

WIFE'S ACQUIRE HUSBAND'S NATIONALITY THROUGH MIXED-MARRIAGE: A COMPARATIVE STUDY BETWEEN INTERNATIONAL CONVENTION AND IRAQI LAW

Hiba Thamer Mahmood Al-Samak, University of Baghdad

ABSTRACT

The wife's acquisition of her husband's citizenship through mixed marriage is one of the human rights stipulated by international conventions and the Iraqi constitution of 2005, as it prohibits discrimination on the basis of sex, and it is one of the contemporary jurisprudential issues that comply with the provisions of the tolerant Islamic Sharia. The research problem is manifested in that the wife, according to the law of her original citizenship, could lose her foreign citizenship as soon as she acquires the citizenship of her husband, and also in terms of being subject to a different legal system, which has legal implications for the foreign wife's acquisition of her husband's citizenship, and can lead to the emergence of the issue of dual citizenship, and the problem of conflict of nationalities. As well as issues of inheritance and other issues of private international law. We studied the subject according to the comparative approach between international law and Iraqi law in two sections, the first topic is about equality between women and men in acquiring citizenship through mixed marriage. The second topic includes the mechanisms of acquiring citizenship through mixed marriage. As for the most important results, the wife's acquisition of her husband's citizenship benefits the family and supports the jurisprudential trend that took the principle of family unity, and we suggest that the legislator should grant citizenship to the foreign wife of an Iraqi once she has a child to help in the unity of family's citizenship.

Keywords: Citizenship Acquisition, Mixed-Marriage, International Conventions, Iraqi Law, Human Rights

INTRODUCTION

Citizenship acquisition as a political and legal concept, that is, as a political affiliation to a state regulated by the legislature in law, used to be difficult, but became easy after progress in the international community and international regulation in the Fouad (2008). Field of basic rights and freedoms without discrimination on the basis of human sex, in respect of the principle of equal rights between men and women¹.

One of the reasons for acquiring citizenship is mixed marriage, which, in most legislations leads to an impact on the acquisition or loss of citizenship, in particular the citizenship of the married woman, and leads to a lesser impact on the citizenship of the husband, as some legislation adopts the principle of family citizenship unity².

Acquisition of citizenship through mixed marriage is one of the contemporary jurisprudential issues, especially in light of the increase in immigration and asylum requests and the ease and availability of means of travel to countries of the world. It is important for foreign women married to Iraqis that help unite the family's nationality. The problem of the research is reflected in the legal consequences Sager & Ahmed (2017) of acquiring or losing the citizenship due to mixed marriages, as the law gives the right to a man and a woman to marry a foreigner, but this right can

arrange subjecting to the legal systems of foreign countries whose systems differ from the legal systems of the wife, which are of great importance in that the wife can lose her original nationality because of acquiring the nationality of her husband and why It has an impact on issues of private International law³. Also, the emergence of the so-called conflict of nationalities due to multiple nationalities and the phenomenon of statelessness, inheritance, the needed laws, and determining jurisdiction. Here, we will discuss international conventions, Hawasi (2010-2020). The Iraqi constitution and the Iraqi nationality law, and we will discuss the most important jurisprudential opinions to solve these problems. Is the Iraqi law and the international legislation able to solve this problem? or does it need to be amended and added to legal texts?

The research methodology to solve the problem of this topic will be according to the comparative approach through researching Iraqi laws and international conventions to conclude to what extent Iraq applies international conventions. Do these conventions protect married women? And do Iraqi laws solve the problem Ghariba (2019) of citizenship of married women⁴?

Research Plan: According to the above, we will approach this research *via* two topics, as follows:

1. Legal equality between men and women in acquiring citizenship.
 - Equal Rights.
 - Definition of Mixed Marriage.
2. How a wife acquires citizenship through mixed marriage.
 - Acquisition of citizenship in accordance with the international conventions and the Iraqi Nationality Law.
 - Implications.

Conclusion

Legal Equality between Men and Women in Acquiring Citizenship

The International community seeks to achieve equality between men and women in acquiring nationality through mixed marriages through international legislation, and Iraq's work to change and amend Iyad, (2019) internal laws of constitutions, including the Iraqi constitution for the year 2005 and the law on Iraqi nationality in force for the year 2006, we will discuss all of this according to the following:

Equal Rights

Nationality is one of the most basic and important human rights in the contemporary international community, as men and women are equal in obtaining citizenship and it is considered a human right, as it is one of the subsequent reasons, which is the acquisition of nationality, and the wife is often affected by her Nouria (2016-2017) marriage to a foreigner. Its internal legislation in line with international declarations, charters and agreements regarding⁵ the wife's right to acquire her husband's nationality through mixed marriage, we will discuss this in three paragraphs:

