Equity in Access to Healthcare for Children; the Domestic Implementation of International Human Rights Law in Iran

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9.1 ABSTRACT

Achieving equity in access to healthcare requires the provision of socially, physically, and economically accessible health services for entire population. The aim of this study is to characterize laws and policies regarding the right to access healthcare for children in Iran and to identify the extent to which they are congruent with human rights standards of non-discrimination. In Iran, the constitution and national laws guarantee equity of everyone in the enjoyment of the right to health but access for some groups of children, such as the poor and illegal immigrants, to health services is not equitable. To solve the problem, barriers to equal access to health services in laws and practice should be eliminated and immediate measures should be adopted for identifying disadvantaged children and improving their access to healthcare.

Keywords: Children; Right to health; Children's rights; Access to healthcare; Equity; Islamic Republic of Iran

9.2 INTRODUCTION

The health of children has an important role in realizing their right to survive, grow and development. Due to physical and mental immaturity, discrimination endangers the health and development of children and makes them more vulnerable to exploitation, abuse and violence. Approximately 22 million children (population under the age of 18) live in Iran which constitutes almost 28% of the total population.[1] In recent decades, by the establishment of the Primary Healthcare (PHC) system across the country, children's survival and health have improved significantly and the main causes of children's diseases and disabilities have been eliminated or controlled in Iran.[2] Disparities can however be seen in the health status of children and their access to health services around the country.[3]

The constitution, national laws and public policies indicate whether a state has made efforts to improve the realization of children's rights.[4] Iran has made a commitment to tackle inequalities in access to healthcare in its constitution and development plans. The purpose of this paper is to characterize laws and policies regarding the right to access healthcare for children in Iran and to identify the extent to which they are consistent with human rights standards of equity and non-discrimination. The results of these kinds of studies will increase awareness of the situation and help to identify the causes of violations and generate political commitment to take action.[5] The study uses the legal framework of accessibility determined by General Comment no. 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to analyse access to healthcare for children. According to this document, health services have to be geographically and economically accessible to all, without discrimination of any kind. Information regarding these services needs to be available to the entire population.[6]

To undertake this research, the original national legislative texts (Persian documents were translated by the researcher), international human rights laws and treaties

1 United Nations Children's Fund (UNICEF), *The State of the World's Children Report 2015 Statistical Tables* (UNICEF 2015) 38.

2 Health Policy Council, Ministry of Health and Medical Education of Iran (MOHME), *Achievements, Challenges and future views of Health system in the Islamic Republic of Iran (*vol 2, Ministry of Health and Medical Education 2010) 266.

3 WHO Regional Office for the Eastern Mediterranean, *Country Co-operation Strategy for WHO and Islamic Republic of Iran 2010–2014* (WHO Regional Office for the Eastern Mediterranean 2010) 7.

4 Heymann J. McNeill, K. Raub, A. 'Assessing Compliance with the CRC Indicators of Law and Policy in 191 Countries' [2014] International Journal of Children's Rights 22 (3) 425.

5 United Nations Children's Fund (UNICEF) Innocenti Research Centre, *The general measures of the convention on the rights of the child the process in Europe and central Asia* (UNICEF 2006) 34.

6 UN Committee on Economic, Social and Cultural Rights. *General Comment no. 14 ICESCR: The Right to the Highest Attainable Standard of Health (*2000) para 12.

and research articles were used. Legal texts were acquired through the United Nations treaties' and the organizations' web pages, Iran's Parliament and organizations' websites and the hard copy of laws at the Ministry of Health and Medical Education of Iran (MOHME). Where it was necessary, supplementary data was gathered from reliable secondary sources, such as reports and concluding observations of international human rights treaties and organizations, as well as the reports of Iran.

Iran is a member of the United Nations, the World Health Organization (WHO) and the International Labour Organization and also a party to several treaties on human rights, such as the ICESCR, the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC) . CRC is the main convention on the rights of children worldwide. Upon ratification of the CRC, Iran made a general reservation to not apply any articles which might conflict with the Islamic laws and the international legislation which is in effect in Iran.[7]

In this article the current situation of children is explained to identify whether the current means for the protection of children are sufficient. The analysis of laws should not only be about the extent to which the legislation is effective to the CRC, but also it should include the effects of legislation on the daily life of children.[8] In this study, the right to health and the obligations of states about children's right to health are explained. Then, the obligations of states defined the international treaties that are applicable to Iran are reviewed.. Then the concepts of equity and non-discrimination are explained. Subsequently, after giving a summary of the health system of Iran, an analysis of national and international laws on different dimensions of accessibility of health services for children is provided. In conclusion, areas of improvement in Iran's laws and policies on equity and non-discrimination for children in the enjoyment of the right to health are presented.

9.3 RIGHT TO HEALTH

The Universal Declaration of Human Rights (UDHR) indicates that everyone is born with inherent dignity and equal in rights and entitled to the protection of his/her fundamental rights without discrimination of any kind.[9] The right to health that is recognized in various international human rights laws and treaties is one of those fundamental rights. According to the UDHR, 'everyone has the right to an adequate

7 United Nations. 'Treaty Collection, Declarations and reservations' (UN 2015) <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en> accessed 18 November 2015.

8 Lundy, C. *Legislation Review and Reform on Behalf of Children's Rights' in Assessing Compliance of National Legislation with International Human Rights Norms and Standards* (UNICEF 2008) 25.

