

Legal Research Series

*Legal Status of Women: Iran's International Human Rights
Obligations*

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Executive Summary

This legal research analysis belongs to a series of studies on human rights in Iran authored by the Human Rights in Iran Unit.¹ The Human Rights in Iran Unit in the School of Law at the University of Essex focuses on the Islamic Republic of Iran's compliance with international human rights law. Each study tackles a distinct topic to measure international obligations against domestic law and practice and to identify underlying or systemic problems. The Unit seeks to provide an accessible account of the breadth and complexity of violations in Iran from the standpoint of international law, which may serve scholars, practitioners and anyone concerned with human rights in Iran.

This study considers the Islamic Republic of Iran's compliance with its obligations under international human rights treaties with respect to the legal status of women in Iran. The relevant treaties to which Iran is a State party are the International Convention on the Elimination of Racial Discrimination ("ICERD", 1965) International Covenant on Civil and Political Rights ("ICCPR", 1966), the International Covenant on Economic, Social and Cultural Rights ("ICESCR", 1966) and the Convention on the Rights of the Child ("CRC", 1989).

This study analyses women's rights within the context of the Islamic Republic of Iran's domestic legal framework. The Iranian Constitution and a body of specific domestic laws constitute a framework for the systematically diminished legal status of women within Iran. These laws are contrary to Iran's obligations under international human rights law, particularly as a result of the Constitutional requirement of conformity with "Islamic criteria", to which Iranian laws are subject in general, and women's rights in particular. The ability of Iranian authorities to take exceptional measures with respect to basic principles of international human rights law on this basis gives rise to gender-based discrimination of women in Iran.

This study analyses Iran's domestic legal framework with regard to women's rights, focusing on freedom of movement, health care, living standards, family life, employment, and access to justice. Attention is also given to further indirect discrimination faced by women living in rural areas, as well as women belonging ethnic, religious, political and sexual minority groups.

While this study does not comprehensively address all issues of women's rights in Iran, the analysis shows how gender-based discrimination of women is rooted in Iranian domestic law

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at a systemic level through the application of Islamic criteria as interpreted within the Islamic Republic of Iran.

This study finds that Iran violates a number of key legal requirements under the ICCPR and ICESCR with regard to women's rights:

- **Women's freedom of movement:** The Iranian Civil Code severely restricts a woman's right to freedom of movement within and outside of Iran, which has further implications on women's access to justice and rights to association, health care and education. These restrictions may constitute further, indirect discrimination of women in rural areas;
- **Discrimination of women in family life:** Domestic legal provisions relating to family life restrict the ability of a woman to transfer her nationality to her child or husband and affect a woman's right to inheritance. In addition to violating the principle of non-discrimination, the requirement of 'obedience' in marriage also violates a woman's right to privacy under article 17(1) of the ICCPR. The ability of men to engage in temporary marriages also raises considerable concerns under article 23(4) of the ICCPR, which governs the equal rights of spouses. Finally, legal regulations on divorce have adverse implications for the rights of a mother and her child. Such discriminatory legislation may also contribute to the high rate of domestic violence within Iran;
- **Ability to access justice:** According to the Iranian Penal Code, the testimony of women in court is considered to be equivalent to either half that of men or entirely inadmissible, depending on the crime. This is in clear violation of the right to equality before courts and tribunals (article 14(1), ICCPR). Several domestic provisions further exacerbate gender-based discrimination within criminal law, including those governing stoning as a punishment and extra-marital relations. A disproportionate number of women are found guilty of crimes in Iran as compared to men;
- **Right to health and family planning:** Iran's recent measures to curb funding for family planning directly violates the right to health as enshrined in article 12(1) of ICESCR. It may also entail further consequences under the right to non-discrimination (article 2(1), 26, ICCPR), the right to life (article 6(1), ICCPR) and several ICCPR provisions relating to family life;
- **Adequate standard of living and ethnic minority women in Iran:** A lack of basic infrastructure in predominantly ethnic minority communities creates health concerns for women in these communities, infringing upon both their right to health and to an adequate standard of living. Moreover, where a lack of an adequate standard of living leads to fatal medical complications, a woman's right to life is violated;
- **Women's right to work:** While Iranian law does not prohibit a woman from working, her right to do so is conditional upon her husband's approval, which severely restricts a woman's right to work as envisioned under article 6(1) of the ICESCR. Participation rates of women in paid work are low, as is the representation

of women in senior decision-making positions. The violation of the right to work also negatively affects the right to a family life, as guaranteed by article 17(1) of the ICCPR.

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I. Introduction

This study examines the Islamic Republic of Iran (Iran)'s compliance with international human rights standards with regard to the legal status of women in Iran. The status of women under Iranian legislation falls short of international standards both through individual laws violating human rights, and through the comprehensive framework which these laws establish, taken together. The unequal legal status of women in Iran is not alone produced by a cumulative effect of different discriminatory laws, but rather finds its source in the State's Constitution. From a legal perspective, women's unequal status is constitutionally mandated by the State. Individual laws express and articulate the intended status. The existence of both an underlying, constitutional source determining women's legal status, as well as a consistent legal expression of that status through different laws, together constitute a framework. To fully understand the legal status of women in Iran, it is therefore necessary to analyse these two aspects jointly. Taken alone, the constitutional basis establishes a possibility for inequality on several grounds, yet this basis would not be as significant without the corresponding expression across different laws. The cumulative body of laws gives rise to a pattern of inequalities which may amount to a discriminatory framework taken alone, yet this framework acquires explicit institutional sanction through its grounding in the Constitution. Accordingly, the analysis of Iran's human rights compliance requires consideration of the domestic legal framework as relevant to women in its entirety.

The study primarily analyses the relevant domestic and international law. This requires an examination of the content and interpretation of the relevant provisions enshrined in the human rights treaties to which Iran is a party. Reference is made to documentation of violations in practice where relevant to the legal analysis.

Of the nine core international human rights treaties,² Iran is a party to and legally bound by five,³ namely:

- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);⁴
- The International Covenant on Civil and Political Rights (ICCPR);⁵

² The list of all core universal human rights treaties is available at the OHCHR website: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

³ Iran has ratified all five treaties. See the UN Treaty Collection (UNTC): <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

⁴ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195

⁵ International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

- The International Covenant on Economic, Social and Cultural Rights (ICESCR);⁶
- The Convention on the Rights of the Child (CRC);⁷ and
- The Convention on the Rights of Persons with Disabilities.⁸

Iran has not ratified the Convention on the Elimination of all forms of Discrimination against Women 1979 (CEDAW) or its Optional Protocol.⁹ As such, the primary sources of law creating legal obligations on the Islamic Republic of Iran to promote women’s human rights and protect women from gender-based discrimination are the ICCPR, ICESCR and ICERD. Guarantees of equality and non-discrimination are core principles of these treaties.¹⁰ The CRC is of further relevance in relation to the girl child.

Alongside the Constitution, salient domestic legal instruments for the analysis of women’s status in Iran are the Iranian Civil Code which dates back to 1928; the Passport Law of 1973; the Iranian Penal Code, which combined the Discretionary Punishment Law and the Retribution Law in the period 1991 to 1994; and the Family Protection Act of 2013. The Family Protection Act replaced the 1967 progressive Family Protection Law, which was revised in 1975 during the reign of Muhammad Reza Shah.¹¹

Provisions in Iran's domestic law have been identified as directly, and indirectly, contravening basic principles of equality and non-discrimination. In particular, gender-based discrimination in marriage, criminal law, employment, health care and living standards will be explored. Discrimination through the laws faced by women living in rural areas, members of ethnic, religious and sexual minorities are also noted. Iran's particular legal framework results in a consistently diminished status of women in Iran.

II. International Law

A. General principles of non-discrimination and equality

The principles of non-discrimination and equality are a cornerstone of the human rights framework, and recognised as core principles under international law. The principle of non-

⁶ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

⁷ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3. Iran is also a party to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 25 May 2000, UN Doc A/RES/54/263

⁸ UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, UN Doc A/RES/61/106, Annex I

⁹ UN General Assembly, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 6 October 1999, United Nations, Treaty Series, vol. 2131, p. 83

¹⁰ Article 2(1) ICCPR; article 2(2) ICESCR; Human Rights Committee, *General Comment No. 18: Non-discrimination* (“HRC GC 18”), UN Doc HRC/GEN/1/Rev.1 at 26 (1994), para. 1 Human Rights Committee, *General Comment 28: Equality of rights between men and women (article 3)* (“HRC GC 28”) UN Doc CCPR/C/21/Rev.1/Add.10 (2000), para. 2-3.

¹¹ L Beck & G Nashat. *Women in Iran from 1800 to the Islamic Republic* (University of Illinois Press 2004), Chronology, xi

discrimination flows from the very concept of human rights as universal and inalienable protections of all human beings equally. The United Nations Charter (1945) sets as one of its fundamental purposes “to achieve international co-operation in ... promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”¹² The Charter also requires the General Assembly to make recommendations and conduct research to assist “in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”¹³ The principle of non-discrimination is enshrined within the Universal Declaration of Human Rights of 1948 (UDHR),¹⁴ which forms the basis for subsequent international human rights treaties such as the ICCPR and ICESCR (jointly the Bill of Rights, which have legal force with regard to States that have ratified them). Article 1 of the UDHR states that “all human beings are born free and *equal* in dignity and rights”¹⁵ [emphasis added]. Article 2 adds that “everyone is entitled to all the rights and freedoms set forth in the Universal Declaration without distinction of any kind...”¹⁶ Article 7 of the UDHR goes on to state that “all are equal before the law and are entitled without any discrimination to equal protection of the law.”¹⁷

The UDHR, while not legally binding as a whole, is a politically and morally persuasive instrument of international law unequivocally calling on all States to ensure the eradication of discrimination, including gender-based discrimination and, today is considered to contain provisions subject to customary international law, therefore legally binding upon States, including Iran.¹⁸

¹² United Nations, *Charter of the United Nations* (UN Charter), 24 October 1945, 1 UNTS XVI, article 1(3)

¹³ *Ibid*, article 13(1)

¹⁴ UN General Assembly, *Universal Declaration of Human Rights* (UDHR), 10 December 1948, 217 A (III).

