

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/69/356 para 102

Full recommendation:

The Special Rapporteur reiterates the call upon the Government to incorporate the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights into national law, to establish an independent national human rights institution, as it pledged when the country was first considered by the Working Group on the Universal Periodic Review, and to end all forms of discrimination in law and practice that undermine the full enjoyment of rights guaranteed by those two covenants, regardless of gender, ethnicity, religion, belief or opinion.

Assessment using Impact Iran human rights indicators¹

A. Establish an NHRI

As of November 2020, Iran has not established an independent and impartial National Human Rights Institution. The High Council of Human rights is often mentioned by Iran as being the country's NHRI, yet the fact that this body is a part of the Judiciary of Iran strips it of any claims of independence and impartiality.

B. Discrimination based on gender

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.” While these provisions supposedly safeguard the human rights of women and protect them from discrimination, such legal guarantees exist as long as they are in conformity with “Islamic criteria.” According to Article 4 of the Constitution the Guardian Council of the Islamic Republic of Iran is entrusted with the definition and determination of the framework of what constitutes the “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

¹ CCPR.2.1.S.1; CCPR.2.2.S.1; CCPR.3.1.S.1; CCPR.3.1.S.4; CCPR.23.4.S.1
CCPR.2.1.P.2; CCPR.2.3.P.1; CCPR.3.1.P.3; CCPR.23.2.P.1
CCPR.2.3.O.4; CCPR.3.1.O.4; CCPR.18.2.S.1; CCPR.18.2.P.1; CCPR.18.2.O.11; ESCR.2.2.S.1; ESCR.2.2.P.1; ESCR.2.2.P.2;
ESCR.2.2.O.2

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

responsible for such task. While the aforementioned provisions supposedly safeguard the human rights of women and protect them from discrimination, such legal guarantees exist as long as they are in conformity with “Islamic criteria.” The room of interpretation allowed under the 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.

The Iranian Islamic Penal Code (2013) is largely based on the Government’s interpretation of Islamic *Sharia* precepts and contains provisions which directly discriminate between girls and boys under the criminal justice system. One of the most telling examples is the age of criminal responsibility, which is set at nine lunar years for girls (equivalent to eight years, nine months) and fifteen lunar years for boys (equivalent of fourteen years, seven months).³

Additionally, a large number of provisions under the Iranian Civil Code are discriminatory towards women. These provisions notably include the legal age of marriage,⁴ the share of inheritance,⁵ and the right to divorce.⁶ In marriage, the Civil Code provides rights to the husband over those of the wife,⁷ notably by establishing that the position of the ‘head of the family’ is the exclusive prerogative of the husband. Under Iranian law the husband is entitled to control aspects of his wife’s life⁸ and demand that she performs her ‘duties.’⁹

Although not challenging the discriminatory legal framework described above, the Government engaged in steps addressing the status of women in the Islamic Republic of Iran. By the order of the President, the Supreme Administrative Council reportedly decided to require the Government to allocate 30% of the managerial positions to women. Additionally, the Deputy-President for women and family affairs has drafted a document on the promotion of the status of women and the family through identifying the indicators of gender balance, and consultation with the civil society. The Government also established a National Task Force on the Empowerment of Female Heads of Households in the field of development of employment and entrepreneurship. The Government reportedly increased the quota of women in recruitment of government departments and launched the Women's Business Development and Acceleration Center which aims at “strengthening rural women's associations and cooperation” as well as “entrepreneurship

³ Criminal responsibility, Articles 140, 146 and 147 of the Islamic Penal Code, 2013 <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

⁴ Article 1041, Civil Code of the Islamic Republic of Iran. <https://iranhrdc.org/the-civil-code-of-the-islamic-republic-of-iran/>

⁵ Articles 861 to 948, Civil Code of the Islamic Republic of Iran. <https://iranhrdc.org/the-civil-code-of-the-islamic-republic-of-iran/>

