



## EROPA SEMINAR 2008

**“Governance in a Triptych:  
Environment, Migration, Peace and Order”**  
*23-25 October 2008  
Manila, Philippines*

# **MIGRATION AND INTERMARRIAGE: CONSEQUENCES OF IRANIAN WOMEN’S MARRIAGE WITH FOREIGN NATIONALS**

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## **Introduction**

No doubt man is naturally and instinctively willing to get married and have children. Although marriage with foreigners is seriously prohibited in many religions including Christian, Jewish and Zoroastrian religions, Islam only bans marriage with infidels. Even though Islam has permitted Muslim males to get married to female followers of the divine prophets, female Muslims are only allowed to marry Muslims. This Islamic advice is because the Muslim scholars believe that religion and belief in God is a most important factor to strengthen family relationships. Likewise, women's affectability is more than that of men; therefore, if a Muslim female gets married to a non-Muslim male, she might be misled or converted. According to Article 1059 of Marriage Law, a female Muslim cannot marry a non-Muslim.

Based on a nation-wide census in 2001, the total number of foreign nationals amounted to 2,530,827, out of which there were some 2,355,227 Afghans, some 23,387 Iraqis, and 5,522 other foreign nationals (mostly Bangladeshis and Pakistanis). A voluntary return home in 2002 started and some 650,000 Afghans went back to their country.

Three groups of migrants might be considered:

- 1- Political asylums (those who have asylum papers),
- 2- Homeless and migrant foreigners who lack any visa at arrival but having their national I.D. card or similar papers,

- 3- Residing foreigners, that is, those who entered the country legally and obtained residence papers.

The problem is mainly with the second group, because they are voluntarily or based on Iran's policies leaving the country.

### **Major raisons d'être**

Due to religious and cultural similarities in areas such as South of Khorasan province, as well as Hormuzgan and Sistan-Baluchestan provinces, as well as some Iranian families' traditional approach to "marriage," many Iranian females in these regions are encouraged to marry Afghan nationals. On the other hand, Lack of appropriate rules and regulations, cultural poverty and poor economic situations are among the main motives for Iranian females to marry foreigners. Although Iranian women sacrifice their family and themselves for their marriages, the foreign nationals (Iraqis, Afghans, ...) leave them as soon as the general conditions in their country is tolerable! For instance, when there was a peace between Iran and Iraq –after eight years of the Iraqi Imposed War by Iranian combatants—Iraqis began returning home, leaving their Iranian wives and children by themselves, because they had their Iraqi wives and kids in their home country! Lack of adequate information and knowledge on the part of Iranian girls' parents or relatives as well as some officials' lack of due attention are among other reasons for such marriages. As a result, many kids are born with a very vague future. Another cause for such illegal intermarriages is said to be the merciful feelings by the Iranian society towards the foreign nationals.

## **Illegal migration, illegal marriages: irreparable consequences**

The Islamic Republic of Iran, after the 1979 Islamic Revolution, has hosted over three million migrants from mostly Afghanistan and Iraq. Among 224 countries in the world, Iran ranks 167 concerning hosting migrants in 2003, proving a relatively high migration to Iran.

The social sciences experts believe if there is no solution to confront illegal migration to Iran, the numerous consequences because of such inflow will impose irreparable damages on the country and its socio-cultural structure. In the short time, it might not be tangible, but in a long run, there will be bitter consequences. For instance,

- 1- employment problems for native workers,
- 2- imbalance in labor market,
- 3- high population rate,
- 4- increase of different kinds of crimes (such as addiction, murder, robbery, ...),
- 5- the problem of those dwelling around big cities,
- 6- negative impact on investment because migrants do not invest,
- 7- establishment of new offices just for administering migrants,
- 8- legal and illegal intermarriages,
- 9- and ...

Roughly speaking, the problems caused by illegal (or in a better word, informal) intermarriages might be as well include:

- Marriage cannot be proved because the couples lack legal and formal marriage papers,
- No I.D. card may be issued for the kids out of such marriages due to lack of lawful documents,

- Iranian women cannot sue their legal issues against their foreign husband because their marriage is not recorded,
- There is no legal and formal guarantee to force the foreign husband to go on living with his Iranian wife or to take her to his home country with him, and to pay alimony to the wife, to pay their kids' life expenses,
- There is no evidence for the marriage once the Iranian wife or the foreign male or both are dead, and as a result the kids are left without a guardian,
- Some foreign national males misuse their Iranian wives confidence and try to get married for a second or a third time in various regions in Iran,
- ...