¹⁵ *Ibid*, article 1

¹⁶ *Ibid*, article 2

¹⁷ *Ibid*, article 7

¹⁸ The essence of many of the provisions in the UDHR have been made legally binding by inclusion within international human rights instruments such as the ICCPR and ICESCR, and several of these provisions are now considered customary international law. For instance, article 3 of the UDHR ensures that “[e]veryone has the right to life, liberty and security of the person.” Similarly, article 6 of the ICCPR requires that States parties to respect “the inherent right to life” and that “no one shall be arbitrarily denied the right to life”. The Human Rights Committee has since recognized that this right, along with the protection from, *inter alia*, arbitrary arrest and detention are now considered customary international law and cannot be subject to reservations (Human Rights Committee, *General Comment 24: General comment on issues relating to reservations made upon ratification or accession to the International Covenant on the Covenant or Optional Protocols thereto, or in relation to declarations made under article 41*, UN Doc CCPR/C/21/Rev.1/Add.6 (1994), para. 8. It is accepted by many legal scholars that the UDHR “constitutes at least significant evidence of customary international law,” see: Hurst Hannum, “The Status of the Universal Declaration of Human Rights in National and International Law”, (1995-1996) 25 *Ga. J. Int’l & Comp. L.* 287 at 322. See also: *Montreal Statement of the [Nongovernmental] Assembly for Human Rights* (1968), reprinted in 9 *J. Int’l Comm. Jurists Rev.* 94 (1968). Further examples found in: Resolutions adopted by the International Law Association, reprinted in International Law Association, Report of the Sixty-Sixth Conference, Buenos Aires 1996; John Humphrey, *The International Bill of Rights: Scope and Implementation*, 17 *Wm. & Mary L. Rev.* 527, 529 (1976). A later work by Humphrey emphasises that the UDHR is now “binding on all states, including the states that did not vote for it in 1948” John Humphrey, *No Distant Millennium: The International Law of Human Rights* 155 (Paris: UNESCO, 1989); Patrick Thornberry, *International Law and the Rights of Minorities* 237-238 (Oxford: Clarendon Press, 1991); Philip Alston, *The Universal Declaration at 35: Western and Passé or Alive and Universal*, 1982/31 *I.C.J. Rev.* 60, 69 (1982); A.H. Robertson & J.G. Merrills, *Human Rights in the World* 96 (Manchester: Manchester University Press, 3d ed. 1989); Richard Bilder, “The Status of International Human

The Committee on the Elimination of Discrimination against Women, a body of international experts entrusted with the supervision of the implementation of CEDAW, which Iran has not ratified, considers the principle of equality between men and women in the enjoyment of all human rights and fundamental freedoms as an emerging principle of customary international law, binding on all States regardless of ratification.¹⁹

B. Non-discrimination and equality as binding international treaty obligations

The principle of non-discrimination applies to all articles within both the ICCPR and ICESCR. The ICCPR and ICESCR, both ratified by Iran in 1975, are an emanation of the UDHR, giving legal expression to the rights contained in the Declaration; by ratifying these treaties, Iran accepts the positive legal obligations contained within their provisions, including the prohibition of discrimination based on an individual's sex.

The legal framework

The committees of independent experts who oversee State implementation of treaties, known as treaty-monitoring bodies (or treaty bodies), shed light on the nature and scope of legal obligations placed on Iran to respect, protect and fulfil women's rights under the two covenants. The Human Rights Committee provides authoritative or persuasive interpretation of the provisions of the ICCPR, while the UN Committee on Economic, Social and Cultural Rights ("CESCR") assumes the parallel function for the ICESCR. 'General Comments' are considered to be authoritative texts that serve as interpretations of treaty law, in which bodies such as the Human Rights Committee ("HRC") or CESCR provide guidance on the interpretation of provisions in the relevant treaties.²⁰ These General Comments will be referred to in interpreting Iran's legal obligations. Furthermore, concluding observations issued by the treaty bodies will be referenced to analyse Iran's compliance with its international human rights obligations towards women.

Rights Law: An Overview in International Human Rights Law & Practice“ 1, 8 (James Tuttle ed., 1978) citing *Rodriguez-Wilkinson*, 654 F.2d 1382 (10th Cir. 1981); For more examples see Hurst Hannum, “The Status of the Universal Declaration of Human Rights in National and International Law”, (1995-1996) 25 *Ga. J. Int'l & Comp. L.* 287. Galindo Pohl, a Special Representative of the former UN Commission on Human Rights concluded in one of his reports on the situation of human rights in Iran that the UDHR applies in full as customary international law: Report of the Special Representative on the human rights situation in the Islamic Republic of Iran, Mr Galindo Pohl, UN Doc. E/CN.4/1987/23 (1987), para. 22-23. The assertion that the entirety of the UDHR reflects customary international law is not universal. In general, however, it is widely accepted that many of the UDHR's provisions reflect customary international law, Hurst Hannum, “The Status of the Universal Declaration of Human Rights in National and International Law”, (1995-1996) 25 *Ga. J. Int'l & Comp. L.* 287; John Humphrey, “The Universal Declaration of Human Rights: Its History, Impact and Juridical Character”, in Ramcharan B. (ed.), *Human Rights: Thirty Years after the Universal Declaration* (Dordrecht, Nijhoff 1979), chapter 1.

¹⁹ United Nations Press Release, *CEDAW and the Universal Declaration of Human Rights at 60 and the CEDAW Committee*, adopted 4 November 2008 at the 42nd session, available at: <http://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/UDHR60_Mr.Flinterman.pdf>. CEDAW has been ratified by 187 States to date, second in number of ratifications only to the Convention on the Rights of the Child: Committee on the Elimination of Discrimination against Women. “*Frequently Asked Questions*” (2014) available at: <<http://www.cedaw2011.org/index.php/about-cedaw/faq>>

²⁰ Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, (N.P. Engel, 2nd ed, 2005) p. 746-748, paras. 61-64

Article 2(1) of the ICCPR and article 2(2) of the ICESCR clearly state that all rights enshrined in the treaties apply to everyone²¹ without distinction on the basis of sex. Covenant rights are to be read in conjunction with the principle of non-discrimination,²² which applies throughout both Covenants to all substantive provisions.

Article 3 of both the ICCPR and ICESCR explicitly obliges States parties to ensure “the equal right of men and women” to enjoy the legal protections afforded by the treaties. In General Comment 16, the CESCR outlines that articles 2(2) and 3 of the ICESCR complement one another and serve to further stress State parties’ obligations to ensure equality between men and women.²³

Positive obligations in both treaties bind States parties to “respect”,²⁴ “guarantee”,²⁵ “take the necessary steps ... to adopt laws or other measures”²⁶ and “take steps ... to achieving progressively the full realization”²⁷ of the recognised rights. State parties are also under an obligation to provide effective remedies to individuals whose rights under the ICCPR have been violated within their jurisdiction.²⁸

Equality before the law

Significantly, article 26 of the ICCPR recognises all persons as equal before the law and as entitled, without discrimination based on, amongst others, sex, to the equal protection of the law. Article 26 creates an obligation on State parties to apply a general principle of non-discrimination, which need not be read in conjunction with one of the Covenant provisions.²⁹ Article 26 applies to all domestic law, whether on civil, political, or economic, social or cultural rights. The principles of non-discrimination and equality before the law are, therefore, applicable as binding treaty-law to any domestic law of State parties at all times.³⁰

²¹ The term “everyone” in article 2(1) of the ICCPR is read to include “all individuals within its [State party’s] territory and subject to its jurisdiction”. In the Human Rights Committee’s General Comment No. 31, the Committee specified that “the enjoyment of Covenant rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State party” (Human Rights Committee, *General Comment 31: Nature of the General Legal Obligation on States parties to the Covenant* (“HRC GC 31”), UN Doc CCPR/C/21/Rev.1/Add.13 (2004), paragraph 10).

²² HRC GC 18, para. 1; HRC GC 28, para. 2-3.

²³ CESCR, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)* (“CESCR GC 16”), UN Doc E/C.12/2005/4 (2005), para. 3

²⁴ Article 2(1), ICCPR

²⁵ Article 2(2), ICESCR

²⁶ Article 2(2), ICCPR

²⁷ Article 2(1), ICESCR

²⁸ Article 2(3), ICCPR; HRC GC 31, para. 15

²⁹ See, e.g., *SWM Broeks v the Netherlands*, which states that article 26 “derives from the principle of equal protection of the law without discrimination, as contained in article 7 of the Universal Declaration of Human Rights, which prohibits discrimination in law or in practice in any field regulated and protected by public authorities (*SWM Broeks v the Netherlands*, Human Rights Committee Communication No. 172/1984, UN Doc CCPR/C/OP/2 at 196 (1990), para. 12.3).

³⁰ HRC GC 18, para. 1-2; HRC GC 28, para. 2-3, 7 and 9.

Equality before the law: in law or in fact

Article 26 of the ICCPR suggests that State parties have a negative obligation not to discriminate based on sex. According to the Human Rights Committee, article 26 “prohibits discrimination *in law or in fact* in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on State parties in regard to their legislation and the application thereof.”³¹ The Committee on Economic, Social and Cultural Rights also elaborates on *de jure* equality, or formal equality, and *de facto* equality, or substantive equality, between men and women.³² Formal equality requires State parties to achieve preliminary equality within texts of the law. The substantive form of equality requires State parties to implement non-discriminatory legislation through the adoption of policies and practices; of particular significance is the promotion of equality for disadvantaged groups.³³

Direct or indirect discrimination

De facto equality is important in particular where discrimination results of a law, but is not immediately evident in the law’s formulation. Discrimination can take two different forms, either direct or indirect.³⁴ Direct discrimination involves the existence of specific rules or policies that discriminate against a specific group, for example, based on gender.³⁵ On the other hand, indirect discrimination occurs when a law or policy does not, *prima facie*, appear to be discriminatory, but is in fact found to be discriminatory against a particular group when implemented.³⁶ This can take place if, for example, a particular group is at a relative disadvantage and a neutral law is introduced – this would not remove the discrimination unless further practices were introduced by the State to specifically enhance the status of the disadvantaged group. According to the Human Rights Committee, articles 2 and 26 of the ICCPR prohibit both direct and indirect discrimination.³⁷

According to the CESCR, State parties must refrain “from direct and indirect actions of discrimination by not adopting laws that are discriminatory and by repealing existing laws

³¹ HRC GC 18, para. 12

³² CESCR, GC 16, para. 7

³³ *Ibid.*

³⁴ CESCR, GC 16, para. 11

³⁵ *Ibid.*, para. 12. See, e.g., *Lovelace v. Canada*, Human Rights Committee Communication No. R.6/24, UN Doc Supp. No. 40 (A/36/40) at 166 (1981), para. 10: legislation that revoked a woman’s status as an Indian upon marrying a non-Indian man, but would not revoke a man’s status if he similarly married a non-Indian woman, was held to be “based on a distinction *de jure* on the ground of sex” by the Committee (although the case raised unrelated jurisdictional issues). See also *SMW Broeks v Netherlands*, where the Human Rights Committee held that a law requiring a woman to prove that she was the sole breadwinner in order to receive benefits, which did not equally apply to a man, was discriminatory (*SWM Broeks v the Netherlands*, Human Rights Committee Communication No. 172/1984, UN Doc CCPR/C/OP/2 at 196 (1990), para. 14).

³⁶ CESCR, GC 16, para. 13. See also, e.g., *L.R. et al v. Slovakia*, CERD Communication No. 31/2003, UN Doc CERD/C/66/D/31/2003 (2005), para. 10.4-10.9 (racial discrimination); *Simunek et al v. Czech Republic*, Human Rights Committee Communication No. 516/1992, UN Doc CCPR/C/54/D/516/1992 (1995), para. 11.6-11.7, which emphasizes that although the legislature in question may not be intended as discriminatory, if the effects are discriminatory, the legislation is not compatible with the ICCPR and the principle of non-discrimination.

