

IRAN: Gender Discrimination at Its Worst

*WOMEN LIVING UNDER MUSLIM LAWS (WLUML)
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النساء فی ظل قوانین المسلمین
Femmes sous lois musulmanes

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Introduction

1. In this submission, prepared for the 20th session of the Universal Periodic Review (UPR) of the Islamic Republic of Iran in October-November 2014, Women Living Under Muslim Laws (WLUML) and raise concern about Iran's lack of progress in implementing the recommendations that it accepted during its first Universal Periodic Review regarding the human rights of women and girls. As part of these recommendations, Iran had committed to "ensure the equal treatment of women and girls in law and practice", including by "bring[ing] its national legislation into conformity with international obligations on women's rights" and "reform[ing] the discriminatory provisions of penal and civil laws, including with regard to women's equal rights in marriage, access to justice and legal discrimination." However, Iran is yet to take a step toward implementing any of these commitments.
2. As of March 2014, discriminatory civil and penal laws persist in the areas of marriage, divorce, inheritance, polygamy, stoning, violence against women and access to justice. On some of the issues raised in the previous UPR such as protection of girl children from sexual exploitation, the situation has deteriorated. WLUML urges all states participating in the UPR to raise the serious issue of implementation during the interactive dialogue with Iran, exploring obstacles to implementation and options for developing a comprehensive legal framework for protecting and promoting the human rights of women.

International Human Rights Standards

3. At the time of its first UPR, Iran accepted to "bring its national legislation into conformity with international obligations on women's rights" and to "follow the recommendations of the Special Rapporteur on violence against women". WLUML regrets, however, that Iran did not accept the key recommendations to ratify the Convention on the Elimination of All Forms of Discrimination Against Women and allow a visit to the country by the Special Rapporteur on violence against women.
4. With respect to advancing the promotion and protection of women's rights, WLUML notes with concern that Iran's discriminatory legal framework, which enforces direct and de jure discrimination against women, remains entirely unchanged.

Human Rights Concerns

1. Protection of Girl Children from Forced and Early Marriages

5. During the course of its first UPR, Iran accepted, *inter alia*, to “conduct a policy of zero tolerance towards ... child prostitution”, “improve its policies and programs to advance the status of ... girls and protect children”, “make progress in education and health care, with a particular focus on ... girl children”, and “enhance efforts to further promote economic and social rights, as well as the rights of vulnerable groups, including ... children”.
6. WLUML is concerned that these commitments stand in stark contradiction to Article 1041 of the Civil Code that sets the legal age of marriage for girls at 13 and allows girls below this age to be wed subject to the permission of their father or paternal grandfather and the approval of a competent court.¹
7. Official statistics released by the government between 2006 and 2011 reveal that the number of officially registered marriages involving girls under the age of 15 have increased from 33,383 in 2006 to 39,831 in 2011. Official statistics released in 2012 showed 1,537 girls below the age of 10 and 29,827 girls between the ages of 10 and 14, as being married. At 1,411 cases, Ardebil, a province in northwest Iran, had the highest rate of marriage for girls below the age of 10, a number 67 times more than the next highest province.²
8. In 2013, the Iranian Parliament amended, at the request of the Guardian Council, Article 27 of the *Bill for the protection of children and adolescents who either have no guardian or have abusive guardians* to legalize the marriage of a custodian to his adopted child when it is found by a competent court to be “in the best interests of the child”.³

2. Rights and Responsibilities during Marriage and at its Dissolution

9. Despite accepting recommendations to reform the discriminatory provisions of its civil laws with regard to women's equal rights in marriage, Iran continues to include a wide range of discriminatory provisions in its Civil Code.

¹ <http://rc.majlis.ir/fa/law/show/99682>.

² Justice For Iran, *Stolen Lives, Empty Classrooms: An Overview on Girl Marriages in the Islamic Republic of Iran* (October 2013), online: <http://justiceforiran.org/wp-content/uploads/2013/10/JFI-Girl-Marriage-in-Iran-EN.pdf>. These numbers suggest that Iranian judges are routinely allowing guardians to coerce children below the age of 10 into harmful sexual activities, rendering the minimum age of marriage, which is set at 13, almost entirely meaningless.

³ <http://rooznamehrasmi.ir/Laws/ShowLaw.aspx?Code=1344>.

2.1. Protection from Marital Rape

10. Article 1108 of Iran's Civil Code obliges women to fulfill the sexual needs of their husbands at all times.⁴ This is known as the requirement of tamkin [submission]. A woman's refusal to engage in sexual activity with her husband constitutes noshuz [disobedience] and can disqualify her for maintenance rights.