9 Universal Declaration of Human Rights 1948, art 1-2.

standard of living, adequate for the health and well-being of him/herself and of his/her family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his/her control'.[10]

The right to health is guaranteed in article 12 of the ICESCR as 'the right to the enjoyment of the highest attainable standard of physical and mental health'.[11] The ICESCR interpreted this right in its General Comment no.14, as the right to the enjoyment of all facilities, services and products necessary for the realization of this right. It ranges from timely and equal access to basic preventive, curative, rehabilitative health services, and socio-economic determinants of health such as food, water, housing, adequate sanitation, a healthy environment and safe and healthy working conditions. It also includes access to health-related education and information and individuals' participation in health-related decision-making.[12]

According to the ICESCR, states are required to progressively realize economic, social and cultural rights by taking steps to pursue the goals of the convention and by using the maximum of available resources. They are expected to realize the minimum core obligations immediately after ratifying the covenant.[13] Non-discrimination, in the realization of human rights, is a fundamental core obligation in all human rights treaties. General Comment no. 14 ICESCR indicates that to realize people's right to health, states should provide available, accessible and acceptable healthcare facilities, services and products of good quality for all. These requirements are referred to as the Availability, Accessibility, Acceptability, and Quality (AAAQ) framework. To be accessible, an adequate number of health facilities, services and products should be provided, physically as well as economically accessible to everyone without discrimination of any kind. The notion of accessibility also includes the accessibility of information.[14]

10 Ibid art 25 (1).

11 International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, art 12 (1).

12 General Comment no. 14 ICESCR, supra note 6 para4

13 UN Committee on Economic, Social and Cultural Rights. *General Comment no. 3 ICESCR: The Nature of States Parties' Obligations* (1990) paras 1, 2, 9 & 10; ICESCR, supra note 11, art.2.

14 General Comment no. 14 ICESCR, supra note 6 para 12.

9.4 OBLIGATIONS OF STATES ON CHILDREN'S RIGHT TO HEALTH

According to the CRC, every child has an inherent right to life, a maximum extent possible of survival and a standard of living adequate for his/her comprehensive development.[15] Based on the Convention on the Rights of the Child in Islam (CRCI), a child, from the time that (s)he is a foetus, has a right to life and care.[16] The problem in the realization of children's rights is that traditionally, in most societies, children are not regarded as rights holders.[17] The Geneva Declaration on the Rights of the Child (1924), as the oldest document about the rights of children, declares that all the material and spiritual means necessary for the normal development of a child must be provided to him/her. It adds 'the child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured'.[18] This comprehensive notion of children's rights has been entered into CRC. Based on General Comment no. 15 CRC on the right of the child to health, 'children's right to health is an inclusive right, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right to grow and develop to their full potential, and live in the conditions that enable the child to attain the highest standard of health through a holistic approach to the underlying determinants of health'.[19] Particularly, the CRC requires the states to reduce infant and child mortality and provide essential healthcare and nutritious food to all children. Mothers should have access to appropriate pre-natal and post-natal healthcare. Society, parents and children should have access to necessary child health education and be supported in its use. Traditional practices which are harmful to the health of children should be abolished.[20]

Similar to other human rights, the right to health imposes three kinds of obligations on States: to respect, protect and fulfil. States should refrain from denying or limiting equal access of everyone to health services and take measures to prevent third parties from acting in this way. States are required to adopt all the necessary measures (legislative, administrative, budgetary, judicial and promotional) towards the full

15 UN General Assembly. Convention on the Rights of the Child (CRC) 1989, art 27.
16 Cairo Declaration on Human Rights in Islam 1990, art 6.
17 UN Committee on the Rights of the Child. *General comment no.5 CRC: General measures of implementation of the Convention on the Rights of the Child* (2003) para 66.
18 Geneva Declaration of the Rights of the Child 1924, para3.
19 UN Committee on the Rights of the Child, *General comment no. 15 CRC: the right of the child to the enjoyment of the highest attainable standard of health* (2013) para2.
20 CRC, supra note 15, art 24.

realization of economic, social and cultural rights including the right to health.[21] To realize the rights of children, states should ensure their legislation is compatible with the principles and provisions of the CRC and adopt relevant national law. In the case of national legislation conflicting with the CRC, priority should be given to the CRC. National laws should be reviewed systematically, the implementation should be monitored and if necessary new or revised laws should be enacted. Impact assessment of existing legislation and policies is essential to ensure that laws are protecting children's rights effectively. Impact assessment should be conducted toward other policies which are not directly concerned with children, such as social security, taxes and immigration but might affect children.[22]

9.5 RIGHT TO HEALTH IN IRAN

Health and the right to health are considered in the Constitution of Iran. It protects citizens' human rights including the right to health and social security, in conformity with Islamic criteria. In the Constitution, improvement of the living situation of the population and alleviation of poverty through expansion of the health services network and insurance coverage are emphasized.[23]

The health system of Iran is structured as a nation-wide network providing three levels of health services; primary, secondary and tertiary. The primary healthcare services are provided and financed by the government, while the others are run by the public and private sectors. Healthcare facilities are distributed throughout the country, based on three main criteria; density of the population, and its distribution and geographical accessibility.[24] Immunization, prevention and control of communicable diseases, maternal and child healthcare and family planning are some services provided by the primary healthcare system.[25] At the secondary and tertiary levels, more complex healthcare services are provided.

21 General Comment no. 14 ICESCR, supra note 6 paras 33-36.

22 UNICEF, *FACT SHEET: Implementation guidelines for the Convention on the Rights of the Child* (UNICEF, 2007)1-2.

23 Iran's Constitution 1979, art 20 & 29.

24 Rahbar, M. *Primary health care in Islamic Republic of Iran* (Ministry of Health and Medical Education 2009)18-22.

25 WHO Regional Office for the Eastern Mediterranean, *supra note* 3 at 23.

9.6 CHILDREN'S RIGHT TO HEALTH IN IRAN

According to the report of the United Nations Children Fund (UNICEF), by having a strong health and education network and infrastructure, Iran is on track to achieve most of the Millennium Development Goals including decreasing poverty and hunger, providing primary education, and improving child and maternal health.[26] There are several laws and legislation about children's health and welfare in Iran. Various interpretations of the term "child" are given by different national laws in Iran. In the health and welfare systems of Iran, this term is defined as everyone younger than 18 years. In this country, several health programs for children of different ages exist that comprise three parts: young children, school children and adolescents.

