

Concluding Observation Human Rights Committee CCPR/C/IRN/CO/3 para 9

Full recommendation:

The State party should amend the Civil Code and further amend the draft Family Protection Law, to (a) abolish the requirement for a father's or paternal grandfather's approval to legalize a marriage; (b) grant women equal rights to divorce; (c) award equal custody rights to the mother, including after a child reaches the age of seven or if she remarries; (d) award guardianship of a child to the mother in the case of the father's death; (e) grant women the same inheritance rights as men; (f) remove the legal obligation for a woman to be obedient to her husband; (g) remove the requirement for a husband's approval when a woman intends to leave the country; (h) prohibit polygamy; and (i) remove the power of a man to prohibit his wife from entering employment. The State party should also adopt legislation giving Iranian women the right to transmit their nationality to their children.

Assessment using Impact Iran human rights indicators¹

As of February 2021, the State has taken action on just one of the Committee's recommendations: in 2019 the State amended the civil code to give Iranian women who are married to non-Iranian men the right to transmit their nationality to their children. However, Iranian women and men are still not on equal footing with respect to their ability to confer nationality—men, regardless of the nationality of their wife, can automatically pass nationality to their children. By contrast, women married to a non-national must apply to pass nationality to their children and also undergo a security check by the Ministry of Intelligence.

Article 3 of the Constitution of the Islamic Republic of Iran stipulates that it is a duty of the State to work towards “the abolition of all forms of undesirable discrimination and the provision of equitable opportunities for all, in both the material and the intellectual spheres.”² Article 20 guarantees that all citizens of Iran, men and women, enjoy the equal protection of the law and of rights, “in conformity with the Islamic criteria.” Article 21 emphasizes that “the government must ensure the rights of women in all respects, in conformity with Islamic criteria”. According to Article 4 of the Constitution, the Guardian Council of the Islamic Republic of Iran is entrusted with determining and defining the framework of what constitutes “Islamic criteria” or standards. Among the 12 non-elected members of the Guardian Council, only the six male clerics directly appointed by the Supreme Leader are responsible for such task. While the aforementioned provisions supposedly safeguard the human rights of women and protect them from

¹ CCPR.2.3.S.1.; CCPR.3.1.S.1.; CCPR.3.1.S.4.; CCPR.16.1.S.1.; CCPR.23.2.S.1.; CCPR.23.4.S.1.; CCPR.23.3.S.1.; CRC.8.1.S.1.; ESCR.2.2.S.1.; ESCR.2.2.S.1.; ESCR.6.1.S.1.; ESCR.6.1.S.3. CCPR.3.1.P.3.; CCPR.16.1.P.1.; CCPR.23.2.P.1.; CCPR.2.3.P.1.; CCPR.23.3.P.1.; ESCR.2.2.P.3.; ESCR.6.1.P.1. CCPR.2.3.O.4.; CCPR.3.1.O.4.; CCPR.23.3.O.1.; CRC.8.1.O.2.; CCPR.2.1.O.1.; ESCR.6.1.O.2.

² Constitution of the Islamic Republic of Iran, <https://irandataportal.syr.edu/wp-content/uploads/constitution-english-1368.pdf>

discrimination, such legal guarantees only exist as long as they are in conformity with “Islamic criteria.” The opportunity for interpretation allowed under qualifications such as “in conformity with Islamic criteria” has often resulted in provisions that discriminate or have a discriminatory impact on various grounds, including gender.

A. The Islamic Republic of Iran should amend the Civil Code and further amend the draft Family Protection Law to abolish the requirement for a father’s or paternal grandfather’s approval to legalize a marriage.

During its 2019 Universal Periodic Review, the Islamic Republic of Iran noted that forced marriage had been prohibited under Article 1062 of the Civil Code and Article 646 of the Islamic Penal Code.³ However, with the permission of the court, the legal guardian has the right to marry for and on behalf of his minor daughter in compulsory marriage.⁴ Additionally, virgin girls above the age of 13 who are marrying for the first time, regardless of age, legally need a father’s or paternal grandfather’s permission.⁵ The Government of the Islamic Republic of Iran stated that when a case of forced marriage is reported to the Judiciary and a judicial case is filed, the forced marriage can be dissolved in accordance with the Civil Code provisions and those who force someone into marriage are prosecuted.⁶ However, underaged children lack access to redress and legal recourse as they cannot file law suits without the representation of their legal guardian.⁷ Further, a woman can be given permission to leave the marital house only if she can prove to a court a significant risk of bodily harm or threat to her life and safety.⁸ Such provision deprives women and girls from legal and social protection when they run away from a forced marriage and girls have been reportedly brought back to their parents.⁹

B. The Islamic Republic of Iran should amend the Civil Code and further amend the draft Family Protection Law, to grant women equal rights to divorce.