³⁷ HRC, GC 18, para. 7

that are discriminatory”.³⁸ States must also fulfil their obligation to protect against discrimination by actively eliminating all kinds of pre-existing practices that perpetuate notions of inferiority or superiority.³⁹ It is only with comprehensive equality, which ensures equality both in the law and in practice, that non-discrimination can be attained.⁴⁰

CEDAW is the international human rights treaty that most comprehensively deals with women’s right to non-discrimination, and the violations that may occur as a victim of direct and indirect discrimination. Although Iran has not signed or ratified CEDAW⁴¹, the definition of discrimination against women, established in article 1 of CEDAW, may be taken as an authoritative elaboration of the notion of gender-based discrimination.⁴² The treaty defines discrimination against women as:

Any distinction, exclusion or restriction made on the basis of sex which has the *effect or purpose* of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁴³

III. Women under Domestic Law in Iran

A. The Constitution of the Islamic Republic of Iran

The most important piece of domestic legislation for analysing the status of women in Iran is the 1979 Constitution establishing the Islamic Republic of Iran, amended in 1989.

Islamic criteria

³⁸ CESCR, GC 16, para. 18

³⁹ *Ibid*, para. 19

⁴⁰ *Ibid*, para. 10

⁴¹ Under the leadership of reformist President Mohammad Khatami, the *Majlis* passed a bill in favour of ratifying the CEDAW; however, the Guardian Council blocked its adoption in 2003. The bill has thus been pending promulgation in the Expediency Council. Interestingly, there is no prescription time for matters before the Expediency Council.

⁴² Statement by Ms Feride Acar on the 30th Anniversary of the Committee on the Elimination of Discrimination against Women (1 November 2012), available at: <<http://www.ohchr.org/Documents/HRBodies/CEDAW/30thAnniversaryCEDAW/30thAnniversaryMsAcarIstanbul.pdf>>. See also *Maria Eugenia Morales de Sierra v Guatemala*, Case 11.625, Report No. 4/00, (Inter-American Commission on Human Rights, 19 January 2001), para. 33-34 and 45, which recognizes CEDAW, and particularly article 1, as part of the internal law of Guatemala and finds a violation partly on that basis; *Opuz v Turkey*, where the European Court considers CEDAW as part of the “consensus and common values emerging from the practices of European States and specialized international instruments” (*Opuz v Turkey*, Application No. 33401/02 (European Court of Human Rights, 09 June 2009), para. 164, 170, 174). In domestic jurisprudence, see *Attorney General (Botswana) v Unity Dow* (124/1990) (CA No. 4/1991), where the High Court concluded that, although CEDAW had not been incorporated into internal laws, “the Courts must interpret domestic statutory laws in a way as is compatible with the State’s responsibility not to be in breach of international law” (available at: <<http://www.elaw.org/node/2018>>).

⁴³ Article 1, CEDAW, emphasis added.

Article 4 of the Iranian Constitution provides that *all* legislation, including “civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria.”⁴⁴ It further stipulates that this principle “applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations,” and that the *fuqaha*, or Islamist jurists of the Guardian Council, shall judge compliance with this principle.⁴⁵

The requirement to abide by “Islamic criteria” can be observed throughout Iran's Constitution. With regard to equality, article 20 of the Iranian 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.” Article 21 of the Constitution specifies that Iran must ensure “the rights of women in all respects, in conformity with Islamic criteria.”⁴⁶ “Islamic criteria” are, therefore, used as a qualifier for women’s rights.

Article 21 of the Constitution maintains that the State aims to “create a favourable environment” wherein a woman's personality can grow and her material and intellectual rights can be preserved and restored. An equality clause also exists in article 20 of the Constitution, guaranteeing equal protection of law and enjoyment of all human, political, economic, social and cultural rights to men and women citizens of Iran. Yet both provisions attach qualifications by stating that the realisation of the provisions is subject to “Islamic criteria”. Moreover, article 20 applies exclusively to Iranian citizens; non-citizen women, including economic migrants, trafficked women, refugee women, stateless women, displaced women and other non-citizens within the territory or jurisdiction of the State, are therefore not afforded constitutionally recognised equality rights (albeit subject to Islamic criteria).

The requirement that women’s rights are not unconditional, but rather must conform to particular criteria, stands in violation of Iran’s treaty obligations under articles 3 of the ICESCR and ICCPR, and article 26 of the ICCPR, as well as the general principles of non-discrimination and equality. Articles 20 and 21 of the Constitution, incorporating these conditions, establish the constitutional basis for the legal status of women in Iran, and further domestic laws relating to women may be understood to flow from that basis.

In terms of the content of Islamic criteria in the case of women, a section in the Constitution’s preamble, entitled ‘Woman in the Constitution,’ sheds some light on the State perspective:

Family is the fundamental unit of society and the focal point for growth and elevation of Man. ... Woman will ... [regain] her enormous and worthy role of motherhood for bringing up pioneer and ideological Man Consequently, she will assume greater responsibilities and enjoy greater value and esteem from the viewpoint of Islam.⁴⁷

This preamble allocates a specific social function to women as mothers, grounded in the Islamic framework of the State. The full implications of this expectation are borne out in Iranian domestic laws, as discussed below.

⁴⁴ Constitution of Iran, article 4

⁴⁵ *Ibid*, article 4

⁴⁶ *Ibid*, article 21

⁴⁷ Constitution of Iran, Preamble, Women in the Constitution

B. A different definition: Islamic criteria according to Iran

Iran's interpretation of Islamic law or *Shari'a* establishes the framework for the particular status of women under domestic law. This study analyses that interpretation insofar as it is integral to domestic laws relevant to women, and therefore subject to international human rights standards and obligations. Different interpretations of Islamic law or *Shari'a* exist; the Iranian interpretation may thus be seen as one of many interpretations. It is beyond the scope of this analysis to address the nature of Iran's interpretation of *Shari'a* in particular in relation to other interpretations. Iranian "Islamic criteria" are analysed insofar as they give form and content to Iranian laws, which are subject to international human rights obligations. An overview of Iran's legal system however provides context for the domestic law framework.

Legal System in Iran

Legislation is passed by the Iranian *Majlis* (Parliament). As seen, all laws ought to "be based on Islamic criteria" or, at a minimum, should be consistent with Islamic law.⁴⁸ Designated Islamist jurists have established Iran's Civil Code, Penal Code and other legislation based on their own interpretation of Islamic sources, such as the *Qur'an*. Many of the Constitution's provisions cite verses from the *Qur'an* as interpretations for the laws provided.

Iran is a theocratic State and one of few Islamic States that is predominantly ruled by members of the clergy. Religious leader Ayatollah Ali Khamenei, the current Supreme Leader of Iran, is considered to be at the top of the power structure of the State, making him the highest-ranking political and religious figure.⁴⁹ In effect, the Supreme Leader functions as the Head of State. The Supreme Leader, amongst other powers, appoints six of the 12 members of the Guardian Council who monitor the activities of the Iranian Parliament and determine who is eligible to run for public office.⁵⁰

The legislative branch consists of the *Majlis* (Parliament) and the Guardian Council. While there are approximately 290 members of the *Majlis*, their legislative powers are subject to approval by the Guardian Council.⁵¹ The members of the Guardian Council are considered Islamic jurists, or *faqih*s, with political powers surpassing those of the other members of the legislative branch.⁵² As such, the Guardian Council has the power to veto any decision taken by the Parliament.⁵³ The Iranian political system also has an Expediency Council whose primary function is to resolve conflicts between the *Majlis* and the Guardian Council.⁵⁴ Such

⁴⁸ A An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law*. (Syracuse University Press: 1990), p. 20.

⁴⁹ See Article 107 of the Constitution of Iran, which recognizes the leadership, "accepted by a decisive majority", of His Excellency Grand Ayatollah Imam Khomeini. For further information regarding the electoral system in Iran, see Human Rights in Iran Unit, *Electoral Process in Iran: Analysis of Political Participation and Iran's Compliance with International Human Rights Obligations* (Legal Research Series, March 2014), available at: <<http://www.essex.ac.uk/hri/documents.aspx>>.

⁵⁰ Iranian Constitution, Articles 91-99. See also, generally, Nader Entessar, "Criminal Law and the Legal System in Revolutionary Iran" (1988) 8(1) *Boston College Third World Law Journal* 91.

⁵¹ Constitution of Iran, Article 96.

⁵² See, e.g., Article 94 of the Constitution of Iran.

⁵³ Article 96, Constitution of Iran ; see also Nader Entessar, p. 95

⁵⁴ According to the Internal Bylaw of the Expediency Council (Majma'e Tashkhis-e Maslehat-e Nezam), the Expediency Council is required to "determine expediency in cases when there is a conflict between Parliamentary legislations and the opinion of the Guardian council" (article 1, last revised 25 October 1997, full English version available at: <<http://www.princeton.edu/irandataportal/laws/institutionsgovernance/expediency-bylaws/>>)

conflicts may take place where the *Majlis* insists on passing a bill that has been rejected by the Guardian Council.⁵⁵ Members of the Expediency Council are appointed by the Supreme Leader and usually include former Presidents of Iran.⁵⁶

IV. Domestic legal framework

Using authoritative international legal standards and substantive Iranian domestic law, the following will examine women's status in Iran through marriage, the criminal law, employment, health care and living standards.

I. Marriage

The Iranian Civil Code encompasses a wide range of provisions that directly discriminate against women in marriage.

a. Minimum age of marriage

According to article 1041 of Iran's Civil Code, although marriage before the age of puberty (13 solar years age) is normally prohibited, a girl's natural guardian may opt to give his daughter in marriage without her consent, so long as the best interest of the child is taken into consideration and with approval of the relevant court. When she does reach the age of puberty, a father must obtain his daughter's consent in his choice of a husband for her; nevertheless, a daughter must also receive her father's consent on a husband of her choice prior to getting married.⁵⁷ If the daughter finds the refusal of consent to be unreasonable, she may appeal to the Family Court, but the court must grant permission for the registration of the marriage.⁵⁸ The practice of child marriage for girls under 13 without obtaining consent is in direct violation of the requirement of intending spouses to grant free and full consent to marriage.⁵⁹ Concerning the marriage of girls 13 years of age and over with their consent, it is universally contested whether a child below the age of 18 in fact has full maturity and capacity to act in providing full and free consent to marriage; this is in line with the internationally advocated minimum age of 18 for marriage.⁶⁰ As such, although a girl

⁵⁵ *Ibid*

⁵⁶ For example, former President Mahmoud Ahmadinejad was recently appointed to the Council by Ayatollah Khomeini. Former President Akbar Hashemi Rafsanjani currently heads the Council. On Ahmadinejad's appointment, see Al-Jazeera, "Ahmadinejad appointed to top Iran Council" (*Al-Jazeera*, 05 August 2013), available at: <<http://www.aljazeera.com/news/middleeast/2013/08/201385134040912530.html>>

⁵⁷ Article 1043, Iranian Civil Code: "The marriage of a girl who has not married previously is dependent on the permission of her father or her paternal grandfather even if she has reached the full age of majority." This requirement concerns girls that are virgins. Where a girl or woman is marrying for the first time and has already lost her virginity out of wedlock, or where a girl or woman is marrying for the second time, the consent of her natural guardian is not required. See also Mohammad Nayyeri, *Gender Inequality and Discrimination: The Case of Iranian Women* (Iran Human Rights Documentation Centre, 8 March 2013), p. 60, available at: <<http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U4cUrpRdU6E>>

⁵⁸ *Ibid*.