Equality in Acquiring Nationality in International Conventions: There are many international laws that affirm equality Nibras Al-Ziyadi. (2018) between men and women in the field of human rights, including nationality issues; some of these charters are:

- A- “United Nations, Charter of the United Nations, 1945”** which insured the firm belief and cooperation of the international community in the rule of law and equality between men and women in fundamental rights in Article 1 of the Charter, Iyad, (2006) and established the Economic and Social Council 1945 of the⁶ United Nations in the first year of the Commission on the Status of Women to advance the reality of women and achieve equality.
- B- “United Nations, Universal Declaration of Human Rights, 1948”** Articles 1-2 which emphasized the equality of people's rights and freedoms.
- C- “United Nations, Citizenship of Married Women Convention 1957”** which stipulated the right of a foreign wife to acquire the nationality of her husband in Article 3 thereof.
- D- Article (2-2) of the International Covenant on Economic and Social Rights of 1966** and Article (2.1) of **the International Covenant on Civil and Political Rights of 1966** stipulated the right to equality⁷ between men and women, especially with regard to nationality.
- E- Convention on the Elimination of All Forms of Discrimination against Women 1979** issued by the United Nations General⁸ Assembly have not signed Article (9/1) of it, which stipulates the equality of women and men in acquiring, retaining, or changing nationality.

The United Nations Women was established on July 2, 2010, approved by the United Nations General Assembly in order to achieve equality between women and men and to empower women. It has four agencies and international offices, including: the United Nations Development Fund for Women (UNIFEM), The Division for the Advancement of Women and the Office of the Special Adviser on Issues Gender⁹, International Research and Training Institute for the Advancement of Women.

United Nations Commission on the Status of Women is a major intergovernmental body dedicated exclusively to the promotion of gender equality and the empowerment of women. The Commission on the Status of Women plays a key role in promoting women's rights, documenting the realities of women's Niranjana & Bhuvanewari (2021) lives around the world, and shaping global standards for equality and women's empowerment.

Equality in the Iraqi Constitution of 2005: The constitutional texts affirm the principle of equality between all citizens without discrimination between women and men, affirm the state's guarantee of rights protection without discrimination, and decide to prohibit any law that discriminates between men and women in the field of human rights.

Article (14) of the Iraqi¹⁰ constitution stipulates that: (Iraqis are equal before the law without discrimination based on gender), as well as Article (16) which stipulates that: (equal opportunities are guaranteed to all Iraqis), and Article (20) of it, which says: (Citizens are men and women right to participate in public affairs).

We find that the constitution allowed¹¹ the Iraqi to acquire nationality and to have multiple-nationalities without discrimination between men and women in Article (18/fourth) and emphasized that this should be regulated by law, *i.e.*, the Iraqi Nationality Law in force for the year 2006, and that the courts have the authority to consider problems of nationality Article (18/sixth).

We find that the effective Iraqi constitution¹² has amended its provisions in accordance with international conventions with regard to human rights in general and women's rights in particular.

The Iraqi Nationality Law of 2006 permitted the wife to acquire the nationality of her Iraqi husband while retaining her foreign nationality¹³ in Article (11) of it. It also permitted multiple nationalities and did not discriminate between women and men. If an Iraqi woman marries a

foreigner, she is entitled to obtain a nationality Her foreign husband while retaining her Iraqi nationality, as the legislator permitted¹⁴ the acquisition of the nationality of her foreign husband in accordance with the Nationality Law of 2006 in Articles (10 and 12).

The Position of Islamic law on the Wife's Acquisition of her Husband's Nationality through Mixed Marriage: The concept of acquired nationality, which is the nationality that an individual obtains by his own will and choice, and it is called acquired, because it is acquired and not imposed.

One of the reasons of acquiring citizenship in Islamic Countries is through mixed marriage. (Which is among the reasons for acquiring citizenship in Islamic countries are: Islam and emigration to an Islamic country, or entering into a contract with the state (dhimmis), or in the case of mixed marriage, or annexation¹⁵ of the state's territories, or requesting the acquisition of citizenship, or long residence in the Islamic region).

One of the foundations for acquiring citizenship in Islamic Sharia is the right to blood and the right to territory. However, these two foundations are not considered sufficient from the perspective of Islamic Sharia to acquire citizenship, since the right to blood must be born to Muslim parents, and there is no room in Sharia to invoke the right of territory as a basis for granting citizenship The Islamic state, and among the foundations of acquiring the original nationality in Sharia: the right of Islamic subordination¹⁶ to the abode of Islam, which is related to Muslims, and the right of dhimmi subordination to the state of Islam, which is the right of non-Muslims living in the Islamic territories.

As for the effects of citizenship from the legal point of view, it means the consequences of the nationality bond, which gives the individual the status of citizenship in the state, so he occupies a significant legal position that enables him to enjoy constitutional rights in return for assuming the duties and costs stipulated by Islamic¹⁷ Sharia.

