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Passports and Passages

Tests of Yemeni Women's Citizenship Rights

SHEILA CARAPICO AND ANNA WUERTH

RIGHTS AND LEGAL STATUS are often tested at the margins. Questions are less likely to arise about how general principles apply under ordinary circumstances than about how specific articles of particular laws speak to unusual situations. The test of legal status comes through case law in the form of judgments about claims made in the context of specific, even peculiar, fact sequences. Rights are affirmed or asserted on behalf of social groups when courts or tribunals find that they have been violated in individual cases. So it is, too, with citizen rights for Yemeni women. Under ordinary circumstances the daughters of Yemeni parents, born and raised in Yemen, who marry Yemeni men and raise Yemeni children, are not conscious of limitations on their citizenship. Questions arise under unusual political or personal conditions where general principles are open to interpretation, where both the facts and the judgment are likely to be affected by race, class, regionalism, and partisanship. In this chapter we examine issues of gender and citizenship in Yemen through the prism of two asylum applications in which women claimed discrimination at least partly on the basis of gender. Both women had migrated across national boundaries during times of profound political changes. Their cases show how citizenship rights of women and their children can be affected directly by circumstances of national, regional, and global politics.

The Case Histories

The first case involves an Adeni woman we will call Ilham who went to Moscow to study in the 1980s when South Yemen, then formally known as the People's Democratic Republic of Yemen (PDRY), was ruled by the Yemeni Socialist Party (YSP). The PDRY was unique among Arab states in its propagation of state feminism, framed as equal rights and opportunities for women under the revolution.¹ Among thousands of men and women from Third World states of socialist orientation educated in the Soviet Union, Ilham met and married a Nicaraguan. Her father objected at the time, from afar, that Muslim women should not marry non-Muslims although it is not clear how progressive socialist legislation then in effect treated such marriages. Still in Moscow, Ilham gave birth to a girl who bore her father's surname. When she subsequently divorced the Nicaraguan (presumably under Soviet law), the child was registered at the South Yemeni embassy on Ilham's Aden-issued People's Democratic Republic of Yemen passport. In the meantime, in 1990, the PDRY united with the Yemen Arab Republic (YAR) to form the Republic of Yemen, and after four years of quarrelsome unity, the YSP was purged from the united government in a civil war.² Like many other PDRY students overseas, Ilham found herself without financial support from the Yemeni government after unification and made her way to a Scandinavian country. There she applied for asylum based on the argument that the Yemeni embassies abroad would not renew her passport nor issue a Republic of Yemen passport for her daughter because they would consider her child illegitimate under the 1992 personal status law forbidding and nullifying exogamous marriages between Muslim women and non-Muslim men.³

In the second case, a woman we will call Arwa was born in what was then part of Ethiopia of a Yemeni father and an Eritrean mother. She spent much of her life in her mother's homeland. Arwa and many others who were called "Arab" in Somalia, Kenya, Ethiopia, and Eritrea migrated—in some cases, fled—to what was then the YAR, that is, North Yemen. Thousands, if not

1. The work of Najib Shamiri (n.d.) and Maxine Molyneux (1985b, 1991, 1995) give the most comprehensive overview of legal development concerning women in the People's Democratic Republic of Yemen (PDRY).

2. For the political development in postunification Yemen, see Carapico 1998, 52–59 and 170–200; Glosemeyer 1995.

3. RoY, Personal Status Law 20/1992, article 29 (*al-Jumhuriyya al-Yamaniyya, Wazara al-Shu'un al-Qanuniyya* 1992). A child of a void union, however, is legitimate according to article 32 of the same law—a point that eluded Ilham and would probably also elude Yemeni passport officials, who would cling to a folk version of legitimate birth rather than to the intricate law.

hundreds of thousands, of repatriated so-called *muwallidin*—Muslim children of Yemeni men and foreign (usually African or Asian) wives—were among the first significant group to seek citizenship papers from the YAR government's fledgling passports and immigration service. North Yemen, at the time, had an open door policy toward refugees and promised citizenship to all sons and daughters of Yemenis. For instance, in the mid-seventies a Yemeni ambassador in Vietnam arranged repatriation of a large community of Yemeni-Vietnamese, their families, their in-laws, and some Vietnamese refugees, a significant proportion of whom later re-migrated to the West or, perhaps, the Gulf.