9.6.1 Young Children

In recent years, Iran has made considerable efforts to improve health in early childhood which resulted in a significant increase of children's survival rate. The under-five mortality rate decreased from 73 per 1,000 live births in 1990 to 17 in 2013, which indicates that children are more protected from diseases and better nourished than before.[27] Training local midwives, establishing confinement facilities in rural areas, setting up Child-Friendly Hospitals, MANA project (Integrated care for the diseases of children), and Well Child Care (WCC) are some of the programs for the protection and improvement of children's health in Iran.[28]

Supporting women during pregnancy and taking care of their children are guaranteed by Article 21 of Iran's constitution and the law on Welfare System of Iran (2004).[29] Prenatal and postnatal care are primary services of the PHC network in Iran.[30] Maternity leave (at least for 6 months), reduced working hours per day for two years and breastfeeding facilities at the mother's workplace are defined as the rights of mothers provision of in the national laws of Iran. The law indicates that during maternity leave, the mothers' work position should be preserved.[31] However, the rate of breastfeeding is not satisfactory; it contributes to low nutrition levels and underweight children.[32] Another issue about this group of children is the prohibition

26 United Nations Children's Fund, *Revised country programme document, Islamic Republic of Iran (2012-2016)* (E/ICEF/2011/P/L.39, 2011) 3.

27 UNICEF, *Annual Report for Iran 2012 (MENA)* (UNICEF 2012) 1; UNICEF, supra note 1 at 38.

28 Health Policy Council of Ministry of Health and Medical Education of Iran. Supra note 2 at 273-283.

29 Iran's Constitution, supra note 23, art 21; Comprehensive Welfare System law 2004, art1.

30 Hamidian, Kh. *The right to health in Iran* (Country report, University of Aberdeen, 2013) 10.

31 Directive on the Promotion of Breastfeeding and Support of Breastfeeding Mothers (PBSBM) 1996, art 3-6; The Directive on (PBSBM) 2005, art 3; Amendments of the Directive on (PBSBM) 2005, art 1; Amendments to the Directive on (PBSBM) 2007, art 1.

32 UNICEF. *UNICEF in Iran 2012-2016* (UNICEF 2012)2.

of abortion. In accordance with the laws of Iran, the foetus has a right to life, and abortion is only allowed before the 4th month of pregnancy, if the health situation of the mother, or child, makes it unavoidable.[33]

9.6.2 School Children

Based on Iran's Law of Schools (2000), access to clean water and a healthy environment, appropriate sanitation and safe food should be provided at schools. Every student gets a general medical screening at the time of enrolment in school and, thereafter at least once per year. Schools must take the necessary measures to control communicable diseases among students. Special attention should be paid to the education of disabled students by providing additional facilities at school.[34] According to the number of students, schools should have a health expert available, or use a local health expert for providing primary healthcare to students and taking care of the school's environmental health.[35] In practice, the current system does not properly respond to the health problems of children, due to the large number of students, inadequate insurance benefits and insufficient number of health experts at schools. There is a gap in providing these services for children who drop out of school too.[36]

9.6.3 Adolescents

In Iran, unhealthy behaviour, such as poor eating choices, smoking, substance abuse, lack of exercise and risky sexual behaviour are increasing among adolescents. The rates of suicide, mental illnesses, injury, disability and death due to accidents are growing among children in this age group.[37] The UNICEF states that to combat these problems, adolescents should get appropriate information about the healthy lifestyle, including safe and respectful social and sexual behaviour and the ways to cope with stress in life.[38] The Comprehensive Program of Adolescents' and Youngsters' Health (2010), now in the pilot stage in Iran, consists of several education programs on the healthy lifestyle and nutrition, exercise, proper social behaviour, smoking, drug addiction and unsafe sexual relationships.[39] In the 5th Economic, Social and Cultural Development Plan of Iran (2011), the government is obliged to provide educational

33 Law on Medical Abortion 2005, art 1.
34 Iran's Law on Health of Schools 2000 art 4; Health Policy Council Ministry of Health and Medical Education of Iran, supra note 2 at 285-289.
35 Directive on Providing, Maintaining and Promoting the Physical, Mental, Social Health of Students 2005, art 1
36 Health Policy Council MOHME, supra note 2 at 296.
37 UNICEF supra note 32 at 2-3; Nasehi, A. 'Children and Adolescents' Mental Health Policy Document has been Published' (IRNA 2011) Health 1.
38 UNICEF supra note 32 at 26.
39 Health Policy Council MOHME, supra note 2 at 287-9.

programs to improve the physical and mental health of children.[40] The Program of Mental Health Improvement (2011-2015) aimed to improve the mental health of different groups including children. One tenth of primary and secondary schools has a part time or full time counsellor available. There is no official data on the prevalence of mental disorders among children in Iran. In general mental health education, facilities and professionals are insufficient in this country.[41]

Adolescents' right to health includes education on family planning, contraceptives and sexually transmitted diseases. The information should be provided to them regardless of their marital status or the consent of their parents.[42] In Iran, there is no education at schools about these issues. Adolescents themselves have to search for reproductive and sexual health services. They are often not willing to use these services because of stigma, the fear of being judged or shame. Related prevention services are not appropriate, attractive and accessible enough for adolescents.[43] In recent years, Iran has focused more on young children's health and survival. Now the time has come to pay more attention to the health needs of children in other age groups, especially adolescents. Iran's PHC programs have started to change in order to tackle other health problems which are more common among young people and adolescents such as traffic accidents, obesity, HIV/AIDS, mental diseases, addiction and to meet the needs of deprived areas.[44]

9.7 EQUITY IN ACCESS TO HEALTHCARE AMONG CHILDREN IN IRAN

Discrimination is defined by the CESCR as 'any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of Covenant rights'.[45] Several human rights treaties such as the ICCPR and the

40 The Fifth Economic, Social, Cultural Development Plan of Iran (2011-2016) art 19.

41 Ministry of Health and Medical Education of Iran. Program of Mental Health Improvement 2011, p1; World Health Organization, *WHO-aims report on mental health system in the Islamic Republic of Iran* (WHO and Ministry of Health and Medical Education of Iran, 2006) 5-7.