The first of these effects is rights, and the first of them is political rights: the first of these is the right to assume public mandates in the state, or political positions. The second is the right to nominate and elect or participate in choosing the ruler.

As for the abolition of nationality in Islamic law and its restoration, it is either:

Loss of nationality by change: It is intended to change the nationality by the will and choice of the individual, by seeking to obtain another nationality, desirous of subordination to another country, and residency in it, or that he wants to make his allegiance to another community due to similarity in beliefs, customs and races¹⁸.

Deprivation of nationality by deprivation: Deprivation of nationality is a legal term that means the demise of nationality from an individual through the state, meaning that the state may resort to stripping an individual of his nationality as a punishment imposed on him for committing a certain violation stipulated in the constitution, or as a means taken by the state to get rid of people who have not, they come back in her view worthy of holding her nationality and affiliation with it.

The demise of nationality by polygamy: It means the presence of a person with two or more different nationalities, and each state demands certain duties and costs required by naturalization, such as military service, paying taxes and others. We conclude from the above that the wife's acquisition of nationality through mixed marriage is in accordance with the provisions of Islamic law. However, Islamic law requires that the wife be a Muslim or one of the People of the Book, that is, she believes in the existence of God. But if she does not believe in the existence of God, then it is forbidden to marry her (Her husband's nationality in the Islamic State).

Acquiring Nationality through Mixed Marriage

Marriage between different¹⁹ nationalities, in many International legislations, leads to the husband or wife acquiring the nationality of the other spouse or facilitating the acquisition of nationality within certain conditions, as follows:

Definition of Mixed Marriage and the Importance of Acquiring Nationality Through it: Mixed marriage is one of the reasons²⁰ for acquiring nationality by naturalizing a foreigner or a foreigner with Iraqi nationality as it is of great importance that we will discuss in this paragraph after examining its definition according to the following division:

Item I: Definition of Mixed Marriage: Because of the development of means of transportation, mixed marriage has become easy in light of the development in the information age and the emergence of the Internet. Two different at the time of the marriage contract.

Whenever the mixed marriage takes place properly by fulfilling the formal and objective conditions, it arranges a set of effects and consequences, since among these effects from the beginning is the nationality of the spouses.

Accordingly, mixed marriage means that marriage that takes place between two parties, one of whom is a national and the other is a foreigner, then it is that marital bond that contains a foreign element. The Algerian is considered a mixed marriage because the husband has the nationality of Algeria, and the wife, on her part²¹, has a French nationality, meaning that both spouses are foreign to the brother due to their different nationalities. Also, some do not differentiate between this marriage and the marriage between two people of the same nationality and either of them grants the other's nationality. Others defined in jurisprudence as a marriage in which the nationality of the spouses differs at the time or after the conclusion of the marriage.

Another jurist defined it as: (It is the marriage in which the spouses have different nationalities at the conclusion of the²² marriage contract, that is, the marriage in which the two spouses are not of the same nationality, and the mixed marriage has legal effects on the nationality of the spouses).

We find that the most correct definition of mixed marriage is the marriage contract concluded between a man and a woman of two different nationalities “according to the law of the country in which it was concluded” and has legal consequences, including the acquisition of the nationality of one of the spouses.

Item II: The Importance of Acquiring Nationality Through Mixed Marriage: The importance of the topic is due to the serious consequences that result from the wife's acquisition of her husband's nationality, as the woman has complete freedom to obtain the nationality of her husband, as it requires her to submit to the customs and laws of society, while she was brought up in another society whose customs and traditions differ from those of her²³. The husband's society and the laws of the husband's country, which raises many issues such as inheritance, wills, and conflict of nationalities due to their plurality, the application of the principle of actual nationality and the law applicable before the courts and the determination of international jurisdiction over disputes, as well as the revocation of her original nationality by her own will or under the laws of her original nationality (statelessness).

The Most Important Jurisprudential Opinions: This topic has been the subject of a great debate among legal scholars, which has left its mark on the legislative regulation of many countries.

Two theories have emerged in determining the legal impact on the nationality of the spouses due to mixed marriage:

Item I: The Traditional Theory (The Theory of the Unity of Nationality): which advocated the unity of family nationality by attaching the wife to the nationality of her husband in accordance with the law to achieve the interest of the family and legal stability between the spouses, especially if the nationality is the reference officer in matters of personal status in the state, which is the same as was taken The repealed Iraqi²⁴ Nationality Law No. (24) of 1924, as Article (117) of it stipulates that a foreign woman automatically attaches the nationality of her husband of Iraqi nationality, once married.

