

ARTICLE 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.



“The Taliban are turning women into nameless, anonymous shadows. A tool, to be used and kept at home, a machine for making babies.”

—Nilofer Fahim, 29-year-old Afghan woman who recently fled Afghanistan¹

Introduction

Article 9 of CEDAW affirms the principle of gender equality in matters of nationality. It obliges States Parties to ensure that women enjoy the same legal rights as men to acquire, change, or retain their nationality. The provision specifically prohibits the automatic alteration of a woman’s nationality because of marriage to a foreign national or due to changes in her spouse’s nationality.

Furthermore, Article 9 mandates equal rights for women in determining the nationality of their children, thereby addressing gender-based disparities that have historically affected the legal identity and citizenship status of both women and their offspring. By doing so, Article 9 seeks to eliminate the risk of statelessness arising from discriminatory legal frameworks and practices. It underscores the necessity of removing sex-based distinctions in nationality laws to ensure women are not disadvantaged in their legal identity or in transmitting nationality to their children. In promoting equal nationality rights, Article 9 contributes to the broader goal of achieving legal equality and protecting the human rights of women and their families.²

The 2004 Constitution of Afghanistan explicitly affirmed the principle of gender equality by granting women equal rights and obligations before the law, thereby recognizing them as full citizens with the same legal standing as men. Article 22 of the Constitution stipulates that “any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law.” This constitutional provision represented a significant advancement toward the realization of international human rights norms, particularly those about gender equality. Article 22 represented an important victory for Afghan women, especially as they were emerging from the systematic violation of most of their rights under the first Taliban regime.

Women’s rights activists in Afghanistan and their allies fought hard to ensure women’s and girls’ rights under the Constitution were recognized and upheld. However, in their attempts to ensure women’s and girls’ rights on the ground, they faced an uphill battle due to patriarchal cultural values and conservative, patriarchal decision-making bodies that helped men control women and girls and undercut their rights, especially in rural areas.³

National Identification Documents (Tazkira) and Passports

The Tazkira is the most important national identification document for Afghan nationals. The Tazkira is an essential document that provides important benefits and is crucial for accessing various services and rights. The Tazkira is official proof of a person's identity and Afghan citizenship. Tazkiras are important to enable access to the educational system and public health services, registering for public or private employment, registering land and property, or proving identity and inheritance claims, voting in elections, opening a bank account, mobile banking, and attaining bank loans, registering a business, and getting a driver's license and passport. Tazkiras are necessary for registering births, marriages, and deaths. For women, Tazkiras are especially important for ensuring their right to inheritance, property, and dowery. For girls, Tazkiras are important to prove a girl's age and help to combat child marriage.⁴

Between 2010-2021, women in Afghanistan could apply independently for their Tazkira and passports, prior to this, they had to be accompanied by a male relative. By 2018, women could register as heads of households and enroll their family members in the program, enabling the family to have greater access to political and social rights. However, by 2020, most Afghan women still did not have national identity cards: only 48 percent of Afghan women had Tazkira cards, compared to 94 percent of Afghan men.

Upon taking power in August 2021, the Taliban has forbidden girls and women to obtain a Tazkira card themselves or for their children without a male family member and local male leaders' approval and supervision.⁵ Without this card, women are unable to vote in elections, have no protection from legal authorities, have less ability for land ownership or leasing, cannot access employment, financial loans, or travel domestically or internationally.⁶ In addition to not being able to access any of the previous services, women are inhibited in their access to humanitarian aid, leaving them dependent on a husband, father, or male family member.⁷

Under Taliban rules, for girls or women to obtain a Tazkira card, they first must be accompanied by a mahram.⁸ Female-headed households, girls, or women whose male relatives do not travel with them are unable to obtain a Tazkira. Older girls or women can request a male community elder to accompany

them, but this can expose girls and women to possible exploitation and abuse.⁹ Additionally, a Tazkira is only granted with the endorsement of community elders, confirmed by local council members, along with assisting documentation from a family member and two witnesses.¹⁰ These steps make this process extremely difficult for female-headed households to obtain national identity documentation. Even for girls and women with husbands present, the process requires the full support and efforts of their husbands and male family members.