⁵⁹ Article 23(3), ICCPR; article 10(1), ICESCR; HRC GC 28 para. 23.

⁶⁰ Article 16(2), CEDAW (1979); Article 21(2), African Charter on the Rights and Welfare of the Child (1990); Committee on the Rights of the Child, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child*, UN Doc CRC/GC/2003/4, (2003), para. 20; CEDAW, *General Recommendation No. 21: Equality in Marriage and Family Relations*, UN Doc A/49/38 (1994), para. 36

between 13 and 17 years of age may provide consent to marriage, the union may still be in violation of international human rights standards as that child's consent may not have been given freely and fully.

The legal age for marriage for girls in Iran is set at 13 years, while it is 15 years of age for boys, suggesting an endorsement of earlier marriage for girls than for boys.⁶¹ Early marriage of women in Iran appears to be endorsed in various forms: the State is currently reviewing policies to reduce the number of compulsory years of schooling for girls, in order to “create an age difference between girls and boys which would make [girls'] preparedness for building a family more suitable”.⁶² The idea is that by finishing school earlier, girls will be prepared to build a family and take on their duties as mothers and wives at an earlier age. This policy would be in contravention of a girl's right to education, as guaranteed by the ICCPR and CRC.⁶³

The Committee on the Rights of the Child promotes the view that where a girl marries before the age of 18, the union is in breach of the core principle of the best interests of a child.⁶⁴ The Committee on the Rights of the Child has, in providing an authoritative interpretation of the CRC, defined child marriage as a harmful practice,⁶⁵ and routinely referred to it as a form of gender-based discrimination.⁶⁶ Moreover, the Committee highlighted child marriage as a significant factor in contributing towards child sexual and reproductive health issues, including HIV/AIDS.⁶⁷ This automatically engages the right to health, as provided by article 12(1) of ICESCR. Child marriage has also been attributed to a violation of a child's rights to life⁶⁸ and liberty,⁶⁹ and protection from violence, including sexual abuse.⁷⁰

⁶¹ Justice for Iran, “Gender Discrimination at Its Worst: An Overview of the Discriminatory Laws of the Islamic Republic of Iran in Family Life” (2014), p.1, available at: <<http://justice4iran.org/english/j4iran-activities/english-gender-discrimination-at-its-worst-an-overview-of-the-discriminatory-laws-of-the-islamic-republic-of-iran-in-family-life/>>. For further review regarding the rights of the child in Iran, see Human Rights in Iran Unit, “Legal Status of the Child and Iran's International Human Rights Obligations”. *Human Rights in Iran Unit Legal Research Series* (2014), available at: <<http://www.essex.ac.uk/hri/documents.aspx>>

⁶² International Campaign for Human Rights in Iran, “Cartoon 75: Women's Education” (*International Campaign for Human Rights in Iran*, 8 January 2014), available at: <<http://www.iranhumanrights.org/2014/01/cartoon-75/>>

⁶³ Article 2(1) and 13(1), ICCPR; article 2(1) and 28(1), CRC

⁶⁴ Article 3, CRC

⁶⁵ Committee on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all forms of violence*, UN Doc CRC/C/GC/13, (2011), para. 29(e).

⁶⁶ Committee on the Rights of the Child, *Concluding observations: Bangladesh*, UN Doc CRC/C/15/Add.74 (1997); Committee on the Rights of the Child, *Concluding observations: Burkina Faso*, UN Doc CRC/C/15/Add.19 (1994); Committee on the Rights of the Child, *Concluding observations: Djibouti*, UN Doc CRC/C/15/Add.131 (2000); Committee on the Rights of the Child, *Concluding observations: India*, UN Doc CRC/C/15/Add.115 (2000)

⁶⁷ Committee on the Rights of the Child, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child*, UN Doc CRC/GC/2003/4, (2003), para. 20; Population Council, “Child marriage in the context of the HIV epidemic”. (2007), p.2; Aliya Haider, “Adolescents under international law: autonomy as the key to reproductive health”. *William & Mary Journal of Women and the Law* 14.3 (2008), p.619

⁶⁸ Article 6(1), ICCPR; Article 6(1), CRC; Aliya Haider, “Adolescents under international law: autonomy as the key to reproductive health”. *William & Mary Journal of Women and the Law* 14.3 (2008), p.619

⁶⁹ Article 12(1), ICCPR; Aliya Haider, “Adolescents under international law: autonomy as the key to reproductive health”. *William & Mary Journal of Women and the Law* 14.3 (2008), p.619

⁷⁰ Article 19(1) CRC; Committee on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all forms of violence*, UN Doc CRC/C/GC/13, (2011), para. 72(g); for an analysis of violence against women see CEDAW, *General Recommendation 19: Violence against women* (1992), available at: <<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>>

b. Freedom of marriage

Iran's Civil Code imposes further conditions on women in their choosing of a husband. For example, Muslim women in Iran are prohibited from marrying non-Muslim men according to article 1059.⁷¹ Furthermore, where a woman wishes to marry a non-Iranian Muslim man, she may not do so without 'special permission' from the government.⁷² This requirement is not only stipulated in article 1060 of the Iranian Civil Code, but also in article 51 of the Family Protection Act of 2013. In order to be granted consent to marry a foreign man, Iranian women are required to provide an extensive number of documents,⁷³ many of which are difficult to obtain. These provisions in Iranian domestic law are discriminatory against women by way of restricting a woman's free right to marry and found a family.⁷⁴ For this reason, the Human Rights Committee has expressed its concern with regard to both the relevant Civil Code provisions and the 2013 Family Protection Act.⁷⁵

c. Maintenance and obedience

Once a woman is married she is expected to be obedient to her husband's sexual and other wishes; obedience is required to ensure legal entitlement to maintenance (*nafaqah*).⁷⁶ This is referred to as *tamkin* (obedience) and is expressed in article 1108 of the Iranian Civil Code. Where a woman fails to comply with the wishes and commands of her husband by refusing, for example, to engage in sexual activity with him, this constitutes *noshuz* (disobedience) and may disqualify her from her right to *nafaqah* (maintenance).⁷⁷ According to the Human Rights Committee, States parties to the Covenant may fail to respect a person's right to privacy under article 17 of the ICCPR when their sexual life becomes a decisive element in the distribution of certain protections.⁷⁸ The concepts of *tamkin* and *noshuz* in Iranian domestic law violate article 17 and furthermore violate the principles of non-discrimination according to sex, and of equality before the law under Articles 2(1) and 26 of the ICCPR, respectively. This is because such obligations are gender-specific as men are not subject to a similar requirement of sexual compliance. As discussed below, the discriminatory practice further infringes on a woman's right to be protected from cruel, inhuman or degrading

⁷¹ Iranian Civil Code, article 1059

⁷² Iranian Civil Code, article 1060

⁷³ Iranian Civil Code articles 976-990 set forth the requirements that must be met to be considered an Iranian national. For further information on how nationality affects children in Iran, see Human Rights in Iran Unit, *Legal Status of the Child and Iran's International Human Rights Obligations* (June 2014), available at: <<http://www.essex.ac.uk/hri/documents.aspx>>. The paperwork required to marry a foreign man includes documents proving the parties' identities, nationalities and religions Justice for Iran, "Gender Discrimination at Its Worst: An Overview of the Discriminatory Laws of the Islamic Republic of Iran in Family Life" (2014), p.3, available at: <<http://justice4iran.org/english/j4iran-activities/english-gender-discrimination-at-its-worst-an-overview-of-the-discriminatory-laws-of-the-islamic-republic-of-iran-in-family-life/>>

⁷⁴ Article 2(1), article 17(1) article 23(2), ICCPR

⁷⁵ Human Rights Committee, *Concluding Observations on the third periodic report of the Islamic Republic of Iran*, UN Doc CCPR/C/IRN/CO/3 (2011), para. 9; the HRC references Iran's Family Protection Bill (2007) which is now the Family Protection Act (2013)

⁷⁶ Iranian Civil Code article 1108 states, "If the wife refuses to fulfill duties of a wife without legitimate excuse, she will not be entitled to the cost of maintenance".

⁷⁷ Justice for Iran, "Gender Discrimination at Its Worst: An Overview of the Discriminatory Laws of the Islamic Republic of Iran in Family Life" (2014), p.4, available at: <<http://justice4iran.org/english/j4iran-activities/english-gender-discrimination-at-its-worst-an-overview-of-the-discriminatory-laws-of-the-islamic-republic-of-iran-in-family-life/>>

⁷⁸ HRC GC 28, para. 20. See also, e.g., *LNP v Argentina*, Human Rights Committee Communication No. 1610/2007, UN Doc CCPR/C/102/D/1610/2007 (2011), para. 13.7.

treatment, as the legal framework contravenes Iran's obligation to protect women from such treatment.

Relatedly, article 1105 of the Civil Code exclusively establishes the husband as the head of the family unit, with the effect that his orders must be obeyed by his wife. This contravenes article 23(4) of the ICCPR, which obliges State parties to ensure that the matrimonial regime contains equal rights and obligations for both spouses.

d. Domestic violence

During Iran's review under the Human Rights Council's Universal Periodic Review, the existence of "widespread violence against women and a lack of redress for victims" was highlighted.⁷⁹ While research reveals that 66% of Iranian women have experienced domestic violence, the State lacks a holistic system for the protection of women from domestic violence. Further, domestic laws explicitly allow for non-consensual sexual relations in marriage.⁸⁰ A woman's duties and obligations in marriage require her to be obedient to her husband's sexual and other wishes.⁸¹ Failure to comply with a husband's sexual wishes may disqualify a woman from her right to *nafaqah* (maintenance).⁸² While violence against women is criminalised under the general provisions of the Criminal Code,⁸³ these laws effectively create an exception for domestic violence. In addition, the State lacks safe houses and social support services for women victims of domestic violence.⁸⁴ The sanctioning of domestic violence in the Civil Code coupled with the absence of a national system serving to protect women from domestic violence constitutes a violation of a woman's right to protection from cruel, inhuman or degrading treatment in accordance with article 7 of the ICCPR.⁸⁵ It also offends a woman's inherent dignity, in contravention of article 10 of the

⁷⁹ Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran, Human Rights Council, 14th Session, UN Doc A/HRC/14/12 (2010), para 73.