Item II: The Modern Theory: This theory took the independence of the family's nationality, granting freedom and independence to the wife in matters of nationality, and not granting her the husband's nationality once the marriage contract was completed, except by her own will, because family harmony and legal stability are based on personal emotions and not by granting nationality, and this theory is consistent with what came It contains international conventions and covenants, which equated women with men and called for the wife not to be attached to her husband's nationality, as Article (12) of the repealed Iraqi Nationality Law No. (43) of 1963 and took this theory and in application of international agreements and covenants in Article (12/A) of it that : "If a foreign woman marries an Iraqi, she acquires Iraqi nationality from the date of the minister's approval - and she may return to her within three years from the date of her husband's death, divorce or annulment of the marriage - and lose her nationality from the date of submitting an application for this), which is the same direction in which the law was taken Iraqi Nationality for the year 2006.

The researcher believes that the wife has the right to acquire the nationality of her husband at the request of her or her husband²⁶ whenever the marital and family bond is achieved (*i.e.*, a continuous and permanent marriage with the presence of children) regardless of the legal period and regardless of the approval of the Minister of Interior that the naturalization of the wife does not violate a previous law If she has been convicted of a felony or misdemeanor in accordance with Iraqi law, or for crimes or misdemeanors outside Iraq, which are also punishable by Iraqi law, and be contrary to public order and public morals.

How to Acquire Citizenship through Mixed Marriage

International legislation, conventions and charters recognize the wife's right to acquire the nationality of her husband, but according to specific reasons and conditions that are similar and differ between international laws, charters and conventions, and the advantages of such a right and its disadvantages and how to avoid them²⁷, we will discuss this according to the following division:

Acquisition of Nationality by Mixed Marriage in Accordance with International Conventions and Charters and the Iraqi Nationality Law: The wife cannot acquire the nationality of her husband by her request except in accordance with the law. We will discuss in this requirement how to acquire nationality in regional and international conventions, as well as in accordance with the repealed and enforceable²⁸ Iraqi nationality laws, according to the following division.

Acquisition of Nationality According to International and Regional Conventions: There are many international conventions and conventions related to the wife's right to nationality on a regional scale.

Item I: The Wife's Right to Nationality in Accordance with International Conventions: States were divided in relation to equality between women and men in the field of nationality into two parts. The first section called for equality between men and women in the matter of acquiring nationality, while the other section of countries opposed full equality in the field of nationality on the pretext that this enables foreign wives to obtain citizenship.

First: The first trend which was adopted by countries is the New York Convention on the Nationality of Married Women of 1957: which equalized between women and men in the field of acquiring nationality due to mixed marriages, meaning that the wife is free to acquire the nationality of her husband or not, or to acquire the nationality of her husband, and she has the right to maintain her original nationality. What the agreement took in the event of the wife's dual nationality helps her avoid the issue of statelessness in the event of divorce.

For my part, I support what this agreement took, but we note that the agreement restricted this right of protecting the national security of the state and public order, which is a matter related to each country separately, (3/1).

The agreement emphasized that the countries contracting with the United Nations or one of its agencies on the agreement may not interpret the agreement in a way that does not enable the wife to acquire the nationality of her husband without observing any law or judicial precedents that enable the wife to acquire the nationality of her foreign husband because she has the right to Article (3/2).

We notice from the above that the agreement did not obligate states to grant citizenship to married women except in accordance with the laws in force within states, and what has been done by the judiciary must be taken into account, as well as working with the public order of each state.

Second: The second trend is the Convention on the Elimination of All Forms of Discrimination against Women 1979: We note that Article (9/1) of it stipulated that the countries organizing the convention should grant women equal rights with men in the matter of acquiring, changing or retaining nationality.

Marriage to a foreigner should not automatically change the nationality of the wife once the marriage was concluded, or change the nationality of the husband during the establishment of the marital bond, and she may not remain stateless (and this agreement established a "Committee for the Elimination of Racism against Women" that performs administrative control over the implementation of the Convention by Its member states that have amended their laws in a manner consistent with the provisions of this agreement. The agreement stipulates sending a periodic report every four years on the extent to which the agreement is implemented and what are those difficulties that impede its implementation, with the obligation of the committee to submit an annual report to the United Nations General Assembly indicating what activities it has undertaken The Committee to Facilitate the Implementation of the Agreement.

We notice from the above that a woman has the right to acquire a nationality other than the original nationality by acquiring nationality, as is the case for a married woman through a mixed marriage, and it can be changed after that or kept, and she can also give it up and return to her first nationality or acquire a nationality Third, according to the circumstances, conditions and laws of countries, the agreement did not distinguish between a man and a woman in that, even if this led to dual nationality and ignoring the actual or real nationality of the wife, as if an Egyptian woman married an Iraqi in Egypt, as she acquires Iraqi nationality, even if she resides permanently in Egypt.

She cannot change her nationality by simply changing the nationality of the husband, and she may not become stateless by marrying a foreigner, or in the event of divorce, she cannot lose the nationality she obtained from her marriage because an agreement prevented that for fear of the issue of statelessness, as an agreement between women and men equaled in these rights.