42 UN Committee on the Rights of the Child, *General comment no. 4 CRC: Adolescent Health and Development in the Context of the Convention on the Rights of the Child* (2003) para29.

43 UNICEF Iran Country Office and Ministry of Health and Medical Education of Iran, *Looking Ahead: HIV Prevention amongst Young People in the Islamic Republic of Iran* (Ministry of Health and Medical Education of Iran 2014) 2.

44 WHO Regional Office for the Eastern Mediterranean, supra note 3 at 30-31.

45 UN Committee on Economic, Social and Cultural Rights. *General Comment no. 20 ICESCR: Non-discrimination in economic, social and cultural rights* (2009) para7.

CRC prohibit any discrimination against children. All mechanisms and programs in a country should be strengthened for the protection of every child, particularly those who are vulnerable, such as girls, the disabled, orphans, abandoned and street children, children living in poverty, children of immigrants, indigenous or minority groups.[46]

To realize children's rights, states should ensure that all domestic laws are fully compatible with the principles and provisions of the CRC and can be applied and enforced appropriately.[47] In this part of the study, the laws related to the access of children to health facilities, services and products in Iran are analysed. According to General Comment no. 14 ICESCR, accessibility has four dimensions; non-discrimination, physical accessibility, affordability and information accessibility.[48]

9.7.1 Non-discrimination

Everyone has a right to a health protection system that provides equal opportunity to all to enjoy the right to health. Health facilities, services and products should be provided in a sufficient quantity and accessible to all, without any type of discrimination. Special attention should be paid to marginalized and vulnerable sections of society. According to the CRC, every child within a country's jurisdiction is entitled to measures of protection, 'irrespective of the child's, or his/her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'. A child who is a refugee or seeking refugee status, or a child affected by inter-country adoption also has the same rights.[49]

Based on Iran's Constitution, the abolition of all forms of unjust discrimination and the provisions of equitable opportunities for all are defined as fundamental goals of the country. It indicates that all the people of Iran, regardless of their tribe or ethnic group, have equal rights; colour, race, language and other status will not grant any privileges.[50] In this part of the study, both direct and indirect discrimination are considered. The universal list of vulnerable children, who may face discrimination, is long but more common grounds of discrimination include gender, birth registration, nationality, ethnic origin, disability, and poverty.

46 Vienna Declaration and Programme of Action 1993, paras 12-24.
47 General comment no. 5 CRC, supra note 17, para1.
48 General comment no. 14 ICESCR, supra note 6, para12.
49 Convention on the Rights of the Child, supra note 15, art 2 & 22.
50 Iran's Constitution 1979, supra note 23 art 19.

- *Girls*

Around the world, girls may face neglect, infanticide, inadequate feeding in infancy, genital mutilation and selective abortion. It is probable that they are expected to undertake excessive family responsibilities and are deprived of education. Discrimination against girls affects their survival and future lives and restricts their capability to contribute to society.[51] The non-discrimination requires that both girls and boys have equal access to health services, adequate nutrition, and a safe environment.[52]

In the laws of Iran, no difference is made between boys and girls in access to health services. Recent survival rates of boys and girls do not show a significant difference.[53] The Charter on the Rights and Responsibilities of Women in Iran (2004) protects girls' right to the necessities of preserving their mental and physical health, including safe and adequate food, housing and health services, as is applicable for boys. Girls who are victims of abuse or violence have the right to rehabilitation services, and girls without guardians have the right to social security and free health insurance.[54] To support girls who are at the risk of social harm, and lack necessary family and social support, special shelters have been established in the country. The purpose of these shelters is to help these girls meet their minimum economic needs and protect them from more social harms.[55]

Another part of children's rights, especially important for girls' health, is the right to be free from harmful traditional practices affecting their health, including early marriage and genital mutilation. Based on the Iranian law on Supporting Children and Young Adults (2002), infliction of any kind of physical and mental harm and injury to children is forbidden and punishable.[56] Based on the Islamic Punishment Law of Iran, mutilation in general is regarded as a crime.[57] In a few ethnic groups, genital mutilation is common, even though its prevalence has decreased in recent years in Iran.[58] The government should take necessary measures to stop female genital mutilation. Another issue endangering the health of girls in Iran is that they are allowed to get married at the age of 13 and earlier if the court agrees.[59] In 2013,

51 UN Committee on the Rights of the Child. *General Comment no. 7 CRC: Implementing child rights in early childhood (2006*) para 11b.

52 General comment no. 14 ICESCR, supra note 6 para22.

53 *UNICEF.* Supra note 1 at 38.

54 Charter of Rights and Responsibilities of Women in Iran 2004, art 15-58.

55 Islamic Republic of Iran, *Report of Islamic Republic of Iran on Implementation of the International Covenant on Economic, Social and Cultural Rights* (E/C.12/IRN/2, UN Economic and Social Council 2011) 159.

