

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

Full recommendation:

In order to enhance women's access to justice through a transparent legal and judiciary reform it is recommended that the Government: Institute proper investigation procedures for rape cases and ensure that rape victims are not subject to prosecution under adultery provisions where they are unable to prove rape;

Assessment using Impact Iran human rights indicators¹

The Islamic Republic of Iran does not have laws which specifically criminalize domestic violence. Article 630 of the Islamic Penal Code (2013) excludes husbands from criminal liability when they commit murder, assault and battery against their wife if the husband catches their wife committing a *zina* offence (adultery and fornication) with another man.² Article 1105 of the Iranian Civil Code recognizes the husband as the head of the family, which means that his orders must be respected by his wife and children.³ 'Disobedience' can be used as a legal ground for battery.⁴ Article 1108 of the Civil Code stresses that if a wife refuses to have sex with her husband without a reasonable excuse,⁵ she is not entitled to 'spousal maintenance'.⁶ Although the legal minimum age for marriage is 13 years old under Iranian law,⁷ girls as young as 9 lunar years can marry, subject to parental consent and court approval.⁸ Therefore, 9 lunar years old married girls and older are also subject to the Civil Code Article 1108's obligation to fulfil the sexual needs of their husbands.

Rape is not classified as a distinct crime under Iranian law but is considered as a *zina* offence without consent.⁹ Marital rape is not recognized as a crime at all. The legal definition for 'coerced *zina*' is restricted to forced vaginal and anal penetration by a penis -therefore excludes other forms of penetration- and only when the perpetrator and the victim are unmarried -

¹ CCPR.3.1.S.1; ESCR.2.2.S.1; ESCR.3.2.S.1
CCPR.3.1.P.1; ESCR.2.2.P.1; ESCR.2.2.P.2
ESCR.2.2.O.2

² Iran Human Rights Documentation Centre <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

³ Amnesty International, 2015, <https://www.amnesty.org/download/Documents/MDE131112015ENGLISH.pdf>

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

⁵ A reasonable and valid excuse for a wife to refuse sexual relations is when the husband has contracted a venereal disease. Iran Human Rights Documentation Centre, https://iranhrdc.org/wp-content/uploads/pdf_en/LegalCom/Womens_Rights_Commentary_389929723.pdf

⁶ Amnesty International, 2015, <https://www.amnesty.org/download/Documents/MDE131112015ENGLISH.pdf>

⁷ Article 1041 of the Civil Code as amended up until December 2000, NGO Submission to the Committee on the Rights of the Child, 2016, https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IRN/INT_CRC_NGO_IRN_19809_E.pdf

⁸ Iran Human Rights Documentation Centre, https://iranhrdc.org/wp-content/uploads/pdf_en/LegalCom/Womens_Rights_Commentary_389929723.pdf

⁹ Article 221 of the Islamic Penal Code (2013), Iran Human Rights Documentation Centre, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

therefore explicitly excludes marital rape.¹⁰ Beyond rape, no other form of sexual assault is specifically criminalized under the Islamic Penal Code.¹¹

As a result, the Islamic Republic of Iran's legislative framework is insufficient to combat domestic violence and marital rape.¹² In 2017, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran found that Article 1108 of the Iranian Civil Code, which obliges wives to fulfill the sexual needs of their husbands at all times, "might even condone sexual abuse".¹³

Reports of cases of violence against women have shown that there is a general lack of accountability for perpetrators.^{14 15 16} According to criminal law in Iran, a crime can be proven on the basis of three things: the confession of the accused,¹⁷ the testimony of witnesses,¹⁸ and the knowledge of the judge.¹⁹ Victims wishing to file a complaint for rape must present four adult male witnesses to the assault, or two men and four women witnesses, an evidentiary burden difficult to meet -if not impossible. In cases where the alleged offender doesn't confess and the victim cannot gather the required witnesses' testimonies, the judge is granted full discretion to reach a verdict, in theory based on statements from the accused and the victim, police and forensic reports, etc.

If the judge decides that there hasn't been rape but a sexual relationship occurred between the victim and the offender, then the victim may be prosecuted for adultery. Indeed, Iranian law criminalises sexual relationships outside of marriage or *zina*. As the legal proceedings rely extensively on the judge's knowledge and considering the negative social stigma surrounding women's sexuality added to gender discriminations under Shari'a law, women victims of rape seeking justice risk to be found guilty of *zina*.