Item II: The Wife's Right to Citizenship in accordance with Regional Agreements: The issue of acquiring citizenship through mixed marriages according to regional agreements is a necessary matter, especially between countries that have a neighborly relationship, social affinity, a common language, a single religion, and a common history.

Among these conventions, which were concerned with the regulation of the nationality of married women, are:

A- Council of Europe Convention of 1997, which is concerned with the nationality of married women in order to achieve equality between men and women.

This agreement imposes on member states to take all necessary measures to eliminate or reduce discrimination against women with regard to the acquisition of nationality, with obligating states to grant citizenship to a foreigner married to one of its citizens, and to enjoy all rights, and it is not required that he obtain citizenship in accordance with the internal law of each state. Rather, he acquires citizenship upon marriage, whether he is a man or a woman.

B- As for the level of the League of Arab States, when the Arab League Council held an agreement on 4/5/1954, in which it called on all member states to join it, it was stated in the preamble of this agreement that it was concluded between the governments represented in the League Council, for cooperation. Close cooperation in matters of nationality, in order to implement Article 2 of the Charter of the League of Arab States.

Article 2 of it states: (An Arab woman acquires the nationality of her Arab husband through marriage, and forfeits her previous nationality, unless the wife requests to retain her nationality in the marriage contract or by a subsequent announcement within six months from the date of the marriage contract).

We note from the text that the legislator has permitted the Arab woman who is married to an Arab of another nationality to acquire the nationality of her husband upon marriage, provided that her original nationality shall forfeit, unless it stipulates that the nationality shall not be revoked in the marriage contract or by a subsequent announcement, provided that no more than six months have passed.

We note that this agreement follows the principle of "unity of family nationality" and obliges the wife to acquire the nationality of her husband, and it contradicts the principle of "equality between men and women" in the right to "acquisition of nationality" by obligating the wife without the husband, and it contradicts the principle of individual freedom to acquire nationality or not.

We find that this agreement does not grant freedom to acquire citizenship and is in violation of declarations, international charters and agreements, including the European Convention mentioned above, and the agreement did not enter into force.

Iraqi Nationality Law: The Iraqi Nationality Laws of 1924 and 1963 that are repealed and the Nationality Law of 2006 in force dealt with the issue of acquiring nationality through mixed marriages. We will discuss them according to the following:

Item I: Repealed Iraqi Nationality Laws: The position of the Iraqi legislator has witnessed a remarkable development in the field of the wife's right to acquire the nationality of her husband.

First: Repealed Law No. (42) of 1924: It states that a foreign woman married to an Iraqi is allowed to automatically acquire Iraqi nationality upon marriage, in Article (17) of it: (If a foreign woman marries an Iraqi, she acquires Iraqi nationality from the date The approval of the Minister of Interior to acquire this nationality).

Some jurists justify the position of the Iraqi legislator because this text is consistent with the Iraqi situation at that time when it was under the control of the Ottoman Empire, as there were many cases of mixed marriages between Iraqis and Turkish women.

We find that the Iraqi legislator was influenced by Islamic law, which was adopted by the Ottoman Empire as a main source of legislation, as Islamic law urges marriage to foreign women and of different religions and to include them in the Islamic religion, and because her children will be Muslims, it is better for the wife to join the husband with regard to nationality, meaning that this text is consistent with the provisions of Islamic Sharia.

Second: Repealed Law No. (43) of 1963: We find that the legislator took a new approach as it witnessed a shift, in Article (12) which states: (1-A: If a foreign woman marries an Iraqi, she acquires Iraqi citizenship from the date of the Minister's approval and has to return from her within three years from the date of her husband's death, divorce, or annulment of the marriage contract, and lose her Iraqi nationality from the date of submitting an application to do so). (B: If the foreign woman is not Arab, she is not entitled to submit an application to acquire her husband's nationality until three years have passed since the marriage and her residence in Iraq for the mentioned period. It is stipulated that the marital bond be established at the time of submitting the application, with the exception of the one whose husband dies from her and she has a child from him).

We note from the text that the Iraqi legislator stipulated several conditions regarding mixed marriage, if it stipulated a non-Arab foreigner married to an Iraqi, several conditions: That three years have passed since marrying an Iraqi with a valid marriage contract recognized in Iraqi law and residence in Iraq with the continuation of the marital relationship and that She is fully qualified, *i.e.*, she has completed eighteen years of age, and submits a request for this to the Minister of Interior, with the exception of the deceased, her husband and child, and her citizenship is forfeited in the event of her husband's death, divorce, or annulment of the marriage contract, but at a request from her to revoke citizenship, and the Arab exception is excluded, *i.e.*, she has the right to Applying for citizenship without fulfilling all the conditions.

