had stronger ties with Afghanistan did not obtain documentation there, the second and third generations cannot easily prove their ties to the country. In cases where the father is unknown, not available or has abandoned the family, and family ties are weak, proving Afghan nationality can be difficult, if not impossible, for the children. Additionally, access and travel to the embassy and consulates of Afghanistan is limited for undocumented Afghans who are at risk of deportation due to their unregistered status while travelling. Considering the one year eligibility period of applying for Iranian citizenship for children born to an Iranian mother and foreign national fathers and lack of awareness about the procedure and financial and administrative barriers to provide the required documents for the application, many children born to these marriages do not apply in practice.

Baluchi population in the Sistan and Baluchistan Provinces

25. The Sistan and Baluchistan provinces located in the south-east of the country has borders with Afghanistan and Pakistan and is predominantly inhabited by ethnic and religious minority Baluch populations. Since 2007 when the province was declared a No-Go Area for Afghans, all registered Afghan residents were either relocated or repatriated to Afghanistan. Only those registered Afghans married to Iranian women were given permission to stay. Due

²² Access to Tazkera and other Civil Documentation in Afghanistan, 2016, NRC, <https://www.nrc.no/resources/reports/access-to-tazkera-and-other-civil-documentation-in-afghanistan/> [Accessed March 09, 2019].

²³ Embassy of Afghanistan in Iran: Processes of obtaining civil documentation: <http://www.afghanembassy.ir/conditions-for-obtaining-and-verification-of-documents-consular.html> [Accessed March 09, 2019].

²⁴ Two regularization plans were conducted to register the irregular Afghan migrants in Iran in 2011 and 2017, however, the latter only targeted the undocumented/unregistered family members of registered Afghans in Iran (either *Amayesh* or visa holders). The former regularization plan led to the issuance of temporary residence visa to about half a million Afghan, who could obtain passport, for which having *tazkera* is a requirement.

to the long shared border and strong tribal ties among the Baluch ethnic group, mixed marriages is prevalent in the province and the number of children born to these marriages is significantly high comparing with other provinces; although there is no clear data . Officials reported in 2017 that at least 20,000 children in the Sistan and Baluchistan province registered for school using a special card for children without proof of citizenship. These are either children of mixed marriages or those who lack proof of citizenship. This figure does not include adults and children without these cards.²⁵

26. In addition to the children of Iranian mothers and foreign national fathers, who might be at risk of statelessness, the province hosts a population without proof of citizenship who have been denied naturalisation for decades. The situation of those Baluch that lack a proof of citizenship is generally understudied. The 2018 OHCHR report on the situation of human rights in the Islamic Republic of Iran, addresses the issue briefly.²⁶ The exact number of people without proof of citizenship is not clear, however the highest number estimatedly lives in the Sistan and Baluchistan province, according to the director of National Organization for Civil Registration in Sistan and Baluchistan Province.²⁷ Those who have applied for Iranian citizenship and opened a naturalisation request file are known as "*parvande'i*". The process of citizenship verification and issuance of ID for those who have a father, brother, paternal grandfather or paternal uncle with Iranian ID is facilitated, sometimes involving a DNA test to prove the relationship. Others without any relationship proof as such have been waiting for decades to receive any update regarding their file. This population cannot easily access social assistance including welfare payments, health care and education, and they face challenges in obtaining access to utilities such as water, electricity and phone service.²⁸ In 2013, the governor of Sistan and Baluchistan Province ordered an expedited process for cases, resulting in 7,959 cases being addressed by Feb 2017. More than 20,000 birth certificated were issued. However, a large number of cases remain unaddressed, mostly for Baluchi families that do not possess or cannot easily access the needed documentation to get birth certificates/notification. This is not only the case in Sistan and Baluchistan, but a problem which is also prevalent in other border provinces.²⁹

²⁵ 23,000 undocumented children registered in schools in Sistan and Baluchistan province, 2017, Salamat news agency: www.salamatnews.com/news/228675/23.

²⁶ Situation of human rights in the Islamic Republic of Iran, 2018, United Nations High Commissioner for Human Rights, https://www.ohchr.org/Documents/Countries/IR/A_HRC_37_24_EN.docx [Accessed March 09, 2019].

²⁷ Seeking identity, 2016, IRNA: <http://www.irna.ir/sb/fa/News/82431374/> [Accessed March 09, 2019].