2.2. Right to Work

11. Article 1105 of Iran's Civil Code provides that "the position of the head of the family belongs exclusively to the husband." Accordingly, Article 1117 of Iran's Civil Code allows a husband to prevent his wife from working in a profession or trade deemed "incompatible with the interests of the family or with his or his wife's dignity".⁵ Since the coming into effect of Article 18 of the Family Protection Law, a husband's decision as to what constitutes incompatibility with family interests must be approved by a competent court.⁶

2.3. Freedom of movement

12. Articles 1005 and 1114 of the Civil Code provide men with the exclusive right to determine the place of their wives' residence. A wife will be considered *nashezeh* [disobedient] and unworthy of spousal maintenance rights if she leaves her husband's home against his will, even if it is for escaping a situation of domestic violence. This rule applies unless the wife can prove to the court that she faces a significant risk of bodily harm, threatening her life and personal safety.⁷

13. According to article 18 of the Passport Law, women need the written agreement of their husbands in order to be issued a passport. Men are entitled, under article 19 of the same law, to impose a travel ban on their wives and request that their passports be confiscated.⁸

⁴ <http://rc.majlis.ir/fa/law/show/92778>.

⁵ Ibid.

⁶ <http://rc.majlis.ir/fa/law/show/97187>. The Iranian government frequently purports that the Family Protection Law provides women with a similar opportunity. In reality however, Article 18 of the Family Protection Law subjects the exercise of this opportunity by women to the condition that it "does not interfere with the livelihood of the family". This is while there is no such condition for men who seek to prevent their wives from working. Underlying this gendered formulation is the assumption that men are the primary breadwinners and women the primary caregivers. Besides this, the Family Protection Law cannot be considered neutral in its treatment of men and women, given the social context of inequality that shapes the lives of women in the country and requires that they remain committed, first and foremost, to household and family duties.

⁷ <http://rc.majlis.ir/fa/law/show/92778>.

⁸ <http://rc.majlis.ir/fa/law/show/96904>.

2.4. Transfer of nationality

14. While during the course of its first UPR, Iran accepted to facilitate for all children born to Iranian mothers access to Iranian nationality, regardless of the nationality of the father, WLUML is concerned that progress on this issue has been minimal. Article 976 of Iran's Civil Code continues to deny women the right to pass on their nationality to children.⁹

15. Until 2006, children of Iranian women who had foreign husbands were not issued national identification papers and were deprived of access to education and primary health care. Since then, a new law has entered into force that allows children of Iranian mothers to apply for Iranian citizenship once they pass the age of 18 but only if their parents' marriage is officially approved.¹⁰ Iranian authorities implement, however, harsh regulations that make it extremely difficult for Iranian women and Afghan men to register their marriages despite the fact that their marriages are accordance with Islamic rules. As of 2010, the Iranian government estimated that there were 32000 cases of unregistered marriages between Iranian women and Afghan men.¹¹ Children born out of these marriages continue to remain in legal limbo and experience daily realities characterized by discrimination, violence and absolute lack of entitlement, including to education and primary health care.¹²

2.5. Inheritance

16. According to article 913 of the Civil Code, a surviving wife may inherit only one-quarter of his husband's estate if the deceased left behind no children and one-eighth of his estate if the deceased left behind children.¹³ A surviving husband may, however, inherit one quarter of his deceased wife's estate when there are children and the entirety of it when there are no children.

17. Among other provisions violating women's right to equal inheritance are article 907 of the Civil Code, which requires the inheritance of sons to be twice as much as that of daughters, and articles 946 to 948 which exclude real estate from the kind of properties that may be inherited by a surviving wife.¹⁴

⁹ <http://rc.majlis.ir/fa/law/show/92778>.

¹⁰ <http://rc.majlis.ir/fa/law/show/97918>.

¹¹ Human Rights Watch, *Unwelcome Guests: Iran's Violation of Afghan Refugee and Migrant Rights* (November 20 2013), online: http://www.hrw.org/node/120431/section/9#_ftn210.

¹² Justice For Iran, *Iran: An Afghan Free Zone?* (June 2012), online: <http://justiceforiran.org/wp-content/uploads/2012/06/Iran-anAfghanFreeZone-layout-Final.pdf>.

¹³ If there are no children, the remainder of the estate goes to the government in accordance with B Article 949 of the Civil Code.

¹⁴ <http://www.dadkhahi.net/modules.php?name=News&file=print&sid=972>. Since 2009, a wife may receive the value of her share of inheritance from the land of her deceased husband. She cannot still however inherit the land itself.