⁸⁰ Payvand Iran News, "Warning on rise in domestic violence" (*Payvand News*, 30 August 2009), available at: <<http://www.payvand.com/news/09/aug/1264.html>> It should also be noted that the actual percentage of women who have suffered from domestic violence within Iran is likely higher than the statistics cited herein, due to the reluctance of women to formally report instances of domestic violence to the authorities.

⁸¹ Article 1108, Iranian Civil Code

⁸² Justice for Iran, "Gender Discrimination at Its Worst: An Overview of the Discriminatory Laws of the Islamic Republic of Iran in Family Life" (2014), p.4, available at: <<http://justice4iran.org/english/j4iran-activities/english-gender-discrimination-at-its-worst-an-overview-of-the-discriminatory-laws-of-the-islamic-republic-of-iran-in-family-life/>>

⁸³ Book Three, Islamic Penal Code. Although violence against women is generally criminalized, both the Human Rights Committee and the CESCR have recommended that Iran specifically criminalize domestic violence, with the CESCR pointing out that these urgent legislative reforms should also include marital rape. See Human Rights Committee, *Concluding Observations on the third periodic report of the Islamic Republic of Iran*, UN Doc CCPR/C/IRN/CO/3 (2011), para. 11 and CESCR, *Concluding observations on the second periodic report of the Islamic Republic of Iran*, UN Doc E/C.12/IRN/CO/2 (2013), para. 17.

⁸⁴ CESCR, *Concluding observations on the second periodic report of the Islamic Republic of Iran*, UN Doc E/C.12/IRN/CO/2 (2013), para. 17

⁸⁵ Domestic violence may also constitute a violation of the prohibition against torture (Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment, Manfred Nowak, UN Doc A/HRC/7/3 (2008), para 44). There is debate as to whether domestic violence, which takes place in the private sphere by perpetrators who are not agents of the State, can meet the definition of torture in article 1(1) of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, particularly due to the difficulties in proving State acquiescence. Nevertheless, domestic violence will still constitute a violation of article 7 of the ICCPR as a form of cruel, inhuman or degrading treatment or punishment.

Covenant, and the right to an effective remedy, as enshrined by article 2 of the ICCPR, which requires State parties to “exercise due diligence to prevent, punish, investigate [and] redress the harm caused by such acts by private persons or entities.”⁸⁶ The Human Rights Committee has urged States to enforce criminal penalties and civil remedies in cases of inhuman and degrading treatment violence.⁸⁷

e. Nationality rights

Article 976 of the Civil Code establishes that children born outside of Iran to an Iranian mother will not automatically receive Iranian nationality.⁸⁸ Where this renders the child stateless, the policy is in clear contravention of a child’s right to acquire a nationality.⁸⁹ Under the same Civil Code provision, women with Iranian citizenship do not have the explicit power to transfer their Iranian citizenship to a foreign husband. While non-Iranian women who marry Iranian men may be considered as Iranian nationals under the Iranian Civil Code, article 976(6), the reverse is not explicitly permitted. The right to married life (article 23(4), ICCPR) includes a protection against discrimination “in respect of the acquisition or loss of nationality by reason of marriage”; thereby, the Human Rights Committee has noted that discrimination in the right to married life based on sex is discriminatory and prohibited under the ICCPR.⁹⁰

f. Freedom of movement

Women’s freedom of movement is severely limited by Iranian domestic law, imposing both procedural and permissive limitations to their ability to leave the country.⁹¹ According to the Passport Law of 1973, an unmarried girl under the age of 18 is required to receive travel authorization from her father in order to leave the country. If a woman is married, including if under eighteen, she is required to obtain the consent of her husband.⁹² Under domestic law, a woman’s right to travel outside Iran may be restricted by her husband refusing to sign the required paperwork for a passport application.⁹³ In fact, husbands may even notify the government and forbid their wives from leaving the country, in which case a woman’s travel documentation may be seized.⁹⁴ Nor is a husband or father’s consent absolute, and they are

⁸⁶ Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligations on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para. 8.

⁸⁷ Human Rights Committee, *General Comment No. 7*, UN Doc HRI/GEN/1/Rev.9 (Vol. I) (1982), para 1

⁸⁸ Iranian Civil Code, article 976 (2) states that “those born in Iran or outside whose fathers are Iranian” are considered to be Iranian subjects. No mention is made of individuals born abroad to Iranian mothers.

⁸⁹ Article 24(3), ICCPR; article 7(1), CRC

⁹⁰ Human Rights Committee, *General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses*, UN Doc HRI/GEN/1/Rev.6 at 149 (2003), para. 7. See also *Aumeeruddy-Cziffra et al v. Mauritius*, where the authors alleged, “female citizens do not have an unrestricted right to married life in their country if they marry a foreigner, whereas male citizens have the unrestricted right to do so” (para. 6.2(a), see also para. 7.2). The Committee held that the applicable domestic laws constituted discrimination on the grounds of sex, stating that “[t]he authors who are married to foreign nationals are suffering from the adverse consequences of the statutes... only because they are women” (para. 9.2(b)(2)(i)(6), see also paras. 8.1, 9.2(b)(2)(i)(3), 10.1): *Aumeeruddy-Cziffra et al v. Mauritius*, Human Rights Committee Communication No. 35/1978, UN Doc CCPR/C/OP/1 at 67 (1984)

⁹¹ Report of the Special Rapporteur on the human rights situation in Iran, Dr Ahmed Shaheed, UN Doc A/HRC/22/56 (2013), para. 47.

⁹² Article 18, Passport Law 1973, available at: <http://www.mfa.gov.ir/index.aspx?siteid=1&pageid=24222>.

⁹³ *Ibid*

⁹⁴ Article 19, Passport Law 1973

entitled to change their mind even after providing authorisation.⁹⁵ It follows that only an unmarried woman aged eighteen or above may freely apply for a passport and leave the country without requiring consent of her father or husband.

In November 2012, the Iranian Parliament's National Security and Foreign Policy Committee approved an amendment to the law on women's freedom of movement outside Iran, as it currently stands.⁹⁶ The Passport and Exit Law Bill was to include an obligation on every unmarried woman under the age of 40 to obtain travel authorisation from her natural guardian (father, paternal grandfather, etc.) when applying for a passport.⁹⁷ After much controversy surrounding the issue, it was asserted in February 2013 that the bill was to be removed.⁹⁸

Despite the proposed bill being discarded, restrictions on a woman's freedom of movement in Iran still exist under the law, affecting a woman's daily life, including with respect to where she resides. During a marriage, the wife has a legal obligation to reside with her husband as stipulated in article 1005 of the Civil Code; the wife may only reside in a separate domicile from her husband when her husband gives consent for her to do so. By virtue of Civil Code article 1114, wives are required to stay in homes "allotted for them" by their husbands. A woman may be considered to be disobedient, and therefore not entitled to spousal maintenance, where she leaves her husband's home against his will.⁹⁹ This rule applies in all circumstances, unless a woman can show, to the satisfaction of domestic courts, that she faces a significant risk of bodily harm, threatening her life and safety.¹⁰⁰

The clear restrictions imposed by Iranian domestic law on a woman's right to freedom of movement stand in contravention of article 12(1) of the ICCPR, which guarantees "everyone ... the right to liberty of movement and freedom to choose [her] residence". The Passport Law of 1973 stands in violation of both the right to liberty of movement under article 12(1), and article 12(3) which establishes that "everyone shall be free to leave any country, including [her] own". Civil Code article 1114 instead stands in violation of both the right to liberty of movement in general and the freedom to choose one's residence in particular as per article 12(1), and by implication also article 12(3), as the lack of freedom to choose her residence constitutes an infringement on a woman's freedom to leave the country if she so chooses.

While freedom of movement is not an absolute right, any exception can only be permitted on the grounds articulated in the relevant limitation provided by article 12(3), which include restrictions "which are provided by law, are necessary to protect national security, public

⁹⁵ Mohammad Nayyeri, *Gender Inequality and Discrimination: The Case of Iranian Women* (Iran Human Rights Documentation Centre, 8 March 2013), p. 35, available at:

<http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U4cUrpRdU6E>

⁹⁶ International Campaign for Human Rights in Iran, "Lawyer and Women's Rights Activist Hopes Discriminatory Passport Law Does Not Pass" (*International Campaign for Human Rights in Iran*, 21 January 2013), available at: http://www.iranhumanrights.org/2013/01/passport_women/

⁹⁷ *Ibid*

⁹⁸ The Iran Project, "Iran's controversial bill of 'Women Passport Amendment' cancelled" (*The Iran Project*, 21 February 2013), available at: <http://theiranproject.com/blog/2013/02/21/irans-controversial-bill-of-women-passport-amendment-cancelled/>

⁹⁹ Iranian Civil Code article 1109.

¹⁰⁰ Iranian Civil Code article 1115. See also Justice for Iran, "Gender Discrimination at Its Worst: An Overview of the Discriminatory Laws of the Islamic Republic of Iran in Family Life" (2014), p.5, available at: <http://justice4iran.org/english/j4iran-activities/english-gender-discrimination-at-its-worst-an-overview-of-the-discriminatory-laws-of-the-islamic-republic-of-iran-in-family-life/>

order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant”. Though restrictions on women’s right to freedom of movement in Iran are provided by law, they are not consistent with other Covenant rights such as article 2(1) on non-discrimination on the basis of sex, and article 26 on equality before the law. The consistency test is contained both in the provision itself, where it may be read adjunctively (“provided by law ... and are consistent”), as well as in article 2(1) which applies specifically to the rights in the Covenant.¹⁰¹ The restrictions given by Iranian domestic law are grounded solely on the basis of sex and violate both article 2(1) and article 26. Additionally, none of the other possible grounds for restriction, namely protection of national security, public order, public health or morals or the rights and freedoms of others, may be seen to apply.¹⁰²

The violation of this right for women in Iran has an impact also on other rights. The restrictions on a woman’s freedom of movement in Iran might create adverse effects on a woman’s access to justice (accessing courts and police stations, for example),¹⁰³ freedom of association,¹⁰⁴ access to health care¹⁰⁵ and access to education,¹⁰⁶ amongst other rights, on a purely discriminatory basis.¹⁰⁷ The restriction on a woman’s right to freedom therefore has a ripple effect, engaging a wide range of civil, political, economic, social and cultural rights, which may be violated as a consequence. Women in locations which are remote or distant from certain services may be further adversely affected.

As a State party to the ICCPR, Iran is obligated to provide the Human Rights Committee with sufficient information on any restrictions imposed on women’s right to freedom of movement.¹⁰⁸ Such restrictions include any required third-party consent to travel, whether in the process of applying for a passport or acquiring a visa for travel.¹⁰⁹

¹⁰¹ Human Rights Committee, *General Comment No. 27: Article 12 (Freedom of Movement)*, UN Doc CCPR/C/21/Rev.1/Add.9 (1999) para. 18.

¹⁰² *Ibid.*, para. 11.