During the days of the "oil boom," many born-and-bred Yemenis migrated to Saudi Arabia in search of higher earnings. In the case of Afro-Yemenis, many hoped, and some, like Arwa, succeeded, to re-migrate to Saudi Arabia, which in those days allowed holders of Yemeni passports special privileges to travel and work in the kingdom. These privileges were suspended in the fall of 1990, soon after Yemeni unity and during the onset of the second Gulf war, prompting a precipitous return of roughly 750,000 to 800,000 Yemeni migrants. Unlike the majority of returnees who faced unemployment upon their return, as a result of her strong office and language skills, Arwa secured a transfer by her employer, Saudi Airlines. Although her passport is Yemeni and by law as the offspring of a Yemeni male she is Yemeni, in her asylum application Arwa told North American authorities that she faced probable treatment as an alien by virtue of her race, gender, and employment for a corporation owned by an unfriendly foreign government.

Some points about these two cases are immediately apparent. Both stories are based on asylum petitions where the burden of proof is to show a reasonable expectation of politically motivated persecution; they are not cases before Yemeni judges or even the Yemeni passports and immigration service. Both women are relatively highly educated and cosmopolitan, probably better prepared socially and psychologically for life in the West than for life in Yemen where neither has spent much time during adulthood. Their experiences reflect not only on Yemeni laws concerning citizenship and personal status but also on global forces such as wars, the market price of oil, regime changes, and migration flows. Both women have become world travelers whose fears of returning to the land of their official nationality are connected to Yemen's domestic politics, fraught with internal conflicts that bear directly on the definition of citizenship.

The Constitutional Context

Yemen's legal-constitutional system remains in a state of flux with the Constitution and most major legislation issued and, in many cases, also

amended in the 1990s. Its legal and judicial history has been rich and varied, shaped by indigenous and exogenous influences: Zaydi and Shafi'i⁴ precepts, highly localized tribal and customary law, Ottoman law in the north and Anglo-Indian law in the south, socialist legislation in the south and Egyptian-inspired legislation in the north, international conventions on matters such as human rights, and some laws drafted by foreign technical experts.⁵ Citizenship laws as such, governing the issue and use of passports, came to Yemen from Europe via models from other Arab countries. Now-outmoded European concepts construing citizenship as a male attribute have been preserved in Yemeni legislation. The current penal and personal status codes reflect contemporary neofundamentalist interpretations of Islamic law partly influenced by practices in neighboring states such as Saudi Arabia. Discrimination against women is, thus, established in broad areas of Yemeni law, whatever the particular law's provenance. Gender discrimination rests on international, regional, and local precedent.

The public roles and civil rights of Yemeni women have been further conditioned by the vicissitudes of Yemeni politics, with important differences between north and south.⁶ In North Yemen, until the early nineteen sixties, very few laws were codified; passports were issued by order of the imam himself, and citizenship was not explicitly defined. When the Yemen Arab Republic was founded after a military coup d'état in 1962, women were afforded legal rights of voting, public office, and special protection at the work place. For many reasons, these rights were not necessarily enjoyed in practice; moreover, the legal system of the YAR government was so rudimentary that it lacked a basic criminal code, administrative courts, or judges and lawyers trained on legislation enacted. A system for issuing passports and visas was introduced only in the nineteen seventies, with help from Sudanese and Egyptian advisors, and routinized in the eighties. In Aden, while it was a British Crown Colony, citizenship was limited to propertied males of established lineage. After South Yemeni revolutionaries established the Arab world's only Marxist regime in the early seventies, they gave

4. The Zaydi school of law, dominant in the northern parts of the former Yemen Arab Republic (YAR), is of Shi'i political allegiance, otherwise, however, closely connected to the Hanafi school. The western and southern parts of Yemen are mostly inhabited by followers of the Sunni Shafi'i school. Relations between followers of the schools have been peaceful at times, rocky at others, centering on political and economic issues rather than religious conflicts; see Vom Bruck 1999 and Haykel 1999.