⁶ Article 1133, Civil Code of the Islamic Republic of Iran. <https://iranhrdc.org/the-civil-code-of-the-islamic-republic-of-iran/>

⁷ Articles 1102 to 1119, 1133 to 1142, Civil Code of the Islamic Republic of Iran. <https://iranhrdc.org/the-civil-code-of-the-islamic-republic-of-iran/>

⁸ For instance, under Article 1117 of the Civil Code of the Islamic Republic of Iran “The husband can prevent his wife from occupations or technical work which is incompatible with the family interests or the dignity of himself or his wife.” <https://iranhrdc.org/the-civil-code-of-the-islamic-republic-of-iran/>

⁹ Article 1108, Civil Code of the Islamic Republic of Iran. <https://iranhrdc.org/the-civil-code-of-the-islamic-republic-of-iran/>

development for women.”¹⁰ There is no readily available information as to what extent these measures effectively translated in practice. In fact, recent statistics suggest otherwise: a recent World Bank study ranked Iran fourth-lowest in its 2019 Women, Business and the Law index,¹¹ and according to the Government’s statistics published in 2018, female economic participation stood at 15.9 per cent for women, compared to 64.1 per cent for men, one of the lowest rates in the world.¹²

Structural discriminations deeply entrenched in the Iranian legal system ultimately translate in practice to widespread discrimination against women.¹³ There are a number of mechanisms where Iranian citizens can report violations of their rights in the Islamic Republic of Iran, including the Article 90 Commission of the parliament,¹⁴ or Oversight Bodies for the exercise of Citizenship Rights in the country's provincial courts.¹⁵ However, gender discrimination is inherent to the Iranian legal framework. Consequently, there is little opportunity for one’s complaint in that matter to be adequately addressed and properly adjudicated in compliance with international standards. There is no independent National Human Rights Institution competent to receive complaints from children, including girls, in the Islamic Republic of Iran. With regards to illegal acts of violence against women under Iranian law, there is no readily available information that might suggest that complaints are adequately addressed, investigated and adjudicated.

The status of women in the Islamic Republic of Iran is far from complying with international standards as set under Article 2, 3 and 23 of the ICCPR and women do not enjoy equal rights and freedoms. Reportedly, Ali Khamenei, the current Supreme Leader, has called gender equality ‘one of the biggest mistakes of Western thought.’¹⁶ This might well suggest that the Islamic Republic of Iran is not currently considering taking steps to address the structural and institutionalized discrimination against women in the Islamic Republic of Iran. Even though The Government engaged in steps to enhance the status of women in practice, notably with regards to the right to work, these measures have yet to bear their fruits and ultimately do not address the unequal status of women under Iranian law. In effect, the equal enjoyment of rights and freedoms for women in the Islamic Republic of Iran is not guaranteed.¹⁷

C. Discrimination based on religion or belief and ethnicity

¹⁰ UPR 2019, National Report, Islamic Republic of Iran, <https://undocs.org/A/HRC/WG.6/34/IRN/1>

¹¹ World Bank, Women, Business and the Law 2019: A Decade of Reform, May 2019, p.9

¹² Statistical Centre of Iran, *Natayej-e-Amar giri-ye- nirou-ye-kaar, Paiez-e-1396* [Results of the census on workforce, Autumn of 1396], <https://bit.ly/330NG8t>

¹³ See more: Minority Rights, https://minorityrights.org/wp-content/uploads/2019/09/MRG_CFR_Iran_EN_Sept191.pdf

¹⁴ The Article 90 Commission was established to receive the citizens' complaints against government institutions and has the responsibility to review them and transmit cases for judicial procedure accordingly.