Men have a unilateral right to divorce their spouse, while women can only apply for divorce in limited circumstances, including situations where their husband is addicted to drugs, imprisoned,

³ Universal Periodic Review, 2019, Reply of the Islamic Republic of Iran, <https://undocs.org/en/A/HRC/43/12/Add.1>

⁴ Iran Human Rights Documentation Center, https://iranhrdc.org/wp-content/uploads/pdf_en/LegalCom/Womens_Rights_Commentary_389929723.pdf

⁵ NGO Submission Committee on the Rights of the Child, 2016, https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IRN/INT_CRC_NGO_IRN_19809_E.pdf

⁶ Universal Periodic Review, 2019, Reply of the Islamic Republic of Iran, <https://undocs.org/en/A/HRC/43/12/Add.1>

⁷ Suuntaus Project, Finnish Immigration Service- Country Information Service, ‘Violence against women and honour-related violence in Iran’, 26 June 2015, http://www.migri.fi/download/61597_Suuntaus-raportti_VakivaltaIran_finalFINAL_kaannosversio_EN.pdf?96fa691925bfd288

⁸ Amnesty International, 2015, <https://www.amnesty.org/download/Documents/MDE131112015ENGLISH.pdf>

⁹ Suuntaus Project, Finnish Immigration Service- Country Information Service, ‘Violence against women and honour-related violence in Iran’, 26 June 2015, http://www.migri.fi/download/61597_Suuntaus-raportti_VakivaltaIran_finalFINAL_kaannosversio_EN.pdf?96fa691925bfd288

refuses to support the family financially¹⁰ or subjects his wife to “intolerable hardship.”¹¹ Recently, however, the government has drafted a bill titled “Limitation of the Right of Men to divorce” that would restrict the “absolute right to divorce” of men and impose certain conditions and restrictions. Currently, the bill is at the very early stages and is being considered by the Internal Commission. This change is, however, unlikely to be approved by the Guardian Council and become law.¹² It should further be noted that the bill was introduced to limit the number of divorces and “maintain the family unit” rather than to address discrimination on the basis of gender in access to divorce.

C. The Islamic Republic of Iran should amend the Civil Code and further amend the draft Family Protection Law, to award equal custody rights to the mother, including after a child reaches the age of seven or if she remarries.

Article 1169 of the Civil Code prioritizes a woman’s right to custody of her child until the child reaches the age of 7 years old; after which the law awards custody of the child to the child’s father or paternal grandfather. In situations where the parents of the child are not married, the law awards legal guardianship of the child to the paternal grandfather. However, according to Article 1173, a woman can challenge a father’s right to custody after the child turns 7 years old in a limited number of situations: if the father is addicted to drugs, alcohol and gambling, is ‘morally corrupted’, suffers from a mental illness, abuses the child or ‘coerce’ them “into immoral occupation”, or repeatedly beats the child “outside the ‘normal limit’”. A Court may then decide who obtains the child’s custody, based on the child’s best interests.¹³ Even if the Court designates the woman, however, she may only obtain physical custody of her child, while legal guardianship remains with the father or paternal grandfather. The right to custody is further limited for women in cases of divorce. In such situations, a woman may only be given custody of her child until they turn 2 in the case of boys, 7 for girls.¹⁴ Custody is then transferred to the father or to another person appointed by the Court. If a woman remarries, she loses the right to custody of her children.¹⁵

D. The Islamic Republic of Iran should amend the Civil Code and further amend the draft Family Protection Law, to award guardianship of a child to the mother in the case of the father’s death.

¹⁰ Civil Code of the Islamic Republic of Iran, 1928 (amended 2006), Articles 1119, 1129, 1130 and 1133.