5. Messick 1993, 38–70. Wuerth (forthcoming), 36–73, on legal and judicial traditions in North Yemen; Shamiry 1984 on South Yemen. On the recent activities of the World Bank in reforming the legal and judicial system, see Shamiry 1995, 237.

6. Boxberger 1998; Lackner 1995.

women rights unrivaled in the region, including parliamentary representation and appointments to judiciary positions. Equal opportunity was declared if not achieved. The PDRY's 1974 family law, always acknowledged as one of the Arab world's strongest legislative protection of women's rights, helped win women's political support for the revolution, mobilize their energies for economic development, and reform the conservative patriarchal family.⁷ Polygamy was officially outlawed. Divorced women were granted custody of the children, and civil law entitled them to possession of the marital home. In the cities, this provision was given teeth by the fact that urban housing was public and could be disposed by the courts.

Under the transitional Constitution issued soon after unification and enacted by popular referendum in 1991, all preexisting legislation under either government remained in effect until specifically amended. For northern women, at least, unity seemed to usher in an era of greater public political participation.⁸ Within the next few years, however, socialist-era legislation was explicitly repudiated in amendments to the Constitution, a new personal status law, and other legislation that curtailed many feminine rights.⁹ The language of freedoms and social equality from the 1991 Constitution was retained in the amended version passed after the remnants of the PDRY army were defeated in the civil war of 1994. But new provisions, some of them taken from the YAR Constitution of 1970, were added: Women were called the "sisters of men" (art. 31), and discrimination on the basis of gender, class, race, language, or religion was not outlawed as it had been in the Constitution of 1991. Although "citizens are equal in general rights and obligations" (art. 40), the equality of rights is mitigated. Women were still constitutionally guaranteed full electoral suffrage, the right to serve in parliamentary and governmental offices, and equality in the workplace. Other legislation, however, barred women from enjoying equal rights in marriage, divorce, and inheritance and limited their legal competence to serve as witnesses in court. Even the penal law seems to favor men. Furthermore, de facto, wives require their husbands' permission to work, rent a house, obtain a passport, or travel abroad. Thus, the 1994 constitutional amendments legitimized gender discrimination existing de jure and de facto. Whereas electoral and labor laws are based on egalitarian models, the personal status and penal codes are deeply conservative. The nationality law combines a premise

7. See Molyneux 1985a. On citizenship laws in the PDRY, especially Law 10/1970 and Law 2/1981, see Shamiri n.d., 95ff. For an anthropological account of gender relations in postunification Aden, see Dahlgren 1998.

8. Carapico 1991.

9. Wuerth 1994; Ash-Sharqi et al. 1993.

of unfettered equality of citizenship with exceptions in the conferral/inheritance of citizenship.

The Citizenship Law

According to the letter of united Yemen's citizenship law, law 6 of 1990, Ilham and Arwa, both daughters of Yemeni fathers, are Yemeni citizens with the full rights thereof. But because the law distinguishes between male and female competence to pass their citizenship to their children or spouse, the nationality of Ilham's child is unclear. A Yemeni citizen is defined as a person who is born in Yemen or the child of a Yemeni father or one who has resided in Yemen for at least fifty years or whose parents or husband lived there for this amount of time; or the child of Yemeni parents who had citizenship when they migrated abroad. Regardless of paternity, any child born to a Yemeni woman in Yemen is automatically a Yemeni national. It seems that the state acknowledges offspring the father does not acknowledge, or children of Yemeni women who would otherwise be fatherless or stateless: that is, if the father is of unknown nationality, Yemeni soil can compensate for women's defective ability to transfer citizenship to their offspring.

