

## Special Rapporteur on violence against women, its causes and consequences E/CN.4/2006/61/Add.3 para 73 (b)

### Full recommendation:

*In order to enhance women's access to justice through a transparent legal and judiciary reform it is recommended that the Government: Remove obstacles to women's rights with regard to child custody, divorce, inheritance and freedom of movement.*

### Assessment using Impact Iran human rights indicators<sup>1</sup>

Article 1169 of the Civil Code prioritises a woman's right to get custody of her child until the child reaches the age of 7; 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, these are: if the father is addicted to drugs, alcohol and gambling, is 'morally corrupted', suffers from a mental illness, abuses the child or 'coerces' 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.<sup>2</sup> Even if the court designates the woman, she may only obtain physical custody of her child, while legal guardianship remains with the father or paternal grandfather. 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. 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 and 7 for girls.<sup>3</sup> 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.<sup>4</sup>

Men have a unilateral right to divorce their spouse,<sup>5</sup> while women can only apply for divorce in limited circumstances, including situations where their husband is addicted to drugs, imprisoned, refuses to support the family financially<sup>6</sup> or subjects his wife to "intolerable hardship."<sup>7</sup> Recently, however, the government has drafted a bill titled "Limitation of the Right of Men to

<sup>1</sup> 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.

<sup>2</sup> Civil Code of the Islamic Republic of Iran, 1928 (amended 2006), Article 1169

<sup>3</sup> Civil Code of the Islamic Republic of Iran, 1928 (amended 2006), Articles 1169- 1170

<sup>4</sup> Civil Code of the Islamic Republic of Iran, 1928 (amended 2006), Articles 1170.

<sup>5</sup> Article 1133, Civil Code of the Islamic Republic of Iran. <https://iranhrdc.org/the-civil-code-of-the-islamic-republic-of-iran/>

<sup>6</sup> Civil Code of the Islamic Republic of Iran, 1928 (amended 2006), Articles 1119, 1129, 1130 and 1133.

<sup>7</sup> Civil Code of the Islamic Republic of Iran, Art. 1130 and 1133 (1928, as amended in 1985)

divorce” which would restrict men’s “absolute right to divorce” and impose certain conditions and restrictions. Currently, the bill is at the very early stages and is being considered by the Internal Commission. However, this change is unlikely to be approved by the Guardian Council and become law.<sup>8</sup> 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.

Under Articles 907, 908 and 911 of the Civil Code, men are entitled to double the share of inheritance in comparison to women.<sup>9</sup>

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 in danger.<sup>10</sup> 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.<sup>11</sup> In addition, the husband has the right to forbid his wife from leaving 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.<sup>12</sup> Previously, a bill was introduced before the Iranian Parliament to amend the Passport Law, attempting to eliminate the absolute right of a husband over his spouse’s ability to travel outside of the country. However, this attempt failed as the bill did not go through the legislative process.<sup>13</sup> 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.<sup>14</sup>

The Islamic Republic of Iran has not removed obstacles to women’s rights with regard to child custody, divorce, inheritance and freedom of movement.

Recommendation status:

This recommendation has **NOT** been implemented.

<sup>8</sup>The Ten Year Division for Divorce in Court (2019), <https://bit.ly/2NtWOO4>

<sup>9</sup> Articles 861 to 948, Civil Code of the Islamic Republic of Iran. <https://iranhrdc.org/the-civil-code-of-the-islamic-republic-of-iran/>

<sup>10</sup> Article 1117 of the Civil Code.

<sup>11</sup> The Passport Law: <https://rc.majlis.ir/fa/law/show/96904>

<sup>12</sup> 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>

<sup>13</sup> The latest status of the plan "Women leave the country without the permission of their husbands", [www.tabnak.ir/003GUK](http://www.tabnak.ir/003GUK)

<sup>14</sup> 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>