

Mandate of the Working Group on the issue of discrimination against women in law and in practice

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Excellency,

I have the honour to address you in my capacity as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice pursuant to Human Rights Council resolution 23/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning discriminatory provisions against women in a number of areas of marital legislation including the legal age for marriage, consent in marrying, polygamy, marital rights and duties, divorce, child custody and inheritance.

According to the information received:

Article 1041 of the Civil Code sets the legal age of marriage lower for girls (13 years old) than for boys (15 years old). Furthermore, it allows children under the legal age to be wed conditioned on the consent of their father and the permission of a court judge—a mother's consent is not required.

Article 1043 of the Civil Code stipulates that, regardless of the bride's age, if she is a virgin she needs the consent of her father or grandfather to marry. There is no equivalent provision for virgin males.

Under Iranian law, polygamy is permitted and it is seen as “a man's religious and legal right to marry more than one woman”. Although this right is not stipulated in the Civil Code, it can be deduced from several articles, including articles 900(2), 901, 942, 980, 993(2), and 1106. Furthermore, articles 1075 to 1077 of the Civil Code authorize the practice of mut'a, allowing only Muslim men to contract an unlimited number of temporary marriages for a fixed time period in addition to his permanent marriages.

Several provisions in the Civil Code show inequalities existing between spouses in marriage: for example, it is a woman's duty to tamkin (sexual submission and obedience), while it is only the duty of her husband to pay mahriyeh and provide nafaqa (maintenance). According to article 1108 of the Civil Code, if the woman fails to perform her duties, including to respond to the sexual needs of her husband, she may lose her rights, including the right to maintenance. The rights and duties of men and women in marriage are transparently not equal in this legal regime of exchanges. This is further highlighted by article 1105, which appoints the husband as the head of the family and stipulates that his wife must obey him. Furthermore, articles 1005 and 1114 provide that a wife is not to leave the house without her husband's permission and article 1117 stipulates that a husband can prevent his wife from employment opportunities if they are "incompatible with the family interests or the dignity of himself or his wife". In addition, article 18 of the 1973 Passport Law provides that a wife requires her husband's written permission to obtain a passport and to travel abroad and under article 19 of the same law, men are entitled to impose a travel ban on their wives and ask for the confiscation of their passports.

Under article 1130 and 1133 of the Civil Code, a husband can divorce his wives without ascribing any reasons, whereas women seeking divorce must prove that they are enduring an intolerable level of difficulty and hardship in the marriage. In addition, under article 1145, if a man initiates divorce, it is revocable, unless before consummation, or after the wife is infertile or has reached menopause, or it is the third divorce between the same husband and wife. Where the wife initiates a divorce and fails to establish grounds, she loses her right to wages for housework, idda maintenance (delivered during the waiting period for a woman after a divorce or the husband's death), etc.

According to article 1169 of the Civil Code, custody of sons over the age of 2 and daughters over the age of 7 is automatically awarded to the father. Under article 1170, custody of children who have not yet reached these ages reverts to the father if the mother remarries. Article 1173 permits judicial discretion in custody if the child is endangered by lack of care or moral degradation. In the event of domestic violence or in cases where the father has a criminal record, however, practice shows that custody may still be awarded to the father or, alternatively, to the paternal grandfather or uncles.

Article 913 of the Civil Code stipulates that when a husband dies, if he has at least one child, his wife may only inherit one-eighth of the assets; if he did not have children, she is only entitled to a quarter of his estate. This small share may become even smaller if her husband has more than one permanent wife. According to article 942, if there is more than one wife, the one-fourth or one-eighth part of the assets usually belonging to the wife will be divided equally among all the wives. Furthermore, article 949 stipulates that a wife may never inherit more than a quarter of the assets of her deceased husband, even when there is no child or other inheritors. The rest belongs to the State. Another limitation on

the wife's inheritance relates to real estate. Articles 946 to 948 establish that while a husband inherits all kinds of properties from his deceased wife, a wife may only inherit chattels, including the trees and buildings but not the land beneath them.

In this regard, the Working Group would like to recall the recommendations made in the context of the Universal Periodic Review of Iran, which are under consideration or are supported by the Government of Iran, which called for a number of measures to, inter alia, intensify the efforts to ensure that women and girls receive the same treatment as men and boys; continue efforts to implement the comprehensive program to protect the rights and empowerment of women; take additional steps to improve gender equality and enhance women's position in marriage, divorce, nationality, custody of children and inheritance; take all steps necessary to reform the discriminatory provisions of penal and civil laws against women; put forward best efforts to eliminate all forms of discrimination against women, including early forced marriage of girls and unequal rights to marriage, divorce, inheritance and child custody; and abolish the discriminatory practice of forced and early marriage (see recommendations 138.95, 138.98, 138.102, 138.106, 138.190, and 138.192 in A/HRC/28/12).

The Working Group would also like to recall the recommendations made by the Human Rights Committee (CCPR/C/IRN/CO/3) that your Excellency's Government 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 Working Group would like to draw to the attention of your Excellency's Government the existence of good practices by some States in your region upholding equality between men and women in relation to marital status on many of the issues the Group has raised above.

In order to clarify the measures being taken by your Excellency's Government to repeal the discriminatory legislative provisions on marital status, the Working Group would be grateful if you could address the following matters:

1. Please provide any additional information on the current status of the relevant legislation with regard to the rights of Iranian women in the context of marriage and related matters, specifically with regards to the legal age for marriage, consent in marrying, polygamy, marital rights and duties, divorce, child custody and inheritance, and any data you have on the numbers of girl child, polygamous and temporary marriages.

2. Please provide information on any measure that your Excellency's Government has taken or intends to take in order to implement the recommendations by UN human rights mechanisms referred to above, bring its legislation into compliance with international and regional human rights law and to ratify the International Convention against all Forms of Discrimination against Women.

The Working Group would appreciate a response within 60 days and remains available for any type of technical advice on legislative reform that your Excellency's Government may require.

This communication and your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Eleonora Zielinska
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women in law and in practice