¹⁵ These committees have the responsibility to oversee the strict implementation of the "Law on Respect for Legitimate Freedoms and Civil Rights"

¹⁶ Minority Rights, https://minorityrights.org/wp-content/uploads/2019/09/MRG_CFR_Iran_EN_Sept191.pdf

¹⁷ See more : Minority Rights, https://minorityrights.org/wp-content/uploads/2019/09/MRG_CFR_Iran_EN_Sept191.pdf

Article 19 of the Constitution of Islamic Republic of Iran, guarantees that all people in Iran enjoy equal rights, “regardless of the tribe or ethnic group to which they belong” and that “color, race, language, and other such considerations shall not be grounds for special privileges.” Though this article seemingly protects ethnic and linguistic minorities, the constitution omits religious or belief identity as a protected characteristic. Additionally, article 14 of the Constitution sets out that the government and Muslims in Iran are “duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their citizen rights,”¹⁸ but this duty applies only to those “who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran,”¹⁹ a charge that is regularly levelled against certain religious minorities and other ethnic groups.

While it is technically possible to file non-discrimination complaints with the administration of justice court, the article 90 commission in the parliament, and Committees for supervisions of implementation of the Law on Respect for Legitimate Freedoms and Citizenship Rights, there is no evidence that judicial actions are taken in response to complaints of denial of fundamental human rights and freedoms on the basis of ethnic, religious, cultural or linguistic identities

Ethnic minorities, especially Kurds and Balochis, are over-represented in death penalty statistics. Many of the offenses carrying the death penalty, in particular drug-related offenses and national security offenses, are among the charges most commonly used to target and convict minorities. These charges can carry the death penalty, especially in national security cases.²⁰ Due to this, minorities might face execution for practicing their culture and/or religion. Impoverished and marginalized minorities have been over-represented among those executed for drug offenses. Additionally, Kurdish political prisoners charged with national security offences represent almost half of the total number of political prisoners. Overall, half of those executed for affiliation with a political party or a banned group between 2010 and 2018 were Kurds, while a quarter were Balochis and over one-tenth Arabs. There have also been serious concerns over the secret executions of Ahwazi Arab prisoners in 2018, as Ahwazi Arab activists have reported that 22 men were executed in secret in 2018.²¹ Reports received from Kurdistan of Iran alone indicate that between 2014 and 2019, 449 Kurdish border couriers were shot at and killed by Iranian border authorities, with another 554 couriers injured primarily due to border shootings.²² Though the Iranian government doesn’t publish accurate labor statistics which could be used to create

¹⁸ The Constitution of the Islamic Republic of Iran, General Principles (Chapter I, Article 14):

<http://www.iranchamber.com/government/laws/constitution.php>

¹⁹ Ibid.

²⁰ Human Rights Watch: <https://www.hrw.org/news/2020/07/10/iran-death-penalty-protest-related-charges>

²¹ Amnesty International, Iran: “Fears mounting for detained Ahwazi Arabs amid reports of secret executions”, 13 November 2018, accessible at: <https://www.amnesty.org/en/latest/news/2018/11/iran-fears-mounting-for-detained-ahwazi-arabs-amid-reports-of-secret-executions/>

²² KMMK-G, Human Rights Violations in Kurdistan of Iran, April 2020, accessible at: https://kmmk-ge.org/sd/wpcontent/uploads/2020/05/KMMK-G-2019_Annual_Report-for-the-Attention-of-the-OHCHR-Desk-of-the-UN-Special-Rapporteur-on-the-Situation-of-Human-Rights-in-Iran.pdf

employment to population ratios by target populations, civil society reports suggest that Iran’s minority populations are constantly being denied equal access to employment opportunities.²³

D. Discrimination based on SOGI

Article 19 of the Constitution of the Islamic Republic of Iran guarantees that all people enjoy equal rights, “whatever the ethnic group or tribe to which they belong” and that “color, race, language, and the like, do not bestow any privilege.”²⁴ However, the Constitution lacks an explicit provision recognizing sexual orientation and/or gender identity as protected characteristics. Article 20 of the constitution states that “All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.”²⁵ The stipulation of “Islamic criteria” excludes lesbian, gay and bisexual individuals from this legal guarantee as same sex relations are penalized under the Iranian ‘Islamic Penal Code.’²⁶

The 2013 Penal Code of the Islamic Republic of Iran explicitly forbids sexual relations between same-sex partners, whether such relations are consensual or coerced.