¹⁰³ Article 14, article 26, ICCPR

¹⁰⁴ Article 22(1), ICCPR

¹⁰⁵ Article 12(1), ICESCR

¹⁰⁶ Article 13(1), ICESCR

¹⁰⁷ See, e.g., Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Mission to the Islamic Republic of Iran, UN Doc E/CN.4/2006/61/Add.3 (2006), para. 48, 73. The CEDAW Committee has a clear stance on this issue: “Any restrictions on a woman’s right to choose a domicile on the same basis as a man may limit her access to the courts in the country in which she lives or prevent her from entering and leaving a country freely and in her own right”: CEDAW, *General Recommendation No. 21: Equality in Marriage and Family Relations*, UN Doc A/49/38 (1994), para. 9. See also CEDAW, *Concluding Observations on the first periodic report of the United Arab Emirates*, UN Doc CEDAW/C/ARE/CO/1 (2010), para. 46; CEDAW, *Concluding Observations on the combined sixth and seventh periodic reports of Indonesia*, UN Doc CEDAW/C/IDN/CO/6-7 (2012), para. 18(b). In both of these Concluding Observations, the Committee expresses concern regarding discriminatory provisions within the respective countries’ internal law that restrict women’s freedom of movement.

¹⁰⁸ Human Rights Committee, *General Comment 26: Continuity of Obligations*, UN Doc CCPR/C/21/Rev.1/Add.8 (1997), para. 16. See also, e.g., the following Concluding Observations, wherein the relevant treaty bodies have called upon States parties to abolish discriminatory practices and laws that restrict women’s right to freedom of movement: Human Rights Committee, *Concluding Observations on the third periodic report of Zambia*, UN Doc CCPR/C/ZMB/CO/3 (2007), para. 13; CESCR, *Concluding Observations on the initial periodic report of the Sudan*, UN Doc E/C.12/1/Add.48 (2000), para. 24, 38; CEDAW, *Concluding Observations on the combined sixth and seventh periodic reports of Indonesia*, UN Doc CEDAW/C/IDN/CO/6-7 (2012), para. 17, 18(b); CEDAW, *Concluding Observations on the first periodic report of the United Arab Emirates*, UN Doc CEDAW/C/ARE/CO/1 (2010), para. 45-46.

¹⁰⁹ Human Rights Committee, *General Comment 26: Continuity of Obligations*, UN Doc CCPR/C/21/Rev.1/Add.8 (1997), para. 16. See also, e.g., *Chiiko Bwalya v Zambia*, in which the Committee

g. The limitation of a wife's right to work

In marriage, a husband may prevent his wife from working in a certain profession if he is of the view that the occupation is not compatible with the interests and dignity of the family.¹¹⁰ While the law does not prohibit a woman from working, her right to do so is conditional upon her husband's approval, which severely restricts a woman's right to work as envisioned under article 6(1) of the ICESCR. The effect of the legislation may be related to the low participation rates of women in paid work and low representation of women in senior decision-making positions.¹¹¹ The Human Rights Committee has urged Iran to remove men's power to prohibit their wives from entering employment, in order to remedy the existing breach of non-discrimination guaranteed in articles 2 and 26 under the ICCPR.¹¹² The Committee on Economic, Social and Cultural Rights is also concerned that the policy contravenes the equal right of men and women to enjoy the economic, social and cultural rights set out in the ICESCR, as guaranteed in articles 2 and 3.¹¹³

Moreover, the Family Protection Law invokes additional violations of both the ICCPR and ICESCR, as it does not prescribe the same right to a woman as a man. A woman is not allowed to restrict her husband's employment in an occupation that she deems incompatible with the family's interests, or with her personal position.¹¹⁴ These laws treat a woman's right to family life under article 17(1) of the ICCPR and her right to work under article 6(1) of the ICESCR less favourably than the rights of their male counterparts. They also reflect discrimination in Iranian women's enjoyment of their rights in violation of the Covenants' common article 2; the general discrimination within the domestic law is also contrary to article 26 of the ICCPR.

The Family Protection Act of 1975 attempted to remedy this discriminatory inconsistency by allowing a woman to prevent her husband from engaging in a particular occupation where it is incompatible with the family's interests, or his or her dignity. Nevertheless, the gender inequality remains, as it is necessary for a woman to make an application to the court for the provision to take effect, whereas men are not required to submit a similar appeal. Moreover, a woman may only prevent her husband from engaging in such employment if it does not

holds that the State's restrictions upon the applicant's freedom of movement, including the refusal to issue a passport, violated his rights under article 12(1) of the ICCPR. (*Chiiko Bwalya v Zambia*, Human Rights Committee Communication No 314/1988, UN Doc CCPR/C/48/D/314/1988 (1993) para. 3.3 and 6.5.); Iran did not provide details of restrictions on a woman's freedom of movement in its third periodic report to the Human Rights Committee (Human Rights Committee, *Islamic Republic of Iran's third periodic report of States parties*, UN Doc CCPR/C/IRN/3 (2010)). In its Reply to the List of Issues, Iran stated that the Passport Law of 1973 was under review in Parliament and that there are no religious impediments to travel (Human Rights Committee, *Islamic Republic of Iran's third periodic report of States parties*, UN Doc CCPR/C/IRN/3 (2010), para. 23).

¹¹⁰ Iranian Civil Code, article 1117; With regard to what constitutes incompatibility, article 18 of the Family Protection Act designates domestic courts the authority to validate a husband's claim

¹¹¹ United Nations Development Programme, "UN Development Chief Visits Iran; addresses United Nations Day Celebration in Tehran", available at

<http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2013/10/24/un-development-chief-visits-iran-addresses-united-nations-day-celebration-in-teheran/>

¹¹² Human Rights Committee, *Concluding Observations on the third periodic report of the Islamic Republic of Iran*, UN Doc CCPR/C/IRN/CO/3 (2011), para. 9

¹¹³ CESCR, *Concluding observations on the second periodic report of the Islamic Republic of Iran*, UN Doc E/C.12/IRN/CO/2 (2013), para. 10

¹¹⁴ Compare with Iranian Civil Code article 1117; see also Mohammad Nayyeri, *Gender Inequality and Discrimination: The Case of Iranian Women* (Iran Human Rights Documentation Centre, 8 March 2013), p.37, available at: <<http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U4cUrpRdU6E>>

interfere with the livelihood of the family. In practice, the provision is not utilised; as such, the prospects of a woman restricting her husband from an occupation are very low, highlighting the unequal treatment that women in Iran are subjected to in accessing employment.

This direct discrimination of a woman's right to work has been criticised by the UN Special Rapporteur on the human rights situation in Iran,¹¹⁵ the CESCR¹¹⁶ and the Human Rights Council in Iran's Universal Periodic Review.¹¹⁷

The CESCR has asserted:

Discrimination can also occur when an individual is unable to exercise a right protected by the Covenant because of his or her family status or can only do so with spousal consent or a relative's concurrence or guarantee.¹¹⁸

h. Revocation of marriage and divorce

Article 1123 of the Civil Code lists six circumstances in which men may revoke their marriages. An emphasis is placed on "defects" involving reproductive functions. For example, protrusion of the womb,¹¹⁹ connection of the vaginal and anal passages¹²⁰ and being crippled¹²¹ are just grounds for a man to bring about the right to cancel a marriage to his wife. Women are afforded three scenarios in which a revocation of marriage would be justified, each involving a defect in the reproductive functions of the husband: castration of the husband,¹²² amputation that disables the husband from performing his marital duty,¹²³ and impotency of the husband, provided that the matrimonial act has not yet been performed.¹²⁴ These provisions point to an explicit centrality of the designated role of women as child bearers, as these grounds for cancellation – for both men and women – revolve around the ability of the woman to give birth.

With respect to divorce, a man is entitled to divorce his wife whenever he wishes provided that he meets certain requirements, including paying his wife's alimony.¹²⁵ A woman, on the other hand, may divorce her husband where she can prove that she is enduring an intolerable level of difficulty and hardship in the marriage.¹²⁶ Examples include the husband's drug or alcohol addiction which he refuses to quit in a period specified by a doctor; the husband's

¹¹⁵ Report of the Special Rapporteur on the human rights situation in Iran, Dr Ahmed Shaheed, UN Doc A/HRC/22/56 (2013), para. 45.

¹¹⁶ CESCR, *Concluding Observations on the initial periodic report of the Islamic Republic of Iran*, UN Doc. E/C.12/1993/7 (1993), para. 5.

¹¹⁷ Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran, Human Rights Council, 14th Session, UN Doc A/HRC/14/12 (2010)

¹¹⁸ CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc E/C.12/GC/20 (2009), para. 31.

¹¹⁹ Iranian Civil Code, article 1123(1)

¹²⁰ *Ibid*, article 1123(4)

¹²¹ *Ibid*, article 1123(5)

¹²² *Ibid*, article 1122(1)

¹²³ *Ibid*, article 1122(3)

¹²⁴ *Ibid*, article 1122(2). In addition, if the man or woman can prove that the other party knew of the defect prior to the celebration of the marriage, that individual has no right to cancel the marriage (Iranian Civil Code, article 1126).

¹²⁵ Iranian Civil Code, article 1133

¹²⁶ *Ibid*, article 1130

imprisonment for a minimum of five years; enduring mistreatment from the husband in a manner that is intolerable in her condition; and, the husband being afflicted with a mental illness or incurable disease that disrupts the marital life.¹²⁷ Women are frequently denied the right to divorce as they are expected to reconcile with their husbands and accept a certain level of violence as part and parcel of family life.¹²⁸

Where a woman is divorced or in the case that her husband passes away, she is required to wait a specific period of time before she may marry another man. This period is called *al-Iddah* and it is a period required exclusively for women.¹²⁹ According to article 1050 of the Iranian Civil Code, if a man attempts to marry a woman before the lapse of *al-Iddah*, he will not be granted authorisation to marry her.

In the case of divorce, a woman will not receive custody of her children if they are over the age of seven years.¹³⁰ Most importantly, a woman will not obtain custody of any of her children if she remarries or becomes insane.¹³¹ The Constitution of the Republic of Iran can also be seen to discriminate against women in limiting the right to custody under article 21 of the Constitution to those mothers who are “worthy”. The Constitution lacks further interpretation of what is implied by the term “worthy”, which is only attributed to women; there is no mention of a worthy father. Even where a woman is deemed “worthy”, her rights would not equate to those of a man, as both parents are not granted equal custody rights under the Iranian Civil Code. Where, on the other hand, a woman is deemed “unworthy”, she would be stripped of the few custody rights that she would otherwise be entitled to.