This interpretation flows from the complicated language in article 4.1 of law 6/90. The child of a Yemeni mother and a father of unknown citizenship born abroad may be granted Yemeni citizenship by the interior ministry if the "child" lives in Yemen for ten consecutive years after reaching the age of eighteen (the age of legal majority defined by this law). These are similar to the criteria for conferral of naturalized citizenship on non-Yemeni Muslim Arabs, or children born and raised in Yemen of foreign parents. Broadly speaking, the spirit of the law seems to be that Yemenis are those born and raised in Yemen, or permanently settled there and living as Yemenis, and speaking Arabic; and all children, even re-settled descendants, of Yemeni men. In other words, citizenship flows from paternity or from the fatherland, and ideally from both.

The 1990 citizenship law deals with binational marriages very differently for men and women. The foreign wife of a Yemeni native may assume her husband's citizenship after four years of marriage, if she and the husband agree; if she stays married to him for another four years, the citizenship becomes permanent, and she retains citizenship even if she subsequently divorces. No guidelines whatsoever are given for foreign husbands. A Yemeni woman who legally marries a foreigner is given the option to change or keep her nationality. If, however, her marriage contract is "void under Yemeni law," meaning *inter alia* that, like Ilham, she has chosen to marry

a non-Muslim, then she cannot renounce her citizenship: she remains a Yemeni national. If a Yemeni woman does take another nationality by virtue of marriage, she may reinstate Yemeni citizenship in the event of divorce. Wives and children of Yemeni citizens are not allowed to change nationality without permission, however.

In other words, on the positive side, women cannot be arbitrarily deprived of citizenship; once a citizen, always a citizen. Conversely, the law does condition foreign wives' and Yemeni daughters' freedom to change their citizenship on permission of Yemeni husbands or paternal relatives. This restriction makes it difficult or impossible for them to obtain passports without their men's approval. The terms, specific references, and underlying assumptions applying to the marriage of a foreign woman to a Yemeni man are quite different from those applying to the marriage of a Yemeni woman to a foreign man; in both cases, they assume that a wife lives in her husband's country. Women are equal citizens, but citizenship is patrilocal.

The case of a child born in Russia of a Yemeni mother and Nicaraguan father raises many legal ambiguities. Ilham's child's registration in her mother's passport seems to suggest recorded citizenship under PDRY law.¹⁰ Whether or not PDRY law at that time explicitly recognized women's marriage to non-Muslims, or a Soviet civil ceremony, marriage of a Yemeni woman to a non-Muslim man is currently unlawful under the 1992 personal status law (and its amendment in 1999) that was specifically designed to revoke the PDRY's state feminism. By current standards, then, Ilham's marriage to the Nicaraguan may have been "void." It is conceivable, in a fiercely anti-socialist atmosphere, as Ilham contended in her asylum petition, that someone would retroactively challenge the legality of her marriage, thus her child's legitimacy. Yet ironically, under the citizenship law, if the child is illegitimate—the offspring of an "unknown," thus stateless, father—then it might be entitled to Yemeni citizenship in infancy, even if born abroad.¹¹ So the question of the child's citizenship is still unsolved. Can a void marriage confer citizenship rights on the child? Can a mother confer her Yemeni citizenship to her child who was born abroad? On the other hand, assuming the marriage is recognized as legal, then by deduction the child born abroad might be a Nicaraguan or, perhaps, a Russian citizen, or else eligible for Yemeni citizenship only at age twenty-eight, after extended residence. Either way, then, this child is in legal limbo, its national and cultural identity uncertain.

10. It is unlikely that such a registry still exists in Aden or, for that matter, Moscow. Many PDRY files and records were destroyed during the 1994 civil war.

11. Islamic jurisprudence is not unanimous on this question; some jurists think the child is legitimate, some think not; see Zahraa and Malek 1998, 165 n. 83.

There is other language in the citizenship law that does not apply directly to either Ilham or Arwa because under the law their nationality should be beyond question, but which, nonetheless, might affect their *de facto* status in the country. Children of non-Yemeni parents born in Yemen become citizens if they speak Arabic, reside permanently in the country, are of good moral character, and so forth. Foreigners may be naturalized if they are Muslim Arabs. Conferred citizenship may be withdrawn if people stay abroad for two consecutive years "without good reason," or if they work for another government against the orders or interests of the Yemeni government, or on other grounds. These clauses leave the impression that in case of doubt, language, propinquity, and political loyalty become relevant citizenship criteria.