Item II: The effective Iraqi Nationality Law No. (26) of 2006: When referring to the effective Iraqi Nationality Law, we find that Article (11) of it stipulates that: (A non-Iraqi woman married to an Iraqi may acquire Iraqi nationality under the following conditions: A- Submitting an application to the Minister B- The lapse of a period of five years since her marriage and residence in Iraq C- Continuity of the marital bond until the date of submitting the application, with the exception of those who are divorced or whose husband has died and who had a child from their divorced or deceased husband).

We note from the text that the Iraqi legislator stipulated several conditions in order for a foreign woman to acquire Iraqi nationality in accordance with Article (11), which are: that she submit an application to the intended minister, the Minister of Interior, and that five years have passed since the marriage to an Iraqi national, and on the condition that both spouses reside in Iraq legally, with the continuation of The establishment of the marital relationship until the date of submitting the application to the Minister, provided that the marriage contract is recognized in Iraqi law, and that it is an adult and enjoys full capacity.

The legislator excluded a non-Iraqi woman who is divorced or whose husband has died and who has a son of an Iraqi father. She has the right to submit an application for naturalization to the Minister of Interior in accordance with the conditions mentioned above, provided that the acquisition of nationality does not affect the laws of the state, what has been done by the judiciary and public order, nor does it pose a political danger or socially.

It is stipulated that the continuous residency be for the same husband and not for two spouses, with her divorce from an Iraqi and her association with another within five years.

But if the divorced woman or her husband is pregnant, then he waits until the birth of the newborn alive, whether the newborn is a boy or a girl, the legislator did not differentiate, and the purpose of that is so that the mother can raise the newborn in the Iraqi society and not take it to the foreign community.

In addition, the Nationality Law 2006 did not require the approval of the minister and did not specify the period for considering the application, while the repealed law of 1963 required the approval of the minister.

We find that the Iraqi legislator in the Nationality Law equated men and women with regard to nationality in accordance with the effective constitution of 2005, and amended the provisions of the valid and repealed Nationality Law with regard to the nationality of a foreigner and came in line with the provisions of international conventions, declarations and charters.

We also note that the legislator in the Nationality Law of 2006 did not distinguish between Arabs and foreigners from the naturalization condition, as he equated them with them, unlike what the repealed Iraqi Nationality Law of 1963 did, as it did not stipulate that an Arab married to an Iraqi has three years, but rather obtains the nationality of her Iraqi husband by mere marriage and with the approval The Minister also equated between an Arab and a Palestinian woman married to an Iraqi in the right to acquire citizenship in the law in force, in contrast to the abrogated law.

The Nationality Law of 2006 also stipulated the lapse of five years of residence for a foreign woman married to an Iraqi, while the repealed Nationality Law of 1963 required only the lapse of three years and distinguished between Arab and foreign.

In both laws, citizenship is granted at a request submitted to the Minister of Interior and after residency, and that the marriage is based on a marriage contract recognized in Iraqi law, and that it enjoys full capacity.

We also note that the legislator does not forfeit the Iraqi nationality from the wife upon divorce or the death of the husband except at the request of the widowed or divorced wife to avoid statelessness, a trend that is consistent with international conventions, charters and declarations.

We also note that the condition of continuous residency is necessary because it is consistent with the principle of the actual nationality of the wife, as the foreigner is not obliged to leave her foreign nationality by simply marrying an Iraqi, as the Iraqi legislator recognizes dual nationality, but requires residency to grant nationality.

The annulled law also allowed the divorced woman, widow, or the one whose contract was annulled within three years to revoke the nationality, *i.e.*, drop the Iraqi nationality at her request, while the law in force did not stipulate that.

We suggest that the divorced or widowed woman who wants to leave Iraq without wanting to return to her original country, drop the Iraqi nationality acquired from her without her children.

The Iraqi legislator must ratify the Married Women's Convention of 1953 AD because it supports women's rights.

We note that the Iraqi legislator did not enable a foreign wife to obtain the nationality of her Iraqi husband except according to certain conditions

And we believe that the legislator must grant citizenship to a foreigner in all cases without conditions if she asks for it because it helps protect the family unit. The wife follows her husband, even if it leads to dual citizenship, especially the one married to an Arab woman.

IMPLICATIONS

Acquisition of citizenship through mixed marriage has many effects, some of which are negative and some are positive. These effects need solutions; here we will discuss all of this according to the following:

Dual Nationality and Statelessness: Acquiring the husband's nationality entails many problems that the legislator and jurisprudence have suffered from, the most important of which are dual nationality and statelessness.

Item I: Dual Nationality: The problem of dual nationality, or as it is called, multiple nationality in Iraq and at the international level is one of the most common problems at the practical level.

The question may be asked what is dual nationality? It is a person who holds the nationality of two or more countries at the same time, and each country holds its nationality as one of its nationals.