²⁸ Situation of human rights in the Islamic Republic of Iran, 2018, United Nations High Commissioner for Human Rights, https://www.ohchr.org/Documents/Countries/IR/A_HRC_37_24_EN.docx.

²⁹ 1110 persons are identified in Khorasan razavi Province who are either undocumented or lack proof of citizenship, 2016, IRNA:<http://www.irna.ir/fa/News/82307827>.

Civil Registration: Barriers in Practice

27. Article 1060 of the Civil Code requires Iranian women to gain special permission from Iranian authorities prior to marrying a man of foreign nationality.³⁰ Any foreign individual, who marries an Iranian woman without such permission risks imprisonment for up to 5 years.³¹ Such permission prior to marriage has not been granted to Iranian women and Afghan men easily. For example, the provincial government in Mazandaran province in 2010, declared that all marriages in the province between Iranian women and foreign nationals illegal, and indicated that individuals who fail to observe this regulation would be subject to punishment. Afghans, along with Iraqis, Pakistanis, and Bangladeshis are specifically mentioned in the circular as foreign nationals that are “forbidden” from marrying Iranian women, according to HRW report in 2013. In addition to the reluctance of state authorities to grant the required permissions, administrative, financial and cultural barriers also prevent Afghans from obtaining a civil marriage certificate. Additionally, a lack of awareness among traditional Afghan communities regarding the necessity of civil registration has been seen especially among the Baluch ethnic group that prefer an exclusively traditional marriage, which is only approved orally.
28. Article 12 of the Personal Status Registration Act stipulates that the birth of every child born in Iran shall be reported to the Civil Birth Registration Organisation, regardless of the parent’s nationalities.³² However, there are administrative, economic, and cultural hurdles preventing parents from registering the birth of their children. The Iranian birth certificate, unlike the birth notification, is considered proof Iranian nationality. Thus, a stateless person cannot register the child’s birth anywhere. For foreign nationals, the father’s residence status is determinative of the registration steps to be taken. In addition to the financial barriers of birth registration, many foreign nationals, specifically undocumented Afghans, give birth at home. Parents whose child is born at home have to provide a written affidavit for the birth registration, either in the Bureau for Aliens and Foreign Immigrants Affairs (BAFIA) for registered refugees, or the embassy for undocumented and visa holding foreign nationals. The process is usually considered to be very time-consuming and complicated for people who are not familiar with it. Additionally, lack of awareness of the significance of birth registration, especially for girls and children with disabilities and children before the school age, and cultural hesitations are further barriers to birth registration.

³⁰ Iranian Civil Code: Book 7 On Marriage and Divorce, Art. 1060.

³¹ Iranian Family Protection Act, Art. 51.

³² Article 12 of the Personal Status Registration Act.

Recommendations

29. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Iran:
- I. Review the provisions of the Act on Determination of the Nationality of Children Born into Marriages of Iranian Women with Men of Foreign Nationality amending the Civil Code, and to ensure that all children who are born to Iranian mothers, including children born out of wedlock, are entitled to Iranian citizenship on the same conditions as children born to Iranian fathers;
 - II. As part of broader efforts to advance gender equality, reform the Civil Code of the Islamic Republic of Iran to uphold women's ability to change and retain their nationality, and to confer their nationality on children and spouses on an equal basis with men;
 - III. Accede to the *Convention on the Elimination of All Forms of Discrimination against Women*, as well as the *1954 Convention on the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*;
 - IV. Ensure every child's right to a nationality and implement effective and adequate safeguards against statelessness, with particular emphasis on ensuring the right to a nationality of children of Afghan or stateless fathers and children born in the Sistan and Baluchistan provinces.
 - V. Develop and implement civil documentation and registration campaigns that address inter-generational lack of documentation, in particular in the Sistan and Baluchistan Provinces;
 - VI. Ensure that the birth of every child is registered, regardless of the nationality or lack thereof of their parents, by addressing legal, administrative, financial and cultural barriers;
 - VII. Ensure that all international and regional obligations related to the right to nationality, prevention and reduction of statelessness, protection of stateless persons, non-discrimination, and birth registration are fully incorporated into domestic law and implemented in practice; and,
 - VIII. Strengthen the collection and monitoring of disaggregated data (including by ethnicity, age, and gender) and conduct a comprehensive mapping on statelessness and the risk of statelessness, with appropriate safeguards in place to ensure anonymity.