Additionally, the Taliban have altered the law to state that older girls and women are not required to carry Tazkira cards if they are accompanied by male family members, resulting in a disincentive for male family members to assist in obtaining Tazkira cards for their female family members.¹¹ Due to a combination of both the lengthy and expensive application process, exacerbated by new Taliban rules, and already financially strained Afghan households, male family members are further disincentivized to get their female members this essential form of documentation.¹²

According to 2023 UNHCR protection data, in rural and culturally conservative areas of Afghanistan, 77 percent of families reported lacking any state identity documentation, with girls and women representing the majority of those lacking documentation.¹³ Due to high levels of illiteracy and the far distances required to civil offices, rural girls and women are less likely to be informed about the application processes and therefore remain without Tazkira cards.¹⁴

Internally displaced people, female-headed households, and girls and women in rural areas in particular are hindered in accessing their rights without documentation. Additionally, due to both the highly communal and expensive nature of applying for Tazkira cards and passports, displaced people or families that are not members of the communities they are living in struggle to access funds to cover the high costs and are thus even more unable to complete the application process for documentation.¹⁵

With the additional steps required by the Taliban to procure a Tazkira card, the use of middlemen has risen to facilitate the application process, adding to increasing costs and the likelihood of fraudulent documentation.¹⁶ Passports were reported to have

the highest level of cost inflation, at around 10,000 to 12,000 AFN, around a 50 percent increase in prices before the Taliban takeover.¹⁷

Without identity documentation, girls and women have no national proof of identity, making it more difficult for them to access basic services, humanitarian assistance, financial resources, housing resources, or health resources.¹⁸ Without legal documentation, girls and women are unable to travel without their male family members, severely restricting girls' and women's freedom of movement.¹⁹ Further restricting freedom of movement, on May 2, 2022, the Taliban ordered that driver's licenses would no longer be issued to older girls and women.²⁰ On January 16, 2023, the Taliban also instructed travel agencies not to sell bus or airplane tickets to girls and women without a mahram.²¹

Moreover, without proof of identity, girls and women are at increasing risk of trafficking, early marriage, and sexual and gender-based violence.²² Under the Taliban's interpretation of sharia law, a girl is an adult by 12-14 years of age. While marriage documents cannot be legally issued for those under 18 years old, the lack of proof of age helps enable girls to be forcibly married.²³ Without documentation or legal proof of a child's age, the Taliban, local power holders, or individual family members can coerce families to marry off their girls, putting those girls at risk for sexual violence and exploitation.²⁴

Statelessness Under the Taliban

Some Afghan women currently face challenges associated with statelessness, compounded by systemic gender-based discrimination and restrictive policies imposed by the Taliban regime. Among the most pressing issues are women's limited access to legal documentation, restrictions on women's freedom of movement, and heightened exposure to gender-based violence. These vulnerabilities are closely linked to longstanding structural inequalities and armed conflict and are

amplified with the resurgence of conservative Taliban practices that curtail women's rights in both public and private life.²⁵

According to the World Bank, Afghanistan has the widest gap between women and men having national identity documentation; 52 percent of Afghan women lack official identification or nationality documentation, compared to only 6 percent of Afghan men. Afghan women's lack of national identity documents is impeding their ability to assert legal rights, access essential services, or obtain protection under national and international legal frameworks. This lack of documentation often results from prolonged conflict, displacement, and discriminatory state practices. Moreover, the Taliban's policies have further constrained women's autonomy by restricting their mobility, both within the country and across international borders. These restrictions impede access to safety, humanitarian aid, and family reunification, often compelling women and girls to resort to unofficial and unsafe border crossings, thereby increasing their susceptibility to exploitation and abuse.²⁶

Women without legal status are particularly vulnerable to various forms of gender-based violence, including sexual and domestic abuse, human trafficking, and forced marriage. Their undocumented status can result in barriers to justice, limited access to legal recourse, and exclusion from support services.²⁷ The economic and humanitarian crises in Afghanistan, coupled with prohibitions on women's employment and education, have further intensified these vulnerabilities, undermining their capacity for self-sufficiency and security.

The Taliban's systematic dismantling of women's rights—such as the right to education, work, and freedom of movement—has created an environment of fear and instability. These policies have significantly restricted women's access to fundamental necessities and opportunities for a stable future. Additionally, the current political climate has contributed to a marked increase in forced displacement and refugee flows.²⁸

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- 6 PeaceRep, "Recognition of Gender Apartheid in Afghanistan Justified."
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