The offences and punishments for males engaged in same-sex sexual or intimate conduct (including acts such as kissing or lustful touching) are described in Articles 233 to 237.

Depending on whether the convicted individual is active/passive partner, married/single, or whether they are Muslim/non-Muslim, the punishment can range from flogging to the death penalty. The 2013 Penal Code also criminalizes female same-sex relations and intimate conduct through Articles 238 to 240, the punishment for which is flogging regardless of circumstance.²⁷ There are no official, readily available statistics on the number of executions for same-sex relations.²⁸ However, NGO reports have shown that it occurs and suggest the incidence rate is high.^{29 30 31 32 33}

²³ <https://minorityrights.org/wp-content/uploads/2018/03/Rights-Denied-Violations-against-ethnic-and-religious-minorities-in-Iran.pdf>

²⁴ Constitution of the Islamic Republic of Iran, http://www.iranchamber.com/government/laws/constitution_ch03.php

²⁵ Ibid.

²⁶ Iran Human Rights Documentation Center, <https://iranhrdc.org/denied-identity-human-rights-abuses-against-irans-lgbt-community/#2>

²⁷ Islamic Penal Code 2013, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

²⁸ Small Media, 2018, https://smallmedia.org.uk/media/projects/files/BreakingTheSilence_2018.pdf

²⁹ Amnesty International, 2017, <https://www.amnesty.org/en/latest/news/2016/08/iran-hanging-of-teenager-shows-brazen-disregard-for-international-law/>

³⁰ Amnesty International, 2018, <https://www.amnesty.org.uk/urgent-alireza-arrested-15-tortured-confession-be-executed-tomorrow>

³¹ Iran Human Rights, 2019, <https://iranhr.net/en/articles/3611/>

³² Human Dignity Trust, <https://www.humandignitytrust.org/country-profile/iran/>

³³ International Lesbian Gay Bisexual Trans and Intersex Association (ILGA), 2019, https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf

In 1986, then Supreme Leader Ayatollah Khomeini, issued a *fatwa* (a ruling or a religious decree on a point of Islamic law given by a recognized authority) permitting the acceptance of sex reassignment surgery for transgender people.³⁴ Sex reassignment surgery is now codified in Article 4 of the Family Law (2013), which stipulates that those seeking medical intervention should obtain prior judicial and medical approval officially stating that they have been diagnosed with Gender Identity Disorder.³⁵ The Ministry of Health has overall responsibility for implementation of this law, by ensuring the provision of medical care to recognized transgender people. The State Welfare Office provides social and psychological support and a number of state institutions, such as the Ministry of Labor, are involved in supporting transgender individuals who pursue or have been through sex reassignment procedures.³⁶ Although State recognition and support have given transgender individuals a certain level of legal legitimization, it also has reinforced the societal stigma due to the pathologisation of transgender identities: that trans persons suffer from a medical condition which requires treatment. Additionally, medical assessment in the Islamic Republic of Iran conflates a variety of sexual and gender identities with transsexuality, resulting in those for whom surgery is neither appropriate nor necessary being ‘treated’ in line with the prevailing medical opinion: that any divergence from cisgendered heterosexuality can only be due to a person’s gender dysphoria and transsexual identity.^{37 38} Further, among these individuals, only those who are officially diagnosed with Gender Identity Disorder and who obtained a permit to undergo sex reassignment surgery can have their gender legally recognized by the government. Others cannot benefit from the State Welfare’s services including sex change procedures or counselling and as a result cannot receive a state-issued identity card which legally affirms their gender.³⁹ As a result, individuals of varying sexual and gender identities who cannot or will not pursue medical transition are not protected from abuses, including arrest, detention and prosecution.⁴⁰

Besides the criminalization of same-sex conduct, a number of other legal provisions directly impact on the rights of lesbian, gay, bisexual and transgender (LGBT) individuals, in particularly Iranian laws related to public decency. For instance, Article 639 of the 2013 Islamic Penal Code criminalizes the facilitation or encouragement of “people to immorality or prostitution.”⁴¹ Article 6 of the Press Law (1986) prohibits the dissemination of material “which violates public chastity” including “forbidden practices”⁴² such as same sex relations. Similarly, Article 14 of

³⁴ Outright International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

³⁵ Ibid.