56 Law on Supporting Children and Young Adults 2002, art 2.

57 Islamic Punishment Law of Iran 2009, art 269

58 Mozafarian, R. *Tigh o sonnat* (Nakoja Abad, Iran 2011); RezazadeJalali, R. 'Cultural context of violence against women, with an emphasis on female genital mutilation in Port of Kang, Iran' (MSc thesis. Shiraz University, Iran 2009); Pashaie, T. Rahimi, A. Ardalan, A. Majlesi, F. 'Prevalence of female genital mutilation and factors associated with it among women consulting health centers in Ravansar City, Iran' [2012] sjsph 9 (4) 57-68.

59 Civil Code of Iran, art 1041

about 32.000 children younger than 15 years were officially married,[60] and 2.8% of all births were to mothers younger than 18 years in 2012.[61]

- ***Children Without an Identity or Birth Certificate***

During 2005-2012, the rate of birth registration was 98.6% in Iran.[62] Not having a birth certificate can be a barrier for realizing some fundamental human rights, such as the right to identity, access to immunization, healthcare, education and protection from underage marriage. Children born out of wedlock may suffer the consequences of discrimination against their parents.[63] Based on Iran's law, a child who is borne out of a non-registered marriage, or out of wedlock, cannot be granted a birth certificate unless both parents are present for the registration.[64] In the culture of Iranian society, having a child out of wedlock is regarded as abhorrent. In these cases, parents are not willing to take on the official parenting responsibility and might try to get rid of the child[65]; this threatens the life of the child.

Reports show that there are thousands of children without identity documents in Iran, particularly from illegal immigrants, who were born in unregistered marriages. Even a child who is born in a marriage between an illegal immigrant and an Iranian woman is not guaranteed an Iranian identity. It is customary in Iran that the father's nationality determines the nationality of the child, therefore if the foreigner father does not apply for the child's identity papers from his country, the child will not have an identity and will be regarded as stateless in Iran.[66] When the child reaches the age of 18, under certain conditions, he/she can apply for the Iranian nationality. Article 27 of the International Convention Relating to the Status of Stateless Persons (1954) requires states to issue identity papers to every stateless person within their territory who does not possess a valid travelling document.[67] These children should be guaranteed an identity certificate and have the opportunity to enjoy their rights to health, education and social security.

60 ISNA. 'Marriage of girls' (ISNA, 16 July 2014) <http://www.isna.ir/fa/news/93042514761/> accessed 03 June 2016

61 Joghtaii, M. 'The Girls who become Mothers' (IRNA, Social(women and adolescents) 4 December 2013) <http://www.irna.ir/fa/News/80936052/> accessed 3 June 2016

62 UNICEF, supra note 1 at 86.

63 General comment no. 7 CRC, supra note 51, para 12.

64 UNICEF. 'Babies in Iran registered for key services, thanks to mobile unit' (UNICEF 2015) <http://www.unicef.org/iran/reallives_2608.html> accessed 15 June 2015.

65 Sarpoosh, 'Abandond children' (Sarpoosh 2018) <http://www.sarpoosh.com/society/social-damages/social-damages970307264.html≥ accessed 15 August 2018

66 Mohammadi, P. '100.000 children without ID card in Iran' (Jame Jam 2012; social) 1.

67 UN Convention Relating to the Status of Stateless Persons 1954, art 27.

- ***Refugees, Asylum Seekers, Illegal and Legal Immigrant Children***

Children displaced from their homes usually face poverty, starvation and the lack of essential basic services; displacement exposes them to violence, sexual attacks and torture.[68] Based on human rights treaties, asylum seekers, immigrants and refugees, including their children, irrespective of their nationality, immigration status or statelessness and legal status should have the same rights as nationals of a country.[69] Foreigners, lawfully residing in a state, have the right to health protection, medical care and social security in accordance with the laws of the nation.[70]

Iran is one of the largest host countries for refugees in the world.[71] The 5th Economic, Social and Cultural Development Plan of Iran (2010-2014) required foreigners, residing in Iran, to have health insurance.[72] The Welfare Law 2005 indicates that non-citizens living in Iran can benefit from social security support with regard to Sharia law, concords and mutual actions with their country of origin.[73] There is no law that limits access of any individual or group to health services in this country. Refugees who live in refugee settlements have access to free health services in Iran. There is a large number of undocumented immigrants in the country. Their legal status has a direct bearing on the enjoyment of their children of the basic rights, such as access to health services.[74] The problem is that usually illegal immigrants living in Iran are poor and have difficulties accessing the necessities of life and healthcare. It is not unusual to see the children of illegal immigrants working in the streets of mega cities; thereby making them vulnerable to the violation of their rights. Another issue regarding legal and illegal immigrants, who have entered Iran over the last three decades from neighbouring countries, is their resistance to change native customs, such as the forced marriages of young girls or preventing them from attending school.[75]

- ***Indigenous and Ethnic Minority Children***

Around the world, indigenous children often suffer poorer health compared to other children. The Committee on the Rights of the Child urges states to ensure that these

68 Oberg, CN. 'Embracing international children's rights: from principles to practice' [2012] ClinPediatr (Phila) 51 (7) 619-624.

69 UN Committee on the Rights of the Child. *General comment no. 6 CRC: Treatment of Unaccompanied and Separated Children Outside their Country of Origin* (2005) para 4.