Now that the Islamic Republic of Iran has decided to provide facilities for especially Afghan migrants to go back to their home country, many problems have been created. These problems might be categorized as follows:

- 1- Intermarriages between foreign men and Iranian women, and vice versa,
  - 1-1 Kids born out of intermarriages: their problems, rights, nationalities, ... .
  - 1-2 Foreign national males leave their Iranian wives and kids behind to return home!
- 2- Their belongings.

### **1- Intermarriages between Afghan men and Iranian women, and vice versa**

One of the most controversial debates over the recent years is the discussion on Iranian women's marriage with non-Iranian male and especially with Afghani men as well as the problems the Iranian women and their children are seriously involved with. **Nationality** law operates on the basis of jus sanguinis (Latin for "right of blood") or jus soli (Latin for "right of

soil") . Under Article 976 of Iran's Civil Law, both rights are applicable, but the main right is the former. Based on the Iranian Nationality Law, it is solely the father who can pass the nationality to the child, i.e. if the father is Iranian, his child is an Iranian national, and if the father is a foreigner, the child is a foreign (non-Iranian) national. The law is unlike with the one in other countries which says that if a child is born to parents of two different nationals, the child can have both parents' nationality.

### **1-1 Kids born out of intermarriages: their problems, rights, nationalities, ... .**

In Iran, many women especially those living in Iran's Eastern Provinces get married to Afghan nationals and those in Iran's West Provinces to Iraqi nationals. Therefore, the kids will have Afghani or Iraqi nationality, although these kids may live their whole life in Iran. According to the Paragraph 2 of the above-mentioned Article, because the father's nationality prevails, there will be many problems for the kids including lack of I.D. card, and also deprivation of education and even inheritance.

It is formally announced that there have been over 30,000 intermarriages between Iranian nationals with Afghani citizens; most of intermarriages have not been recorded at all. However, some statistical resources say that the number of marriages exceeds 100,000. Most of these intermarriages happened in Tehran, Hormuzgan, Khorasan and Sistan-Baluchestan provinces. The kids born to such Afghani parents (male or female parent) have faced problems for going back to Afghanistan. These children lack I.D. cards because their Iranian mothers could not record their marriages with foreign nationals such as Afghanis, Iraqis, and Pakistanis.

## **Legal status of Afghan migrants' children**

Nationality is one of the precise but relatively complicated legal issues which is related both to people personality and a government's public policy. The issue is more complicated when nationality goes beyond national law to have an international dimension. Among such situations, the issue of intermarriages might be touched, that is, marriages between men and women with different nationalities.

Since afghani people's migration to Iran after the war broke out in Afghanistan, it is said that about 20,000 to 30,000 Iranian women got married with Afghan men; mostly Iranian women of lowest social strata. In this way, the Afghani migrants enjoyed a more stable social condition, without getting any marriage permission. To clarify the point, under Iran's Interior Ministry By-law approved in 1966, issuance of marriage permission necessitates a foreigner get a certificate from his own country allowing the foreigner to get married to an Iranian woman. The Iranian Interior Ministry may even require the Afghani male to prove and guarantee his financial ability for sustaining the alimony of his spouse and kid(s). Such marriages entail two legal effects: Firstly, Afghan nationality is imposed on the Iranian woman (who marries an Afghan). It is because (under Afghanistan Nationality Law) the foreign nationals who are married to afghan men are considered Afghan nationals; the Iranian internal laws cannot stop such legal outcome.