Personal and Political Complications

Ilham's potential problems in Yemen, like Arwa's, are complicated by the tumultuous national and international politics of their still-young lives. Ilham must once have been a bright young Socialist, among not more than a few dozen in her class selected for graduate study in the Soviet Union. Many prurient tales of the PDRY's policy of sending young women and men unchaperoned to the coed dorms and free love of communist Europe have circulated in Yemen since the YSP's fall from power. Ilham's short-term marriage to a Latin American might well be read in terms of this salacious lore. On a more serious note, even a very earnest contemporary Yemeni judge might be hard-pressed to uncover relevant PDRY legislation and precedent, much less the relevant codes for Soviet civil marriages and Nicaraguan citizenship in the mid-eighties. In political terms, everything about Arwa's story brands her as a Socialist. Her extended absence from Yemen, her marriage to a non-Muslim, and finally her asylum application might all shed doubt on her patriotism or even be interpreted as the renunciation of Yemeni nationality claims.

For many Yemeni women the ability to press legal claims is facilitated or constrained by the presence or absence of male relatives with the standing and connections to represent them in a court of law. This is true in rural communities and in urban courts. Evidence from court cases in Sana'a shows that significant numbers of women do use the courts to defend their personal, family, and property rights, often challenging fathers, brothers, or husbands. If these women enjoy some support from their other menfolk, they are often more likely to succeed.¹²

12. For a detailed analysis in one village, see Mundy 1995; in one urban court, see Wuerth (forthcoming), 117-20.

This could well be the crux of the matter for both Ilham and Arwa. Ilham's disregard of her father's warning and her long stay abroad presumably speak to some distance from her family, who in any case as southern Socialists could well have experienced considerable downward mobility in the interim. If her male relatives will and can help her pursue a passport for her daughter through legal or informal channels, or by bribing the right officials, or even if she had neighbors or coworkers who might vouch for her, she might stand a good chance. Otherwise—in the absence of patrimonial support, relying only on her legal status as a citizen who is a woman—her chances of success are considerably reduced.

Arwa has a Yemeni name but does not “look” or “act” or “sound” like a *Yamaniyya*. She is taller and darker complected than the average Yemeni woman, and her carriage is identifiably African. Arabic is her third or fourth language, not that of a native Yemeni speaker. Even if she dressed in ultra-conservative Yemeni fashion, with a full veil, she could not really “pass”; just as Africans label her Arab, Yemenis call her *Habashiyya*, literally the feminine of Ethiopian, the term for East African women generally. She is among uncounted tens or hundreds of thousands of Afro-Yemeni “*Muwallidin*” who have migrated and remigrated across the Red Sea in the past twenty or thirty years or more. Men like Arwa's father traveled to Aden when it was a colonial hub, to Africa after the PDRY revolution, within the Horn during its various wars and revolutions, back to Yemen when things got intolerable, and into Saudi Arabia whenever they could get work permits. Neither she nor Yemeni officials know what Ethiopian laws of the Emperor Haile Selasse and Mengistu Miriam governed her own mother's nationality or hers when Eritrea was an irredentist province of Ethiopia.

Issues of race and gender are further complicated by politics and economics. Sex and ethnic discrimination are by no means trivial in Yemen. Yet compared with neighboring Saudi Arabia, even post-civil war Yemen is rather tolerant. Inside the Saudi kingdom, women are required to veil and forbidden to drive. Saudi citizenship evidently derives from patrilineal criteria, and naturalization is rare. Even if Saudi men voted, women would be prohibited. Moreover, it seems that in Saudi Arabia corporeal punishment, including amputations, floggings, and so forth, is carried out with greater frequency against non-Arab aliens. Given the many generations of Red Sea intercourse, there are black Saudis, just as there are black Yemenis, of full unquestioned parentage, nationality, and identity. There are also native Yemenis whose combination of intergenerational residence and financial success have gained them Saudi citizenship. Nonetheless, an Afro-Yemeni woman is even more vulnerable politically in Saudi Arabia than in Yemen.