70 UN Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live 1985, art 8 (3).

71 WHO Regional Office for the Eastern Mediterranean, supra note 3 at 16.

72 The Fifth Economic, Social, Cultural Development Plan of Iran, supra note 40, art 95.

73 The Law on the Structure of the Comprehensive Welfare and Social Security 2005, art 1 (3).

74 UNICEF, supra note 22 at 1-2.

75 Islamic Republic of Iran, *The Third Periodic Report on the Convention on the Rights of the Child: The Islamic Republic of Iran* (United Nations Committee on the Rights of the Child, 2013) 7.

children have access to culturally appropriate services related to health, nutrition, education, social services, housing and sanitation. States are required to take measures to ensure indigenous children are not discriminated against in their right to health. They also have a positive duty to combat malnutrition and infant, child and maternal mortality .[76] States are required to work together with the indigenous communities to eradicate harmful practices, such as early marriage and female genital mutilation and stereotypes on gender roles which contribute to these practices.[77]

Many people from various ethnicities, with a variety of cultures, live in different regions of Iran. The Constitution of Iran guarantees equal rights for every Iranian, irrespective of their ethnic or religious background. It also protects the human rights of the non-Muslims and obliges the government to treat them without discrimination.[78] The health system of Iran is community-based, respectful to the traditions and culture of people in different regions. The personnel of primary healthcare centres in rural areas are selected from local communities. They know the local traditions and are able to give health services and information in the local language. In all the development plans of Iran, improving the standard of living in disadvantaged areas is emphasized. Reports show higher rates of mortality in infants and children of some regions of Iran in which ethnic minorities live. In these regions, poor living conditions, malnutrition, limited access to safe water, poor and unhealthy sewage systems and insufficient health services exist.[79]

- ***Disabled Children***

Children living with disabilities around the world usually face more difficulties and barriers to the enjoyment of their rights. These barriers are not just because of their disability but due to a combination of cultural and social obstacles with which they are confronted in their daily lives. Stigmatization and discrimination make them excluded and marginalized which might even threaten their survival and development. They may be at risk of physical or mental violence and exclusion of access to education and quality healthcare and social services.[80] According to General Comment no. 7 of the CRC on the implementing child rights in early childhood, children

76 UN Committee on the Rights of the Child. *General comment no. 11 CRC: Indigenous children and their rights under the Convention on the Rights of the Child* (CRC/C/GC/11, 2009) paras 49-52.

77 Ibid para22.

78 Iran Constitution, supra note 23, art 19 & 14.

79 United Nations Economic and Social Council. *Concluding observations on the second periodic report of the Islamic Republic of Iran* (E/C.12/IRN/CO/2, 2013) 5-7.

80 UN Committee on the Rights of the Child. *General comment no. 9 CRC: The rights of children with disabilities* (2007) paras5 & 8

with disabilities not only have the same rights as other children but also require additional assistance to exercise and enjoy their rights and to integrate into society.[81]

Based on the CRC, a physically, mentally or socially handicapped child has a right to a full and decent, dignified life, so (s)he should have access to the special treatment, education and care necessary for his/her condition in order to achieve the highest possible level of social integration and individual development.[82] A disabled child has the right to access healthcare and rehabilitation services. If it is possible for states, these services should be provided free of charge, depending on the financial resources of parents, or others caring for the child.[83]

One of the necessities, in realizing disabled children's rights, is to identify their disabilities at an early stage and to provide timely treatment and rehabilitation to achieve their full functional capacity.[84] In Iran, children are screened in several stages of their life, such as in prenatal and postnatal phases, and before attending school, to identify their probable disabilities. According to the law in Iran, preventing disabilities and social harm, and providing the facilities needed for improving the physical, mental and social conditions of the disabled are the obligations of the government.[85] Providing health, rehabilitation and social security services for vulnerable groups, such as the mentally ill, disabled and orphaned children, are parts of these obligations.[86]

The Comprehensive Law on Protection of People Living with Disabilities (2004) requires the government to provide vocational and lifestyle education as well as rehabilitation services for disabled people. The government is obliged to increase the number of educational and rehabilitation centres and special institutions for the confinement of the homeless, orphaned or poverty-stricken disabled people. The government subsidizes poor families to afford homecare for disabled family members.[87] There is no study about the situation of disabled children's access to health and rehabilitation services in Iran. These services are not free for the disabled. People's large share of healthcare expenditures affects the access of the disabled to necessary services .

9.7.2 Physical Accessibility

One of the conditions of accessibility is that health facilities, services and products should be within a safe physical reach of entire population, especially marginal-

81 General comment no. 7 CRC, supra note 51, para11b.
82 UN Declaration of the Rights of the Child 1959, Principle no. 5.
83 Convention of the Rights of the Child, supra note 15, art 23.
84 Convention on the Rights of Persons Living with Disabilities 2007, para 25.
85 The law on Structure of the Comprehensive Welfare and Social Security, supra note 73, art 4.
86 Statute of Welfare Organization of Iran 1998, art 1.
87 Comprehensive Law on Protection of People Living with Disabilities in Iran 2004, art 3-5.

ized and vulnerable groups, such as children, persons living with disabilities, ethnic minorities and indigenous populations.[88]

In Iran, physical accessibility and the health needs of population are fundamental criteria for developing health services networks.[89] More than 90% of rural population and all urban population have access to primary healthcare.[90] In remote and under-developed areas of the country, the availability of medical specialist and well equipped hospitals is restricted.[91] Some children who are hardest to reach, especially in disadvantaged areas, do not receive enough attention. Child deaths, malnutrition and low-weight births are higher than national average in the rural areas and lower income regions of Iran.[92] One of the sections of the Policy Paper on the Child Development (2013) in Iran is allocated to combating regional disparities in health.. Currently, along with the programs for the improvement of urban infrastructure in disadvantaged areas, according to the Law on Health Sector Reform in Iran (2014), the government provides incentives to encourage physicians, and particularly medical specialists, to work in disadvantaged areas.[93] Based on General Comment no. 5 CRC on the general measures of implementation of the CRC, in addition to national laws and plans of action, states should set out time-bound and measurable provincial goals, adopt implementation measures and allocate enough financial and human resources for every individual province. Continuous monitoring and review systems should be established.[94]

9.7.3 Affordability

To be accessible, health facilities, services and products, privately or publicly provided, should be affordable for all, especially for marginalized and disadvantaged groups. The principle of equity should be the basis of the payment for health services and underlying determinants of health.[95] In the World Declaration on the Survival, Protection and Development of Children (1990), eradicating poverty that would have immediate benefits for children's welfare was determined as an important step in improving survival, protection and development of children.[96] The CRC does not

88 General Comment no. 14 ICESCR, supra note 6 para12.

89 Rahbar, M. supra note 24 at 18-22.

90 Motlagh, M. Oliaimanesh, A. Beheshtian, M. *Health and social determinants of health; solution of expanding health equity and fair opportunity for all* (2nd edn, Movafagh 2008) Introduction.