According to Article 987 of Iran's Civil Law, when an Iranian woman gets married to a foreign national, she may remain an Iranian national, unless the laws of the country of her foreign husband dictate otherwise. Secondly, the kids born to such parents with different nationals are not Iranian nationals; they are Afghanis! It is because Paragraph 2 of Article 976 of Iran's Civil Law says that kids (born in Iran or outside Iran) are considered Iranian nationals only if the father is Iranian national. Paragraph 5 of the said Article says that if those who are born in Iran

to a father who is a foreign national stay in Iran one full year after they live for eighteen years in Iran, they can have Iranian nationality; otherwise, they should observe the rules and regulations for having Iranian nationality. The kids born to Afghan migrants can only be considered Iranians if they stay in Iran for a total of 19 years; such condition is rather difficult for such kids because Iranian Government has been trying to encourage the Afghans to return. This has caused a big problem for the Iranian women who married to Afghan nationals. To solve such problem, there is an inevitable need to review nationality regulations in Iran's Civil Law.

### **Latest parliamentary efforts, Government bill**

On the basis of the latest efforts by Iran's Majlis (Parliament), the kid(s) born out of a marriage between Iranian women to foreign national men may apply for Iranian nationality after they are eighteen years old. According to the only article of this plan, such kids who have been born in Iran or may be born one year after this law is approved may apply for Iranian nationality. Such applications may be accepted if there is no bad security and/or penal records and if the non-Iranian nationality is rejected. Once the plan is approved, some of these problems might be solved.

Additionally, Interior and Justice Ministries, jointly with Judiciary Branch have formulated and presented a bill to the Majlis (the Iranian Parliament) to modify Articles 979, 980, 982, 987 and 988 of the Iranian Civil Law in order to solve some of the problems these Iranian women are facing with. A female Member of Parliament announced that Majlis is seriously working on an Article for the Civil Law to change the rule of nationality from father to the mother for such marriages. It should be noted that a woman's nationality is defined in Article 987 of the Civil Law, Article 17 of the Marriage Law (approved in 1931) as well as Article 1060 of the Civil Law.

## 2- Belongings

Afghani nationals long stay in Iran has created many problems; each own transferable and non-transferable properties. The question is: "Do foreign nationals in general and Afghans in particular, have the right to own properties or not?" What is their legal situation in any case? Can they take them with themselves? Under the Iranian law, foreign nationals have no right to own non-transferable belongings.

Iranian civil law classifies the properties into two categories: transferable and non-transferable properties. Article 12 of the Iranian civil law defines non-transferable properties as follows: "Non-transferable property is what cannot be moved to another place ...". Transferable property based on the Article 19 of the law is the things which can be transferred from one place to another, without leaving any damage. Based on the definitions, foreign nationals have the right to possess the transferable properties. Note 2 of Article 987 of the civil law clarifies that Iranian women who acquire a foreign nationality following their marriage to a foreign national have no right to own non-transferable properties, if it may cause foreign dominance. (Such an issue will be distinguished by a committee comprising of representatives from Ministries of Interior Affairs and Information. Therefore, now that it is decided that the Afghans go back home, the issue should not be overlooked. According to the Iranian law, the Afghan nationals may take their transferable properties with them.

Meanwhile, Paragraph 6 of Article 976 of Iran's civil law says any foreign national female who marries an Iranian man is considered an Iranian national. Therefore, these ladies can own non-transferable properties, just like any Iranian national. However, under Iranian law, these ladies may have their original nationality, once they are widowed or divorced. Article 986 of the law says: "... a non-Iranian female who is an Iranian national as a result of her marriage may have

her original nationality, when her husband is dead or divorced..." The problem is: What is the property situation of such women or their legal conditions, when they are afghani national again, after their husbands' death or their divorce.

## **Conclusions**

Therefore, if the Iranian civil law is to be corrected, the national interests should be seriously considered. On the other hand, Article 10 of the Iranian Constitutions believes in strengthening the family system. Consequently, the Council of Guardians (of the Iranian Constitutional Law) is advised to try to remove any ambiguity before endorsing such law. Legislators in the Parliament are also expected to utilize the viewpoints made by experts in Private International Laws and Regulations in this regard. Meanwhile, presence of hundred thousands of Afghani and other foreign nationals in Iran has caused numerous legal and other problems. However, appropriate and logical measures are expected to be taken in a way to help further expand and solidify the relations between Iran and its neighbors, while providing reasonable and proper solutions to solve the existing problems.