This freedom to grant citizenship to each country is limited by only a few restrictions compared to the general principle recognized as a general origin, as countries, including Iraq, seek to set certain controls and bases for acquiring and reclaiming nationality in a way that suits their political, social, and economic interests.

Such is contrary to the Hague Convention of 1930, which stipulated that: "The proverb The highest level that humanity should turn to in the matter of nationality is the complete elimination of the phenomena of polygamy and statelessness".

Because of this plurality, the so-called conflict of nationalities appeared, as we need a well-known principle, which is the actual nationality by which the applicable law and jurisdiction can be determined in the event of a dispute.

The question is, what is the actual nationality? It is the one with which a person is linked more than others, in which most of his interests and connections are concentrated, and his legal life prevails, and he exercises most of his civil and political rights and is inferred from it through a number of facts and circumstances that reflect its existence, including performing military service, paying taxes and residing therein, exercising the right to vote, nomination, ownership of real estate, employment and marriage. What is the focus of these issues is the country of actual nationality? The nationality that reaps the greatest amount of the foregoing facts is the actual nationality.

The International Court of Justice Article (3) of the Statute of the International Court of Justice: (... He is considered a national of the country in which he normally exercises his civil and political rights).

As for the Iraqi legislator, Article (33/1) of the Iraqi Civil Code of 1951 stipulates: (The court appoints the law that must be applied in the case of persons who have multiple nationalities at the same time), it did not authorize the adoption of the actual nationality, but we can infer that Adoption of the principle of actual nationality through the text of Article (30) of the Iraqi Civil Code of 1951, which states: (Where there is no provision for conflict of laws, the most common principles of private international law are followed), and it is the principle of any actual nationality that is followed internationally.

Item II: Statelessness: In international law, a stateless person is defined as a person who is not considered to have the nationality of any state under the law of that state. This means anyone who does not have the nationality or status of a national of any country in the world, and there is the UN Convention on the Reduction of Statelessness of 1961 which obligates not to be deprived of Citizenship only after acquiring another nationality.

A wife's right to acquire her husband's nationality can lead to statelessness in the event of divorce or the husband losing his nationality for any reason that leads to the wife losing her husband's acquired nationality due to a mixed marriage.

We have previously discussed the Convention on the Elimination of All Forms of Discrimination against Women, which provides for the equality of women with men and the right to acquire and change nationality and retain nationality. In addition, the Iraqi legislator did not require a divorced woman or her husband to lose her nationality and become stateless, nor did it require her to renounce her original foreign nationality, but rather allowed her to keep it.

The Legal Effects of Acquiring Nationality through Mixed Marriage: Acquisition of nationality has consequences, as international agreements equated women and men in acquiring nationality, and then equalized in the effects. As for the Iraqi Nationality Law, it arranged individual effects and collective effects, as follows:

Item I: Individual Effects: Individual effects mean those effects that pertain to the person who acquires the nationality himself, and does not extend to other members of his family.

Submitting the application for naturalization and the minister's approval and taking the legal oath of loyalty to the homeland, that is, he completed the requirements for integration into the Iraqi society, and Article (9) stipulated in its three paragraphs of the law in force. Paragraph (1) stipulated a general rule, which is that a naturalized Iraqi citizen may not enjoy all the rights that an Iraqi enjoys, and that the second paragraph confirmed that a naturalized person according to Articles (4, 6, 7, 11) cannot be a minister or a member of Parliament Only after ten years have passed since the date of acquiring Iraqi citizenship, and to confirm this, Paragraph (3) stipulates that those mentioned in Paragraph (2) shall never have the right to occupy the position of President and Vice President.

We notice that the repealed and enforceable Iraqi Nationality Law did not equate with regard to individual rights between a citizen who obtains citizenship by birth and a person who acquires Iraqi citizenship according to the conditions, as it violates international agreements, charters and the Universal Declaration of Human Rights.

Item II: Collective Effects: What is meant by collective effects is that which is not limited to the person who has acquired citizenship, but extends to his family members, namely his wife and young children, based on the principle of family unity.

The position of the international conventions on the nationality of married women of 1957 indicates that the naturalization of the husband should not affect the nationality of the wife in anything.

As for the Iraqi Nationality Law, the repealed law of 1963 and the law in force of 2006 left freedom for women in this field without obligating them to leave their nationality after acquiring the nationality of their husband, which is inferred from the provisions of Articles (11, 12, 13) of the Nationality Law in force 2006.

The current legislator abolished the distinction that was in the repealed Nationality Law of 1963 between Arab and foreign women in terms of affecting the change of the husband's nationality, as the repealed law obligated a foreign woman whose husband naturalized her Iraqi nationality to choose the nationality of her Iraqi husband by naturalization within five years, otherwise he was obligated to leave Iraq, While this was not required for an Arab woman whose her husband enjoys the Iraqi nationality.

