

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

**Full recommendation:**

*In order to enhance women's access to justice through a transparent legal and judiciary reform it is recommended that the Government:*

*Establish procedures whereby custody rights are determined by a judicial process in accordance with the principle of the best interests of the child;*

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

Article 1169 of the Civil Code considers the mother to be the main caretaker of a child until the child reaches the age of 7, at which point, this responsibility is transferred to the father or paternal grandfather.<sup>2</sup> However, the Note to Article 1169 of the Civil Code states that “if a dispute arises over custody of a child after the age of seven, it is for the court to determine custody in the best interests of the child.” The best interests of the child are not defined in law and are left to the discretion of the court.

According to Article 1173 of the Civil Code, “the following causes a parent to be deprived of custody of a child: Addiction to drugs, alcohol and gambling; Reputation for moral corruption; Having a mental illness diagnosed by a doctor; Child abuse and coercion into immoral occupations; and Repeating beatings outside the "normal limit".” This article effectively allows for the custody of a child to either parent to be questioned.

In addition, in 2013, the Family Protection Law was passed<sup>3</sup>, which deals with the issue of child custody in Chapter 5, Articles 40 to 46. The Family Protection Law complements current law in family courts in the Iranian judiciary. According to Article 43 of this law, in the event of the death of the father, the custody of the child is passed to the mother, unless the grandfather of the child or the prosecutor deems the custody of the mother to be against the best interests of the child. According to Article 45 of this law, "observance of the interests of children and adolescents in all decisions of courts and executive authorities is considered mandatory."

Given the points raised, although the Family Protection Act has been enacted to fill the gaps in the Civil Code, it is still not certain that court decisions take into account only the best interests of the child in determining custody, as Article 1169 recognises the father as the custodian of the child after they reach the age of 7, and the mother will be able to obtain custody only if one of

<sup>1</sup> CCPR.2.1.S.1; CCPR.14.1.S.1; CCPR.14.3.S.1; CCPR.23.4.S.1; CCPR.23.4.S.2; CCPR.2.1.P.1; CCPR.23.4.P.1; CCPR.23.4.O.1

<sup>2</sup> The Civil Code: <https://shenasname.ir/laws/6664>

<sup>3</sup> February 19, 2013.

the cases of disqualification (according to Article 1173 of the Family Protection Act) is found valid by a court against the father.

Recommendation Status:

This recommendation has been **PARTIALLY** implemented.