2.6. Divorce

18. Articles 1130 and 1133 of the Civil Code entitle men to divorce their wives whenever they wish whereas they require women seeking divorce to prove that they are enduring an intolerable level of difficulty and hardship in the marriage.¹⁵ Examples of such hardship include “the husband having a drug or alcohol addiction which damages the marital life, and which he refuses to quit in a period prescribed by a doctor ... the husband being sentenced to five or more years of imprisonment ... the husband mistreating the wife in a manner that is intolerable in her condition ... [and] the husband being afflicted with some incurable mental illness or contagious disease that disrupts the marital life.”¹⁶

2.7. Marital Fidelity and Polygamy

19. Iranian law establishes a discriminatory regime regarding marital infidelity, granting men an exclusive right to be married to two permanent wives and as many as temporary wives. In an effort to restrict polygamy, articles 16 and 17 of the Family Protection Law of 1975 require men to fulfill certain conditions before they can marry a second wife on a permanent basis.¹⁷ A punishment term of six months to one year of imprisonment applies to men who fail to register their permanent marriages in accordance with national legislation.¹⁸ Men do not, however, have to fulfill any substantive or procedural conditions in order to enter into temporary marriages.¹⁹

3. Stoning as a Punishment for Adultery

20. WLUMI deeply regrets that Iran either rejected or took no position on all the recommendations regarding stoning and that Iran’s new Islamic Penal Code continues to prescribe the grotesque punishment of stoning as a penalty for people convicted of *zina* [having intercourse outside of marriage].²⁰

¹⁵ <http://rc.majlis.ir/fa/law/show/92778>.

¹⁶ *Ibid.*

¹⁷ <http://rc.majlis.ir/fa/law/show/97187>. These include provision of consent by the first wife; inability of the first wife to perform her marital duties; failure of the first wife to be obedient to her husband; affection of the first wife with insanity or a serious incurable disease; conviction of the first wife; addiction of the first wife to harmful substances; abandonment of family life by the first wife; infertility of the first wife; and disappearance of the first wife.

¹⁸ <http://rc.majlis.ir/fa/law/show/92683>.

¹⁹ According to article 21 of the Family Protection Law of 2013, the registration of these marriages becomes mandatory only if the temporary wife becomes pregnant, or the parties make a mutual agreement and/or set registration as a condition precedent.

²⁰ See Article 225, <http://rc.majlis.ir/fa/news/show/845002>. Article 104 of the old Penal Code dictated the manner of execution and the type of stones that should be used, noting that they must be large enough to cause pain but not so large as to kill the victim immediately

21. Although applying in theory to both men and women, the criminalization of *zina* has been, in practice, overwhelmingly directed against Iranian women because Iranian men have on the one hand a unilateral right to divorce and on the other hand a right to marry two permanent wives in polygamous marriages and an unlimited number of temporary wives in *Mut'a* [temporary marriages].²¹

22. Many of those sentenced to stoning have been victims of forced and early marriage and of longstanding patterns of physical and sexual abuse as well as forced economic dependence. They were in many cases drawn into adultery because of their inability to obtain divorce from their abusive husbands.²²

4. Violence against Women

23. While Iran accepted the recommendation “to reform the discriminatory provisions of penal ... laws, including with regard to women's equal rights in ... access to justice”, WLUML is concerned that little steps have been taken to give effect to this recommendation.

24. Of particular dismay to WLUML is the fact that Iran actually rejected the specific recommendations that were key to implementing this recommendation, including those which urged Iran to “adopt and implement efficient policies aimed at eliminating gender-based violence ... and guaranteeing for victims access to justice and rehabilitation” and to “accept a visit to the country by the Special Rapporteurs on violence against women”. Iran is yet to demonstrate a commitment to combat extreme

(see <http://rc.majlis.ir/fa/law/show/845048>). This specific article has been removed from the new penal code; however, the method of execution it outlines is based on Sharia law and does therefore still apply pursuant to article 15 of the Regulations for the Implementation of Sentences of Hanging, Stoning and Amputation (see <http://haghgostar.ir/ShowPost.aspx?id=687>).

²¹ Since the establishment of the Islamic Republic in 1979, Amnesty International has documented at least 77 cases of stoning, but believes that the true figure may well be higher. Most of those sentenced have been poor, illiterate, or otherwise marginalized women who were coerced into signing false confessions that they did not understand and who were denied access to legal counsel. Many belonged to ethnic minorities which did not speak Persian, the language of courts, and could not therefore understand what was happening to them in the legal process or even that they faced death by stoning (see Amnesty International, *Execution by Stoning*, MDE 13/095/2010 (December 2010), online: <http://www.amnesty.org/en/library/info/MDE13/095/2010>).

²² In her 2013 Report to the Human Rights Council, the Special Rapporteur on Violence against Women drew attention to the case of an incarcerated woman in the Islamic Republic of Iran that clearly illustrates the link between prior violence and crime, and also the disproportionate punishment often meted out to women. The woman was a victim of domestic violence and was forced into prostitution by her husband. One of her clients killed her husband, and the woman was convicted of adultery and of being an accomplice to murder. The male client was sentenced to an eight-year prison term and the woman was sentenced to death by stoning (see <http://www.ohchr.org/Documents/Issues/Women/A-68-340.pdf>).

forms of gender-based violence and the overwhelming impunity that plagues such crimes.