In financial terms, if an Afro-Yemeni woman could obtain a visa and find a job, whatever her skill level, her earning power in Saudi Arabia would be

greater than in Yemen or East Africa. For this reason she might well elect to live in Saudi Arabia. But like other women in the kingdom, Arwa faced there the world's most restrictive limitations on feminine mobility plus discrimination against Africans and, indeed, Yemenis. Presumably it was a combination of her race, her gender, her Yemeni passport, and the lack of male intermediaries in Saudi Arabia that landed her back in Sana'a when Riyadh punished Yemeni citizens for their government's tilt toward Iraq. In Riyadh, as a noncitizen, and especially as a *Habashiyya*, Arwa had no rights of any kind. But she had air conditioning, as another woman in similar straits observed, and the streets were orderly. Arwa and others like her would have stayed, had politics not intervened.

In Yemen, Arwa's passport was not contested because she inherited her father's nationality. As the Yemeni government and the Saudi opposition are fond of pointing out, Yemeni women legally vote, work, drive, and dress as they wish. At issue was not her citizenship as such, but rather her loyalty, even her identity. She wore a Saudi Airlines uniform, and worked for the national airlines of an unfriendly foreign government. As Saudi-Yemeni relations worsened, this evidently drew mistrust from Yemen's Ministry of Interior, who, Arwa says, had her shadowed by security agents.

Furthermore, in Yemen, too, Arwa suffered social discrimination as a *Habashiyya*, primarily in the form of lewd comments from unemployed youth on the streets. Whatever distant kinfolk she has in Yemen are in some remote village she has never seen, scarcely people she could expect to intervene on her behalf with national security authorities. For a range of social, psychological, and cultural reasons, then, she interacted mainly with the *muwallidin* community, which is large enough to have its own class distinctions and sub-groups. Arwa's subgroup incorporated bourgeois tastes with African social styles, bemoaning the total absence of discotheques in Sana'a. Between her and the prim and proper Sana'ani society was a great deal of social distance and "otherness."

In an atmosphere where either socialist or Saudi sympathies were seen as potentially seditious, extralegal resort was sometimes made to loyalty-based tests of citizenship, among them residence in Yemen or registration with an embassy abroad. When, amidst a wave of political repression surrounding the 1994 civil war, Ilham remained abroad "without good reason," she demonstrated what in other cases has been interpreted as anti-Yemeni sentiment. Scores of Yemeni, Somali, and other men had been detained during the war.¹³ Women still seemed relatively safe from arbitrary political arrest

13. Rone and Carapico 1994

and physical violence, but selected female regime critics, Africans, and others have been harassed and threatened, for instance, in near-collisions with military vehicles while driving. Ilham knows that in case of an accident or incident she will be powerless to defend the rights her passport supposedly confers.

These two cases are not representative of the experiences of ordinary Yemeni women but representational of the ways that changes in the international system affect national identities and their definition. Other Yemeni women who have lived their whole lives in Yemen might have known five or more distinct Yemeni governments each of which defined, or did not define, their subjects or citizens differently: the North Yemeni imamate, southern sultanates and autonomous tribes, Aden's colonial government, the PDRY, the YAR, and the Republic of Yemen. Any Yemeni past forty years of age remembers at least three distinct polities with very different views of citizenship. All Yemenis older than ten years of age have been citizens of more than one state and have seen major changes in legal, educational, political, and security systems. The current law is the current law, not an enduring foundation of national identity. Although the lives of women like Arwa and Ilham are exceptional for Yemeni women, they metaphorically embody the Red Sea, Middle Eastern, and global experience of creation and recreation of state entities, and with them of national identities. Changes in the relationship of states to nations and in fundamental legal philosophies have profound impact on the lives of individuals, how they define themselves, and how nationality is passed on to one's children. Issues of citizenship and nationality are a function of these global forces in interaction with internal political culture.