CONCLUSION

First: Results

1. The motive behind the wife's acquisition of citizenship from her foreign husband is due to the great effects that are reflected in the benefit not only on her but also on the family.
2. We find that the foreign wife's acquisition of the nationality of her Muslim husband is in accordance with the provisions of Islamic Sharia.
3. The laws issued by the Iraqi legislator, the Iraqi constitution and the repealed and enforceable nationality laws are nothing but the obligation to implement the provisions of international agreements signed and ratified.

Second: Suggestions

1. I suggest changing the term Mixed-Marriage with the term Foreign-Marriage.
2. We propose that Iraq accede to the Married Women Convention of 1957 and the Convention for the Reduction of Statelessness of 1961.
3. The legislator had to distinguish between Arab and foreign with regard to the period of residence due to the convergence of customs between Arabs and customs and the union of language and religion.
4. We suggest that the wife can obtain the nationality of her husband as soon as the legal conditions are met and that it does not conflict with the laws, public order or the judicial system in Iraq, and the Minister of Interior should approve the naturalization request once the above-mentioned conditions are met.
5. The Iraqi legislator must agree to grant citizenship to a foreign woman married to an Iraqi when she has a child from her Iraqi husband, whether she is inside Iraq or abroad to protect the Iraqi family abroad.
6. Finally, we believe that the Iraqi legislator should amend the effective nationality law to ensure that the wife obtains Iraqi nationality whenever she submits a request for that without conditions, because it protects the family unity.

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- 21-The Hague Convention of 1930.
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Article 2: (Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty).

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Fouad Deeb, "Women, Nationality and Equality", 384.

"adopted by the United Nations General Assembly on December 18, 1979". It was described as an international women's rights document, and ratified on September 3, 1981. More than 189 countries signed the Convention and more than 50 countries agreed with the Convention, The House of Representatives, by majority, approved a draft law to cancel Iraq's reservation to Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women of 1986, which was based on the first and second paragraphs of Article 18 of the Constitution on October 06, 2011, stating that Iraqi women will retain their citizenship under this article if they marry a woman. A foreigner, which was prohibited during the time of the previous regime, and made it clear that this matter is a gain for the Iraqi family.

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however, there are many Iraqi laws in force that have not amended the texts that distinguish between women and men. We will study this in more detail in the second chapter.

These also include religious rights, which include freedom of religious and intellectual choice, and freedom to perform rituals. It also includes social, economic and civil rights and public freedoms such as the right to property, freedom of expression, freedom of assembly, freedom of contract and freedom of thought.

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Sayhoud, I.M. (n.d). Encyclopedia of Comparative Nationality Provisions, 115

We will study this law in the second section, Abbas Al-Aboudi, Explanation of the Provisions of the Iraqi Nationality Law No. (26) of 2006, 88-89.

Jabr, N. (2017). "The impact of international organization on the nationality of married women: A comparative study". *Al-Qadisiyah Journal*, 8(2), 5.

Iraq has ratified accession to this Convention under Law No. 66 of 1986 on June 28, 1986, and submitted its first report in 1989, and submitted its second and third periodic reports in August 1998 and was discussed in June of 2000. This report covers the period from 1998 to the end of 2010.

Iraq submitted a reservation to (Article 2), especially paragraphs (and + g) in July 2000, and Article (9) thereof.

This agreement has established a "Committee for the Eradication of Racism against Women" to carry out administrative monitoring of the implementation of the Convention by its member states, which have amended their laws in a manner consistent with the provisions of this agreement. The agreement stipulated that a periodic report be sent every four years on the extent of implementation of the agreement and what are those difficulties that impede its implementation, with the obligation of the Committee to submit an annual report to the General Assembly of the United Nations, in which it indicates what activities the Committee has undertaken in order to facilitate the implementation of the Convention, Nibras Jabr, "The Impact of International Organization on the Nationality of Married Women, a Comparative Study", 7.

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This agreement was signed by Iraq, Egypt and Jordan, and Article (11) stipulates that this agreement shall be effective two months after the first three countries deposit the instruments of ratification of the agreement, and it shall apply to each of the other countries two months after the deposit of its instrument of ratification or accession, without The ratification documents were not deposited with the League of Arab States except by Jordan and Egypt, and thus the condition for their entry into force was not completed.

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Committee on the Elimination of Discrimination against Women Considers Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women 1979, Reports of States Parties Consolidating Fourth, Fifth and Sixth Periodic Reports, Iraq, United Nations CEDAW/C/IRQ/4 Distr.: General, 11 January 2013 Original: Arabic [23 November 2011], p. 44. <http://webcache.googleusercontent.com>, (accessed November 19, 2020)

The reason for this is the state's freedom to grant its nationality or not and to organize its own affairs of nationality, which is one of the general principles established in private international law. It has become a universal principle that most countries are relied on when organizing their nationality matters.

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