91 Hamidian, Kh. Supra note 30 at 6.

92 WHO Regional Office for the Eastern Mediterranean*, supra note 3 at 30.*

93 The Law on Health Sector Reform in Iran 2014, art 1.

94 General comment no. 5 CRC, supra note 17, paras 32-35**.**

95 Schoukens, P. 'The right to access to health care: health care according to international and European social security law instruments' in Den Exter, A. (ed) *International Health Law: Solidarity and Justice in Health Care* (Maklu Antwerpen 2008) 22.

96 World Declaration on the Survival, Protection and Development of Children 1990, art 20 (10).

indicate that governments should improve the economic situation of families but it obliges the states to provide an adequate standard living for every child.[97] General Comment no.14 ICESCR maintains that states should provide necessary health insurance and healthcare services to poor people.[98] Providing the basic benefit pocket of insurance to everyone is one of the main policies of the universal health insurance system in Iran.[99]

Generally, in Iran, apart from free primary healthcare services, access to secondary and tertiary health services for children is dependent on the kind of health insurance their parents have. In recent years, global factors, such as years of war and international isolation and sanctions, have adversely affected the wellbeing of the Iranian population, including children.[100] Their access to secondary and tertiary health services has declined continuously. Although more than 80% of Iranians are insured,[101] most uninsured people are from the lowest income groups of society.[102] Patient's contribution to healthcare expenditure (out of pocket) was about 60% of total health expenditure in 2011.[103] This high percentage of direct financial contribution of healthcare costs is a serious barrier for vulnerable groups of the population to access health services.

- ***Poor Children***

Children, who are orphaned and do not have any guardian, or whose parents have inadequate, or no health insurance, might not have equal access to healthcare because of the inability to pay for the services. Iran has issued cheap packages for those who do not have any health insurance. The government offers free health insurance for the poor and their children, orphans, and prisoners.[104] In addition, health services and insurance are provided free of charge in rural areas. Patients with certain chronic diseases are supported with a special insurance benefit package.[105] However, all these programs do not completely cover all sections of population.[106] In recent

97 Reinbold, GW. 'Realizing Young Children's Right to Health under the Convention on the Rights of the Child' [2014] The International Journal of Children's Rights 22 (3) 502.

98 General Comment no. 14 ICESCR, supra note 6 para19.

99 Law on Health Services Improvement in Iran 2002, art 1.

100 UNICEF, supra note 27, at1.

101 Keshavarz, A. 'Estimating Out of Pocket payments (OOP) for medical care in Qazvin province in 2009' [2011] Hospital 10 (4) 75

102 Health Policy Council, Ministry of Health and Medical Education of Iran, *Health in the 5th Economic, Social, Cultural Development Plan of Iran* (Ministry of Health and Medical Education 2009) 103.

103 DaneshJafari, D. 'Financial resources of health sector' (Conference of the Review of Government's Performance in the field of Health, National Institute for Health Research, Iran 2015)

104 Directive on the Identification of Those in Need in Iran 1995, art 1; Statute of Welfare Organization, supra note 86, art1

105 Motlagh, M. Oliaimanesh, A. Beheshtian, M. supra note 90 at 87-90.

106 Hamidian, Kh. Supra note 30 at16.

years, people's contribution to health expenditure has increased considerably. The government has devised a new plan to decrease out-of-pocket payment and to cover all uninsured people by committing to pay 90% and 95% of in-patient services' costs for urban and rural populations respectively.[107]

- ***Children Living and/or Working on the Street***

There are a high number of street children, especially in large cities, with limited access to health services and education in Iran.[108] In recent years, the number of street children has increased considerably because of the high rate of unemployment and inflation that has worsened the living situation of poor people . Children work to make a living and help their poor families.[109] If their parents can not afford the rent, they become homeless too. A significant number of these children are undocumented immigrant children who, owing to the unwillingness of their parents as illegal residents of the country to be known to public organizations, have limited access to health services and education.[110]

In Iran, the By-law on Organizing Street Children (2005) includes obligations for the government to identify and empower everyone under the age of 18 living in the streets of cities, whether they have a family or not. According to this document, the health needs of street children and their families should be met; children and their families are entitled to health insurance and free health services in special health facilities. Moreover, they should be financially supported by the government until such time as their situation improves.[111]

9.7.4 Information Accessibility

The right to seek, receive and impart information and ideas concerning health issues is another dimension of the accessibility of health facilities, services and products.[112] Based on the Executive Directive on Providing, Maintaining and Promoting the Physical, Mental, and Social Health of Students in Iran (2005), 42 hours of health education per school year should be provided to students.[113] According to the Program of Health Promoter Schools, this education should be about a healthy lifestyle,

107 Directive on the Budget Allocation for Health System Reform 2014, art1-2.
108 United Nations, Economic and Social Council, supra note 79 at 5.
109 International Campaign for human rights in Iran, *A Growing Crisis; The Impact of Sanctions and Regime Policies on Iranians' Economic and Social Rights* (vol 1, International Campaign for human rights in Iran 2013) 14.
110 UNICEF, supra note 27 at 22.
111 Bylaw on Organizing Street Children in Iran 2005, art2.
112 General Comment no. 14 ICESCR, supra note 6, para 12 (b).
113 Directive on Providing, Maintaining and Promoting the Physical, Mental, Social Health of Students in Iran 2005, art1-2.

especially healthy and nutritious food.[114] Health education, especially about young children's health, is one of the services provided by the PHC of Iran.