³⁶ Ibid.

³⁷ Small Media, 2018, https://smallmedia.org.uk/media/projects/files/BreakingTheSilence_2018.pdf

³⁸ Outright International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Islamic Penal Code (2013), Iran Human Rights Documentation Center, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

⁴² International Lesbian Gay Bisexual Trans and Intersex Association (ILGA), 2019, https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf

Law on Computer Crimes criminalizes the distribution of “immoral content.”⁴³ Government-mandated organizations set up to preserve “public morality,” notably the *Basij* militia, reportedly harassed, arrested, detained and abused LGBT individuals on the basis of the aforementioned regulations.^{44 45 46} Similarly, law enforcement forces have been reportedly arresting and detaining transgender individuals for appearing cross-dressed in public, an act considered *haram* (forbidden under Islamic law) until a ‘disorder’ could be medically and legally established.⁴⁷ Additionally, Article 638 of the 2013 Penal Code provides that all women must appear in public wearing the mandatory *hijab*,⁴⁸ a provision that has been reportedly used against both transgender men pressured into wearing a *hijab* and transgender women accused of “cross-dressing” in public, regardless of whether their change in gender has been legally recognized.⁴⁹ In a number of reported cases, transgender individuals arrested on such charges have been detained, prosecuted and sentenced to flogging.⁵⁰ Due to the lack of official reporting and victims’ fear of social stigma, the number of cases of abuses and discriminations against individuals on the grounds of their sexual orientation and gender identity is likely much higher than those reported by human rights organizations.^{51 52}

In June 2019, when asked about the imposition of the death penalty in cases of same-sex intercourse between men, the Iranian Minister of Foreign Affairs said that the law was reflective of moral principles held by society.⁵³ There is, as of now, no evidence that the Iranian government is currently considering repealing or amending aforementioned laws that result or could result in discrimination, prosecution and punishment of people because of their sexual orientation or gender identity.

Recommendation Status:

This recommendation has **NOT** been implemented.⁵⁴

⁴³ International Lesbian Gay Bisexual Trans and Intersex Association (ILGA), 2019, https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2019.pdf

⁴⁴ Iranian Lesbian & Transgender Network (6Rang), 2014, <http://6rang.org/english/wp-content/uploads/2014/06/Pathologizing-Identities-Paralyzing-Bodies.pdf>

⁴⁵ Iranian Railroad for Queer Refugees (IRQR), 2018, <https://irqr.net/wp-content/uploads/2018/09/IQW-Report.pdf>

⁴⁶ OutRight International, 2016, https://outrightinternational.org/sites/default/files/OutRightLesbianReport.pdf?_ga=2.78516692.1992181521.1595330838-780871412.1595330838

⁴⁷ Outright International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

⁴⁸ Outright International, 2016, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

⁴⁹ Outright International, 2016, <https://outrightinternational.org/sites/default/files/OutRightTransReport.pdf>

⁵⁰ Ibid.

⁵¹ Small Media, 2018, https://smallmedia.org.uk/media/projects/files/BreakingTheSilence_2018.pdf

⁵² Iranian Lesbian & Transgender Network (6Rang), 2015, https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IRN/INT_CRC_NGO_IRN_19808_E.pdf

⁵³ www.dw.com/en/iran-defends-execution-of-gay-people/a-49144899

⁵⁴ For more, please see: <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf> and Minority Rights Group, <https://minorityrights.org/wp-content/uploads/2018/03/Rights-Denied-Violations-against-ethnic-and-religious-minorities-in-Iran.pdf> and https://smallmedia.org.uk/media/projects/files/BreakingTheSilence_2018.pdf