State parties to the ICCPR are obliged to ensure that non-discrimination and equality are reached in marriage, divorce and in the event that a marriage partner passes away. Not only does the ICCPR require the “free and full consent of the intending spouses” in marriage,¹³² but article 23(4) of the ICCPR also requires State parties to “take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution”.¹³³ The current regime governing divorce in Iran does not meet this standard, as women are in an inferior position with regard to their rights and responsibilities in marriage and at its dissolution. Non-discrimination in family life is affirmed by the Human Rights Committee’s interpretation of article 23(4) of the ICCPR that State parties are required to ensure that the “matrimonial regime contains equal rights and obligations for both spouses” with regard to entering into marriage, during marriage, in dissolution and over custody rights.¹³⁴

¹²⁷ Justice for Iran, “Gender Discrimination at Its Worst: An Overview of the Discriminatory Laws of the Islamic Republic of Iran in Family Life” (2014), p.6, available at: <<http://justice4iran.org/english/j4iran-activities/english-gender-discrimination-at-its-worst-an-overview-of-the-discriminatory-laws-of-the-islamic-republic-of-iran-in-family-life/>>

¹²⁸ *Ibid*

¹²⁹ Iranian Civil Code, articles 1150 - 1157

¹³⁰ Iranian Civil Code, article 1169. It used to be that women could not have custody of their boys if they had passed the age of two but this was amended through a reformist Iranian legislation, in the era of Khatami, presented by the *Majlis*. Initially, it was not approved by the Guardian Council, which led to the involvement of the Expediency Council. The Expediency Council approved the bill at the insistence of the *Majlis*, who were the reformists in majority.

¹³¹ Family Protection Act (2013); Iranian Civil Code, article 1170

¹³² Also guaranteed in article 10(1) of ICESCR and article 16(2) of the UDHR

¹³³ ICCPR, article 23(4)

¹³⁴ HRC, GC 28, para. 23, 24, 25 and 26. The Human Rights Committee has also found that “the family”, as worded in article 23(1), does not “refer solely to the family home as it exists during the marriage. The idea of the family must necessarily embrace the relations between parents and the child.” (*Hendriks v the Netherlands*,

In divorce, the Human Rights Committee also notes that discrimination on grounds of gender is prohibited and draws particular attention to the requirement of non-discrimination in matters of child custody.¹³⁵ The impediments that women face in re-marrying after divorce and obtaining custody of their children are in clear violation of a woman's right to family life.¹³⁶ It may also infringe the rights of the child to private and family life¹³⁷ and fail to respect the primacy of family unit and the principle of non-separation from a parent;¹³⁸ prohibiting women from obtaining custody of a child may violate that child's best interests,¹³⁹ which, as a core principle of international child law, is to be made a primary consideration in all actions concerning that child.¹⁴⁰ It is evident that Iran is not currently adhering to the non-discrimination requirements in marriage, divorce and custody, as stipulated in the ICCPR.

i. Polygamy and temporary marriages

The law under the Family Protection Act (2013) permits men to have several wives (a permanent wife and an unrestricted number of temporary wives sequentially or simultaneously).¹⁴¹ The Human Rights Committee is clear on this point: "Polygamy violates the dignity of women. It is an inadmissible discrimination against women. Consequently, it should be definitely abolished wherever it continues to exist."¹⁴² The practice is inconsistent with the standards of article 16 of CEDAW guaranteeing non-discrimination on the basis of gender in all matters concerning marriage and family relations. Similarly, polygamy violates a woman's inherent dignity,¹⁴³ as well as article 23 of the ICCPR concerning equality in marriage, read in conjunction with the article 2. Where it may be a more frequent practice in particular communities (rural, ethnic or religious, for example), women in polygamous marriages may be victim to indirect discrimination in marriage.

Amongst the more prominent discriminatory provisions in the 2007 Family Protection Bill is also article 21, authorising temporary marriage of men to women. Some of these marriages may take place without official registration of the marriage;¹⁴⁴ however, under the new

Human Rights Committee Communication No. 201/1985, UN Doc Supp. No. 40 (A/43/40) at 230 (1988), para. 10.3)

¹³⁵ Human Rights Committee, *General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses*, UN Doc HRI/GEN/1/Rev.6 at 149 (2003), para. 9.

¹³⁶ Article 17(1), article 23(2), ICCPR

¹³⁷ *Ibid*

¹³⁸ Article 9(1), CRC

¹³⁹ *Ibid*

¹⁴⁰ Article 3(1), CRC

¹⁴¹ Mohammad Nayyeri, *An Analysis of the Responses Given by the Iranian Delegation to the Human Rights Committee* (Iran Human Rights Documentation Centre), para. 6(a) available at:

<http://www.iranhrdc.org/english/publications/legal-commentary/3536-an-analysis-of-the-responses-given-by-the-iranian-delegation-to-the-human-rights-committee.html#.U57qKY1dU6E>. The Family Act Bill (2007) has been passed and has since become the Family Protection Act (2013). The relevant article number in the new Act may therefore differ to the Bill.

¹⁴² HRC GC 28, para. 24. The CEDAW Committee has also expressed that polygamy violates the Convention, as it "contravenes a woman's right to equality with men" (CEDAW, *General Recommendation No. 21: Equality in Marriage and Family Relations*, UN Doc A/49/38 at 1 (1994), p. 4, para. 14; see also article 16, CEDAW).

¹⁴³ Article 10(1), ICCPR

¹⁴⁴ Mohammad Nayyeri, *Gender Inequality and Discrimination: The Case of Iranian Women* (Iran Human Rights Documentation Centre, 8 March 2013), p.47, available at:

<http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U4cUrpRdU6E>. The Bill has been passed and has since become the Family Protection Act (2013). The relevant article number in the new Act may therefore differ to the

Family Protection Act of 2013, the registration of temporary marriages has become mandatory in certain circumstances. The implications are that where temporary marriages do not require registration, women are not able to claim costs of maintenance (*nafaqah*) they would otherwise be able to claim if their marriage were registered.¹⁴⁵ Under Iranian law, a wife is entitled to financial support from her husband.¹⁴⁶ It is, however, important to note that these maintenance costs are a custom consolidating a husband's position as the "head of the family",¹⁴⁷ and can be revoked where a wife refuses to fulfil her duties as a wife.¹⁴⁸

j. Inheritance rights

Discrimination against women in the Iranian Civil Code occurs not only in areas of marriage and divorce but also in family inheritance. According to article 907 of the Civil Code, sons are entitled to twice as much inheritance as daughters, where the deceased is not survived by parents. A mother of the deceased is entitled to a decreased share of inheritance as stipulated in article 906 of the Civil Code. The provision grants the mother of the deceased one-third of the estate, with the father of the deceased receiving the rest; however, in certain circumstances, the mother is entitled to one-sixth of the estate, while five-sixths are distributed to the father.¹⁴⁹ Moreover, if a husband dies his wife may claim one-quarter of his estate, but he would be able to claim one-half of his wife's estate in the case of her death.¹⁵⁰ Where no other heirs exist, a man is entitled to claim all of his wife's estate, whereas a wife would only be entitled to one-sixth of the estate; the remainder remains under her dead husband's name and she is unable to access the funds.¹⁵¹ According to article 945 of the Civil Code, a wife may not claim any inheritance from her husband if he had been ill prior to the marriage and ultimately dies of that illness.

The unequal treatment of assets and inheritance on the basis of gender not only amounts to gender-based discrimination under the ICCPR, but it also violates the right to equality between spouses, as enshrined in article 23. In providing an authoritative interpretation of Iran's international legal obligations under the ICCPR, the Human Rights Committee expressed that spouses should have an equal say in issues such as the choice of residence and the administration of assets.¹⁵²

II. Criminal law

a. Age of criminal liability

Bill.

¹⁴⁵ The law accounts for spousal maintenance in permanent marriages: Iranian Civil Code, article 1106

¹⁴⁶ Iranian Civil Code, article 1107

¹⁴⁷ *Ibid*, article 1105

¹⁴⁸ *Ibid*, article 1108

¹⁴⁹ *Ibid*, article 906

¹⁵⁰ *Ibid*, article 913

¹⁵¹ *Ibid*, article 945

¹⁵² Human Rights Committee, *General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses*, UN Doc HRI/GEN/1/Rev.6 at 149 (2003), para. 8; *Aumeeruddy-Cziffra et al v. Mauritius*, Human Rights Committee Communication No. 35/1978, UN Doc CCPR/C/OP/1 at 67 (1984), para. 1.2, 9.2(b)(2)(i)(6) [right to residence and non-discrimination].

One of the more striking examples of girls being exposed to disproportionately harsher punishments under the Penal Code is seen in article 147. It declares the age of criminal responsibility for girls to be 9 lunar years (8 years and 9 months), while for boys it is set at 15 lunar years (14 years and 7 months). In essence, the provision allows for young girls to face criminal sanctions of the severity of adult punishments at the age of nine.¹⁵³ The concept of girls, at the age of 9, being held criminally responsible and sanctioned, does not only constitute gender-based discrimination¹⁵⁴ and a violation of the child's best interests,¹⁵⁵ but it is also inconsistent with international minimum legal standards on child protection. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") establish that the age of criminal responsibility should "not be fixed too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity".¹⁵⁶ Moreover, the Committee on the Rights of the Child has clarified that "a minimum age of criminal responsibility below the age of 12 years is considered ... not to be internationally acceptable".¹⁵⁷

b. *Diya* (blood money)

The Iranian Penal Code is more lenient when punishing men for crimes committed against women. For example, the *diya* (blood money) for murdering a woman is half that of a man; this can be observed in article 544 of the Islamic Penal Code.

Article 379 of the Penal Code provides that where a Muslim woman is murdered by a man, the right to *qisas* (retaliation) is created; however, if the murderer is a Muslim man, the heirs of the victim should pay the perpetrator half of the *diya* of a man because a woman's blood money is worth half that of a man's. This provision has been rectified, to an extent, by article 545 of the Penal Code, which provides that the female homicide victim's family need not pay the perpetrator half of the *diya*; instead, it will be funded from the Fund for Compensation of Bodily Harms. The Fund for Compensation of Bodily Harms was established to exclusively compensate bodily harms caused by car accidents when the perpetrator escaped or was not identified or when the vehicle was not insured.¹⁵⁸

While this is a progressive development in eradicating gender-based discrimination in this area of the law, it nonetheless does not apply to instances of bodily injury;¹⁵⁹ in such cases, gender-based discrimination remains. In the case of bodily injury that does not cause death, however, the *diya* for men and women is still only equal until it reaches one-third of the full *diya*: once the *diya* of a woman surpasses the one-third mark of the full *diya*, it will be

¹⁵³ The rights of the child within the Iranian context is considered at length within the HRIU's Legal Research Series: Human Rights in Iran Unit, "Legal Status of the Child and Iran's International Human Rights Obligations". *Human Rights in Iran Unit Legal Research Series* (2014), available at:

<<http://www.essex.ac.uk/hri/documents.aspx>>. Please refer to this document for further information, particularly regarding the discrepancy between age of criminal liability and age of maturity for girls.

¹⁵⁴ Article 2(1) and article 14(1), ICCPR; article 2(1) and article 40(3)(a), CRC

¹⁵⁵ Article 3(1), CRC

¹⁵⁶ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), GA resolution 40/33, (1985), para. 4.1.

¹⁵⁷ Committee on the Rights of the Child, *General Comment No. 10: Children's rights in juvenile justice*, UN Doc. CRC/C/GC/10, (2007), para. 32.