According to the CRC, in making decisions on a child's health, (s)he should have the opportunity to participate, receive appropriate information, and counselling, negotiate about his/her choices and freely express views in accordance with his/her age and maturity.[115] Access to confidential counselling, without parental or legal guardian's consent, should be provided to adolescents if professionals working with them think it is in their best interest.[116] In Iran, there is no law or policy about these rights of children. Married girls face another limitation in access to health services. It is common in Iran that married girls and women need to get the consent of their spouse to receive hospital care and surgery.[117] Particularly, the husband's consent is a prerequisite to access some health services such as abortion, C-Section, infertility treatment, hysterectomy, sex reassignment surgery, organ transplant and cosmetic surgery.[118] These girls are considered mature enough to get married but not to decide independently about their body.

9.8 CONCLUSION

In Iran, the constitution and health laws guarantee equity in access to healthcare for all. In spite of the overall gains, and having several national laws for the protection of vulnerable groups of children, in practice, access of all children to health services is not equal. Children who are living in poverty, children of illegal immigrants, children without identity or birth certificate, children living in remote areas and married girls face difficulties in accessing health services in Iran. In some of these cases, law is the source of discrimination and restricts access to the services. The law that guarantees equal access to healthcare but requires payment for the services falls short in taking measures to overcome discrimination against poor people. The law on issuing birth and identity certificates restricts the access of children who are borne out of wedlock or from illegal immigrants to necessary services, including healthcare and insurance. All children must be provided with a birth certificate at the time of birth.

114 Health Policy Council MOHME, supra note 2 at 284.

115 Convention on the Rights of the Child, supra note 15, art 12 &13.

116 UN Committee on the Rights of the Child. *General comment No. 15 CRC the right of the child to the enjoyment of the highest attainable standard of health* (2013) para31.

117 Rahimi, H. Sadeghi, H. AmainiSamani, R. 'The consent of the husband for health care services of the wife' [2012] Private Law 8(18) 25.

118 Mahmudian, S. Arzemani, M. Dolatabadi, T. *Consent and its Legal Aspects* (North Khorasan, Bojnord, Iran 2007) 15- 21

Regarding the law on the provision of free health insurance for poor people and their children, incomplete implementation is a problem. There is no comprehensive data system regarding the situation of children and a monitoring system to measure the implementation of the laws concerning children. In other cases, such as for protecting street children, the corresponding programs and infrastructure have not been adopted. Sufficient budget allocation, especially for vulnerable children, a data system on the situation of children and a monitoring system to track the progress of related programs are needed. Iran must amend the law on children's marriage and remove barriers that married girls face in access to health services, such as the obligatory consent of the husband. Married girls with poor living situations should get financial support, since they are more likely to be uneducated and unemployed, and have limited financial resources to access the necessities of life. Special attention should be paid to the health of adolescents and their access to sexual health and family planning information and services at schools and health facilities. Iran should employ the necessary means to remove the disparities in the health status of children living in different provinces, particularly those of indigenous and ethnic minorities. Children of poor illegal immigrants should have access to health services in emergencies, irrespective of the legal status of their parents. Financial and physical accessibility of health and rehabilitation services should be guaranteed for children living with disabilities. To access necessary health services, children should not face any financial limitations; their unconditional access should be guaranteed.

The PHC system in Iran has provided equal access to primary health services, but its focus is more on the prevention of diseases. Based on the principle of progressive realization, the government of Iran should provide equal access to advanced health services too. Programs in the pilot stage, such as the Program on the Health of Adolescents, should be implemented to a larger extent. Analysing the accessibility of health services in Iran shows that the main problems concerning access to healthcare are unaffordability of health services and a shortage of health professionals in remote and rural areas. Iran should allocate scarce healthcare resources in a way to meet the basic needs of all people. The gaps in the fulfilment of the rights of children should be identified and access barriers should be eliminated. Failure to eliminate differential treatment and progressively realizing children's rights, on the basis of a shortage of resources, is not a reasonable justification. It is an international principle on children's rights that, in all circumstances, children should be among those who receive protection and relief first.[119]

To promote the health of children, their needs and rights should be a priority in all development plans of Iran. The future policies of Iran should, first and foremost,

119 UN Declaration of the Rights of the Child 1959, art8.

ensure the minimum of subsistence rights for all and safeguard children from inadequate protection or rights violations, then progressively improve the situation of all children by using the maximum extent of available resources. To properly implement CRC, Iran should strengthen the co-ordination among various government bodies involved in children's rights at national and international level. Society should have sufficient information and be able to identify vulnerable children in need.[120] Children should be aware of their enforceable rights. Health workers, in the public and private sectors, should be trained about children's rights and there should be deterrent sanctions against those who violate children's right to equal access to healthcare.[121]

Finally, since all human rights are interdependent and interrelated, policies about the right to health should be prepared as a part of a comprehensive plan concerning children's welfare. Policies should entail the right to underlying determinants of health such as food, education and housing too. According to the World Fit for Children 2002, to build a world fit for children, principles, such as putting children first, eradicating poverty, caring for every child, not leaving any child behind, educating children, protecting children from harm, exploitation and war, listening to children, ensuring their participation in the decisions related to them and protecting the earth for them should be addressed in the policies of governments.[122]

120 United Nations Economic and Social Council. Supra note 79 at 11-17.

121 General Comment no. 20 ICESCR, supra note 45, para36.

122 UN General Assembly. *Resolution no. S-27/2, A World Fit for Children* (A/RES/S-27/2; 2002) para7.