4.1. Murder

25. The Islamic Penal Code defines murder as a crime punishable by death in accordance with the laws of *qisas* [retaliation].²³ Besides being predicated upon cold-blooded vengeance, *qisas* laws are rooted in gender-discrimination as they hold that the life of a woman is worth half of that of a man. Accordingly, women convicted of murder are always at a greater risk of *qisas* through execution than men because in the case of men, the family of the slain woman must pay the family of the murderer a sum of money amounting to 50% of the murderer's blood money before they can request his execution

26. Opposing the death penalty and *qisas* as cruel, inhuman and degrading forms of punishments that condone premeditated and vengeful killing of human beings in the name of justice, WLUML calls for a penal regime that abolishes the death penalty in all cases without exception regardless of the nature of the crime and the characteristics of the offender, and that metes out proportionate and humane punishments to perpetrators of murder, on an equal basis and without discrimination against women.

27. In line with this request, WLUML denounces those provisions of Iran's Islamic Penal Code that provide impunity to perpetrators of murder. These include, but are not limited to,

- a. Articles 302 and 303, which entitle men to murder individuals who are "deserving" of murder and whose blood is considered to be "free to a Muslim" (this provision generally applies to cases where the victim has committed capital crimes such as adultery and prostitution);
- b. Article 301 which applies a for more lenient sentencing regime to men who murder their child or one of their immediate relatives; and
- c. Article 302(c), which provides complete impunity to a man who murders his wife while she has sexual relations with a man.

4.2. Other Forms of Domestic Violence

28. Iran has not adopted any specific legislation to prevent, prohibit and punishment domestic violence, and left women in a position where they have to frame their claims of domestic violence as physically assault and bodily harm and proven them in accordance with the requirements of articles 160 and 161 of the Islamic Penal Code. WLUML notes with concern that these provisions have not been written with a view to circumstances that surround situations of domestic violence and impose evidentiary

²³ This means survivors of a victim of murder have the right to seek capital punishment for the murderer.

burdens that render proof of domestic violence by women very difficult if not impossible. Most egregious among these is the requirement that the complainant bring two male witnesses to testify that the accused has caused physical harm to the complainant.

29. It is worth mentioning that claims of domestic violence, even when proven, are not often adequately punished. The sentence tends to be a fine unless the offence committed is found to have disrupted public order and caused social insecurity in which case a prison sentence of two to five years may be imposed (article 614 of the Islamic Penal Code). WLUML is concerned that judicial authorities rarely make such factual findings considering that they expect women to reconcile with their husbands and accept violence as an “incidental” fact of family life.

Recommendations

Women Living Under Muslim Laws (WLUML) calls on the government of Iran to:

Ratification of International Treaties

- Ratify CEDAW without reservation

Protection of Girl Children from Forced and Early Marriages

- Increase the minimum age of marriage to 18 and take all necessary action, including legislation, to ensure that the marriage of a girl child shall have no legal effect
- Take all appropriate measures to eliminate the practice of forced and early marriage and ensure that women have the right to freely choose a spouse and to enter into marriage only with their free and full consent
- Exercise due diligence to prevent, investigate and punish acts that are aimed at coercing a child into forced and early marriage, whether those acts are perpetrated by state or private actors
- Provide reparation to victims of forced and early marriage

Rights during Marriage and at its Dissolution

- Repeal all provisions of the Civil Code which constitute discrimination against women in matters relating to marriage and divorce
- Abolish the requirement of *tamkin* with a view to ensuring respect for women’s right to physical and mental integrity
- Exercise due diligence to prevent, investigate and punish acts of violence against women, including those involving marital rape

- Respect women's rights to work, including by abolishing current unlawful arrangements which allow men to prohibit their wives from working in certain trades or professions
- Respect women's equal right to freedom of movement, including by enabling them to obtain passport on an equal basis with men
- Respect women's right to transfer nationality to their children, on an equal basis with men and without discrimination
- Ensure that children born to Iranian women are given access to nationality, irrespective of their father's nationality
- Reforms existing laws, regulations, customs and practices which bar women from receiving an equal share of inheritance
- Eradicate civil and penal provisions that establish a discriminatory legal regime regarding marital infidelity for women and men

Stoning as a Punishment for Adultery

- Ban execution by stoning
- Decriminalize consensual sexual relations between adults

Violence Against Women

- Repeal all penal provisions which facilitate, sanction or condone violence against women
- Exercise due diligence to prevent, investigate and punish men who murder their wives or other female relatives on suspicion of adultery or other so-called 'honour crimes'
- Adopt and implement efficient policies aimed at eliminating gender-based violence and guaranteeing for victims access to justice and rehabilitation
- Accept a visit to the country by the Special Rapporteur on Violence Against Women