¹¹ Civil Code of the Islamic Republic of Iran, Art. 1130 and 1133 (1928, as amended in 1985)

¹² The Ten Year Division for Divorce in Court (2019), <http://cabinetoffice.ir/fa/news/5006/>-مقیدو-محدودسازی-بررسی-لایحه-پیشنهادی-حق-طلاق-شوهر-در-کمیسیون-لوايح-هيئت-دولت

¹³ Civil Code of the Islamic Republic of Iran, 1928 (amended 2006), Article 1169

¹⁴ Civil Code of the Islamic Republic of Iran, 1928 (amended 2006), Articles 1169- 1170

¹⁵ Civil Code of the Islamic Republic of Iran, 1928 (amended 2006), Articles 1170.

Under Article 43 of the Family Protection Law (2013), in the event of the father's death, custody of the child is given to the mother, unless the grandfather or the prosecutor decides that the best interests of the child require otherwise.

E. The State party should amend the Civil Code and further amend the draft Family Protection Law, to grant women the same inheritance rights as men.

Under Articles 907, 908 and 911 of the Civil Code, men are entitled to double the share of inheritance in comparison to women.

F. The Islamic Republic of Iran should amend the Civil Code and further amend the draft Family Protection Law, to remove the legal obligation for a woman to be obedient to her husband.

Article 1105 of the Civil Code establishes that the position of 'head of the family' is the exclusive prerogative of a man; a designation that empowers men in household decision making, including financial decisions. A husband is legally entitled to control aspects of his wife's life. For instance, a husband is entitled to demand that his wife performs certain "duties"¹⁶ and failure to fulfil such duties "without a legitimate excuse" results in a woman losing her right to maintenance" (spousal support), upon separation. In effect, such legal provisions grant power to men to demand anything in a marriage relationship.

G. The Islamic Republic of Iran should amend the Civil Code and further amend the draft Family Protection Law, to remove the requirement for a husband's approval when a woman intends to leave the country.

Iran's Civil Code forbids a woman from leaving the matrimonial home without the husband's permission, unless she is able and willing to go to court to prove that she is endangered.¹⁷ The Civil Code specifies that a woman who decides to leave the marital home will not receive alimony from her husband, which may well function as a deterrent for women to exercise their freedom of movement. According to Article 18 (3) of the Passport Law, a woman needs written permission from her husband to obtain a passport.¹⁸ In addition, the husband has the right to forbid his wife to leave the country, regardless of whether she holds a passport. In exceptional cases, the county prosecutor can authorise the issuance of a passport for a woman; however, only a few exceptions have been made so far.¹⁹ Previously, a bill was introduced before the Iranian

¹⁶ Article 1108, Civil Code of the Islamic Republic of Iran. <https://iranhrdc.org/the-civil-code-of-the-islamic-republic-of-iran/>

¹⁷ Article 1117 of the Civil Code.

¹⁸ The Passport Law: <https://rc.majlis.ir/fa/law/show/96904>

¹⁹ For example, Niloufar Ardalan, a player in the Iranian women's futsal team, was unable to leave the country and participate in competitions due to her husband's opposition. An issue that led to the issuance of a temporary permit with the intervention of the Tehran prosecutor and a temporary court order. <https://www.asriran.com/001opM>

Parliament to amend the Passport Law, attempting to eliminate the absolute right of a husband over his spouse to travel outside of the country. However, this attempt failed as the bill did not go through the legislative process.²⁰ In 2017, a draft law that sought to allow women with particular jobs – notably athletes and artists- to travel outside the country without their husband’s consent, provided that they secure the permission of the prosecutor-general, was introduced before the Parliament.²¹

H. The Islamic Republic of Iran should amend the Civil Code and further amend the draft Family Protection Law, to prohibit polygamy.