During its last Universal Periodic Review (November 2019) the Government of the Islamic Republic of Iran stated that the Act on Protection, Dignity and Security of Women against Violence, will be "aimed at criminalizing new forms of assault, harassment and violations of the rights of women and adopting preventive and support measures to stop violence against women."²⁰ In January 2020, the U.N. Secretary General expressed concerns about the slow

¹⁰ Iran Human Rights Documentation Center, 2020, <https://iranhrdc.org/access-to-justice-for-victims-of-sexual-violence-in-iran/>

¹¹ Iran Human Rights Documentation Center, 2020, <https://iranhrdc.org/access-to-justice-for-victims-of-sexual-violence-in-iran/>

¹² See more: Iran Human Rights Documentation Center, 2020, <https://iranhrdc.org/access-to-justice-for-victims-of-sexual-violence-in-iran/>

¹³ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 2017, <https://www.refworld.org/docid/58bd7e2b4.html>

¹⁴ Center for Human Rights in Iran, 2019, <https://iranhumanrights.org/2019/11/stop-violence-against-women/>

¹⁵ Iran Human Rights Documentation Center, 2020, <https://iranhrdc.org/access-to-justice-for-victims-of-sexual-violence-in-iran/>

¹⁶ Human Rights Activists News Agency, <https://www.en-hrana.org/articles>

¹⁷ According to Article 172 of the Islamic Penal Code, 2013, the accused should confess 4 times in the presence of a judge.

¹⁸ "The standard [of proof] for testimony in all offences shall be two male witnesses; unless in *zina*, *livat*, *tafkhez*, and *mosahegeh* which shall be proved by four male witnesses" Article 199 of the Islamic Penal Code (2013), Iran Human Rights Documentation Center, 2020, <https://iranhrdc.org/access-to-justice-for-victims-of-sexual-violence-in-iran/>

¹⁹ Article 160 of the IPC.

²⁰ Universal Periodic Review, Iran, 2019, <https://undocs.org/A/HRC/43/12>

progress of the bill, which has been under review since 2010²¹ and as of February 2021 is under the review of the Iranian Parliament.²² The draft bill will then need to be vetted by the Guardian Council. The Secretary General also noted that “critical articles were reportedly removed from the initial proposal of the Executive, including provisions protecting women from various forms of violence and criminalizing domestic violence.”²³ ²⁴ As of early February 2021, the available draft of the law²⁵ suggests that the text may be insufficient to protect women in Iran from discriminations and violence. Even though the draft law may bring positive developments, it will remain limited by the Civil Code²⁶, the Family Law²⁷, and the Islamic Penal Code²⁸, which contain provisions effectively discriminating against women and fail to protect them adequately from violence.²⁹ In November 2019, the Islamic Republic of Iran rejected States’ UPR recommendations asking for the criminalization of domestic violence and marital rape.³⁰

While investigations may be conducted in cases of alleged rape, there is no readily available information that would indicate that such procedures are appropriate and that all cases are promptly, impartially and independently investigated. Women victims of rape have very limited access to justice, notably because of the witness burden and the risk of being accused of *zina*. Additionally, added to the Iranian legal framework which discriminates against women, the decision on whether rape occurred overly relies on the judge’s subjective ‘knowledge’.

Recommendation Status:

This recommendation has **NOT** been implemented.

²¹ Ceasefire Centre for Civilian Rights, Centre for Supporters of Human Rights and Minority Rights Group International September 2019, <https://www.justice.gov/eoir/page/file/1203136/download>

²² New York Times, <https://www.nytimes.com/2021/01/05/world/middleeast/iran-sexual-violence-metoo-women.html>

²³ Report of the Secretary General, Situation of human rights in the Islamic Republic of Iran, 2020, https://www.ohchr.org/Documents/Countries/IR/Report_of_the_Secretary-General_on_the_situation_of_human_rights_in_the_Islamic_Republic_of_IranA4320.pdf

²⁴ See Radio Farda <https://en.radiofarda.com/a/new-watered-down-draft-law-on-violence-against-women-iniran/30173089.html> ; and ISNA www.isna.ir/news/98071612729/ (in Farsi).

²⁵ <https://shenasname.ir/laws/7023>

²⁶ The Civil Code: < <https://shenasname.ir/laws/6664> >

²⁷ The Family Law: < <https://shenasname.ir/subjects/family/1470> >

²⁸ The Islamic Penal Code: <<https://shenasname.ir/subjects/salamat/1571-mojazat92> >

²⁹ This information is up-to-date and accurate as of early February 2021. For more up to date information on the passage of this bill, please click the following link: <http://www.impactiran.org/vawbill>

³⁰ Recommendations 26.253, 26.254, Universal Periodic Review, Iran, 2019, <https://undocs.org/en/A/HRC/43/12/Add.1>