The Iranian legal framework does not explicitly prohibit polygamy. However, Iranian law is mostly based on *Sharia* law, under which polygamy is allowed and men can have up to four permanent wives.²²

Additionally, according to *Sharia* law, men are allowed to enter in temporary marriages (*Sigheh*). In such circumstances, a man (married or not) can marry a woman (necessarily unmarried) for a limited period of time without having to register the union. There is no limitation as to the number of temporary marriages a man can enter, and the duration of such unions can last up to 99 years.²³

While the Civil Code does not explicitly prohibit or permit polygamy, the wording of a number of provisions suggest that polygamy is effectively allowed. For example, Article 900 which deals with the right to inheritance, refers to "spouse" and "spouses". In Article 942, “spouse” is followed by “spouses”. Additionally, while Article 1304 stipulates that "any woman who is free from" obstacles to marriage "may be proposed to", this provision does not exist for men, suggesting that, for men, an existing marriage may not be considered as an obstacle for a new marriage.

According to an opinion issued by the "Legal Deputy of the Judiciary", Articles 16 and 17 of the Family Protection Law, which was adopted before the 1979 revolution, are still considered valid.²⁴ According to Article 16 of that pre-revolutionary law, already married men can remarry with the "permission of the court". As a consequence, in effect, the current Iranian legal framework does not prohibit polygamy.

²⁰ The latest status of the plan "Women leave the country without the permission of their husbands", www.tabnak.ir/003GUK

²¹ Asriran News Agency, ‘Mowlaverdi : Tarh-e- eslaah-e-gozarnameh baraye khourouj-e-zanan az keshvar dar Majles barrasi mishavad [Mowlaverdi: The draft bill on the amendments to the passport law allowing women to leave the country will be discussed in the Parliament], 28 July 2017, <https://bit.ly/330XCyC>

²² < <http://vasael.ir/fa/news/15174/> >

²³ < <https://www.tabnak.ir/fa/news/710888/> >

²⁴ Issued on May 14, 2013: < <https://www.ekhtebare.com/?p=4160> >; < <https://www.hamshahrionline.ir/news/462911/> >

Further, the practice of polygamy has been actively promoted in Iran, including within religious communities²⁵ and through public events.²⁶

I. The Islamic Republic of Iran should amend the Civil Code and further amend the draft Family Protection Law, to remove the power of a man to prohibit his wife from entering employment.

A husband can prevent his spouse from pursuing an occupation which he believes to be against family values or harmful to his or her reputation.²⁷ There is no law prohibiting an employer from seeking a husband's permission for a woman to work and employers have been reportedly requiring engaged or married women to provide a written statement of permission from their husbands in order to be hired.²⁸

J. The Islamic Republic of Iran should also adopt legislation giving Iranian women the right to transmit their nationality to their children.

The Iranian government passed a new law in 2020 that enables Iranian mothers who married a foreign national to pass on their nationality to their children, provided that they have been cleared by national security checks carried by the Intelligence Ministry and the Islamic Revolutionary Guard Corps' intelligence organization.²⁹ The law, entitled "Granting Citizenship to Children Resulting from Marriage Between Iranian Women and Non-Iranian Men" was approved by the Guardian Council on October 2nd, 2019.³⁰ Before this date, Article 976 of the Iranian Civil Code provided that only children born of Iranian fathers could be granted citizenship.

There is no official and readily available information as to the impact of the law in practice.³¹ The law is expected to contribute to granting citizenship to around 500,000 children (mostly children of Afghan refugees and Iranian women) who had, until now, been deprived of a legal avenue for obtaining an Iranian birth certificate.³²

Recommendation status:

This recommendation has been **PARTIALLY** implemented.

²⁵ < <https://www.irna.ir/news/83577562/> >

²⁶ < <https://www.mojnews.com/fa/tiny/news-303751> >

²⁷ Civil Code of the Islamic Republic of Iran, Art.1117 < <https://shenasname.ir/laws/6664> >

²⁸ Human Rights Watch, 'It's A Men's Club': Discrimination against Women in Iran's Labour Market, May 2017

²⁹ Radio Farda: <<https://en.radiofarda.com/a/children-with-iranian-mothers-foreign-fathers-to-receive-citizenship-/30652718.html>>

³⁰ <https://rrk.ir/Laws/ShowLaw.aspx?Code=22043>

³¹ ISNA < <https://www.isna.ir/news/98071007927/> >

³² ISNA < <https://www.isna.ir/news/98071007927/> > ; < <https://www.unhcr.org/ir/fa/2020/12/01/75000-children-in-iran-to-gain-nationality-under-new-law/> >