¹⁵⁸ Mohammad Nayyeri, *Gender Inequality and Discrimination: The Case of Iranian Women* (Iran Human Rights Documentation Centre, 8 March 2013), p.8-9, available at:

<<http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U4cUrpRdU6E>>

¹⁵⁹ *Ibid*

decreased to half that of a man's *diya* for the same injuries.¹⁶⁰ This practice also constitute a violation of the victim's family's rights to redress and compensation where the victim had been tortured.¹⁶¹

The Human Rights Committee has emphasised the fundamental point that *all* persons ought to have *equal* access to justice and a right to a fair trial, in conformity with article 14(1) of the ICCPR.¹⁶² Article 16 of the ICCPR requires States to recognise all people as a whole "person before the law," without distinction based on gender.¹⁶³ Accordingly, both genders are to be considered a *whole* and *equal* person before the law.¹⁶⁴ In its final remarks on equal rights of men and women, the Human Rights Committee makes a strong statement on State obligations to ensure non-discrimination based on gender. The Human Rights Committee explains that "the right to equality before the laws and freedom from discrimination, protected by article 26, requires States to act against discrimination by public and private agencies in all fields".¹⁶⁵ These fields include, amongst others, criminal law. Finally, there can be no laws that are more severe in punishing women than men. Such practice would be in violation of articles 6, 14, and 26 of the ICCPR protecting the rights to life, equality before the law and non-discrimination, respectively.

c. Sexual offences

According to article 12 of Iran's Penal Code, five kinds of punishments may be prescribed to persons convicted of a crime: *hadd* (plural: *hudud*), *qisas*, *diyat*, *ta'zirat* and *deterent*. If a person has been convicted of a *hudud* offence, such as adultery, the punishment is fixed and may not be changed at the judge's discretion. The punishment for such an offence ranges from stoning to death to flogging. In the punishment of a *qisas* offence, exact retaliation against the perpetrator of a crime may be undertaken.¹⁶⁶ Such harsh punishments are of particular concern to girls and women who appear to have a greater chance of being convicted for a crime under the Iranian Penal Code. This is because women, unlike men, cannot use the provision for temporary marriages (which permit sexual relations outside formal marriage) under the law as a justification for extra-marital relationships.¹⁶⁷

¹⁶⁰ Article 554, Islamic Penal Code; Mohammad Nayyeri, *Gender Inequality and Discrimination: The Case of Iranian Women* (Iran Human Rights Documentation Centre, 8 March 2013), p.8-9, available at: <http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U4cUrpRdU6E>

¹⁶¹ Article 14(1), ICCPR. Where appropriate, the term "victim" should also include "the immediate family and dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization" (*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted by UNGA Resolution 60/147 (2005), para. 9). The Basic Principles also set forth the measures that should be taken in order to ensure that a State has fully complied with a victim's right to an effective remedy.

¹⁶² HRC, GC 28, para. 18

¹⁶³ *Ibid*, para. 19

¹⁶⁴ *Ibid*

¹⁶⁵ *Ibid*, para. 31

¹⁶⁶ Mohammad Nayyeri, *Gender Inequality and Discrimination: The Case of Iranian Women* (Iran Human Rights Documentation Centre, 8 March 2013), p.5, available at: <http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U4cUrpRdU6E>

¹⁶⁷ Temporary marriages are permitted and regulated under the Iranian Civil Code. For permission see articles 1075-1077 of the Iranian Civil Code; for regulation see, e.g., Iranian Civil Code article 1113, which specifies that a temporarily married woman is not entitled to the cost of maintenance unless specific provisions have been arranged for such costs to be paid. Nowhere in the Civil Code does it refer to a temporary husband. See also

Research shows that women are more susceptible to an unfair trial due to higher illiteracy rates amongst the female population in Iran.¹⁶⁸ In 2008, the United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment reported that stoning as a method of capital punishment is used primarily for crimes such as adultery.¹⁶⁹ The report revealed that women "are disproportionately found guilty [of such crimes], which is inconsistent with the prohibition of discrimination on the basis of sex enshrined in all major human rights instruments".¹⁷⁰ These findings reflect entrenched gender-based violations,¹⁷¹ and an institutionalised infringement of women's fundamental right to equal treatment before a court or tribunal and the right to a fair hearing.¹⁷²

Discrimination has also been documented in the method of stoning used against women. While all offenders are placed in a sandpit, the distinguishing feature in punishment between genders is that women are covered in sand up to their chests, while men are only covered up to their waists. This makes it more difficult for women to escape the pit; escaping the pit is significant not only for the preservation of one's physical integrity, but also because if a convicted person manages to escape the pit of dirt they are buried in, they cannot be stoned again.¹⁷³ Women, being covered up to their chests in sand, are therefore not only subjected to a possible violation of their right to life (article 6, ICCPR) and a violation of the protection from torture, inhuman and cruel treatment, (article 7 and 10, ICCPR),¹⁷⁴ but they are also placed in a more life-threatening situation by virtue of their gender, constituting gender-based discrimination (article 2(1) read conjunctively with the aforementioned rights, and a violation of article 26, ICCPR).¹⁷⁵

Mohammad Nayyeri, *Gender Inequality and Discrimination: The Case of Iranian Women* (Iran Human Rights Documentation Centre, 8 March 2013), p.11, available at: <<http://www.iranhrdc.org/english/publications/legal-commentary/100000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#U4cUrpRdU6E>>

¹⁶⁸ Amnesty International, "Iran: Executions by Stoning" (2010), available at: <<http://www.amnesty.org/en/library/info/MDE13/095/2010>>; The illiteracy rates amongst women is a reflection of the barriers to accessing the right to education under article 13(1) of the ICESCR that many girls in Iran face. This, in itself, constitutes a failure by the State to fulfill its positive obligations in eliminating discrimination based on gender under the ICESCR and the ICCPR.

¹⁶⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment, Manfred Nowak, UN Doc A/HRC/7/3 (2008), para. 40

¹⁷⁰ *Ibid*

¹⁷¹ Article 2(1) and article 14(1), article 3, article 26, ICCPR

¹⁷² Article 14(1), ICCPR

¹⁷³ Amnesty International, "Iran: Executions by Stoning" (2010), available at: <<http://www.amnesty.org/en/library/info/MDE13/095/2010>>; while the old criminal law outlined the specific procedures and steps to be taken in stoning for criminal punishment, the new Islamic Penal Code of the Republic of Iran 1991, as amended in 1996 (and some parts amended in 2012 and 2013), omitted these provisions. In practice, therefore, Islamic *Shari'a* sources are consulted for the procedures governing stoning.

¹⁷⁴ The Human Rights Committee has recognized that death by stoning violates articles 7 and 10 of the ICCPR. See Human Rights Committee, *Concluding Observations on the second periodic report of the Sudan*, UN Doc CCPR/C/79/Add.85 (1997), para. 9; Report of the Special Rapporteur on the human rights situation in Iran, Dr Ahmed Shaheed, UN Doc A/68/503 (2013), para. 28.

¹⁷⁵ It is important to note that the Iranian Penal Code (article 225) retains a provision that allows for execution by stoning for the crime of, *inter alia*, adultery. As noted, women are more likely to be convicted of such crimes due to the discrimination within the court system and the discounting of women's testimonies in courtrooms. This structural discrimination within the legal system creates a situation wherein women are more likely to lose their lives simply due to the fact that they are women. Accordingly, the Special Rapporteur on the human rights situation in Iran has called for a moratorium on all executions (public and secret), including stoning. See Report of the Special Rapporteur on the human rights situation in Iran, Dr Ahmed Shaheed, UN Doc A/68/503 (2013), para. 77(d).

d. Testimony of women in court

The Penal Code fails to view both men and women as equal before the law. For example, according to article 199 of the new Islamic Penal Code, the testimony of women alone in the capacity of a witness is not given the same value as that of men in certain criminal cases of *hudud* and *qisas* in a court of law; in essence, it equates a woman's word to half that of a man's.

In some cases such as of *lavat* and *mosaheqeh*, women's testimonies are totally inadmissible.¹⁷⁶ In the cases of some *hadd* crimes such as *qavvadi* (pimping)¹⁷⁷ and the consumption of intoxicants,¹⁷⁸ the testimony of women is only admissible where there is at least one male witness to the purported crime; and, every two female witnesses equate to one male witness.

Diminishing the value of a woman's testimony symbolises the way in which the law regards women as unequal to their male counterparts. The Human Rights Committee, in its General Comment 28, iterated that it is expected that State parties equate accounts by women before the court to those of men.¹⁷⁹

e. The compulsory *hijab*

Article 638 of the Penal Code specifically provides that women may be punished by between 10 days and two months in prison or fines for not conforming to wearing the *hijab* publicly and covering their bodies in accordance with Islamic traditions.¹⁸⁰ Men, on the other hand, are not legally restricted to wearing certain dressing attire (see following section for further analysis of discriminatory practices in Iran's criminal law and practice). The Human Rights Committee considers that the State regulation of women's clothing in public may result in a violation of women's rights, particularly when the relevant regulations interfere with a woman's rights to non-discrimination,¹⁸¹ privacy,¹⁸² religion,¹⁸³ culture,¹⁸⁴ freedom of expression¹⁸⁵ or freedom of movement.¹⁸⁶ In addition, if a woman can be arrested for not conforming to a State regulated dress code, this law will likely contravene the woman's right to protection from arbitrary arrest and detention,¹⁸⁷ as guaranteed by the ICCPR.¹⁸⁸

Considering that most, if not all, of the aforementioned rights are engaged with respect to the nature of the compulsory regulation of the *hijab* on women in Iran, including the imposition

¹⁷⁶ According to the Iranian Penal Code, women cannot provide testimony for the acts of sodomy: articles 117 and 119, Islamic Penal Code. See also A An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law*. (Syracuse University Press: 1990), p. 90

¹⁷⁷ Article 137, Islamic Penal Code

¹⁷⁸ Article 170, Islamic Penal Code

¹⁷⁹ HRC, GC 28, para. 18.

¹⁸⁰ Article 638, Islamic Penal Code: "Those women that appear in the streets and public places without the Islamic *hijab*, shall be sentenced from ten days to two months' imprisonment or fined from fifty thousand to five hundred thousand Rials."

¹⁸¹ Article 2(1), article 3, article 26, ICCPR; article 2(2), article 3, ICESCR

¹⁸² Article 17(1), ICCPR

¹⁸³ Article 18(1), ICCPR; article 5(d)(vii), ICERD; article 2(1), article 14(1), article 30, CRC

¹⁸⁴ Article 27, ICCPR; article 15(1)(a), ICESCR

¹⁸⁵ Article 19(2), ICCPR

¹⁸⁶ Article 12(1), ICCPR; HRC, GC 28, para. 13

¹⁸⁷ Article 9(1), ICCPR

¹⁸⁸ HRC, GC 28, para. 13

of the requirement on non-Islam followers,¹⁸⁹ it is clear that the regulation violates the aforementioned ICCPR, ICESCR, ICERD and CRC provisions. In addition, reports show that a failure to comply with *hijab* laws often result in restrictions on a woman's rights to work, education and health care,¹⁹⁰ violating articles 6(1), 13(1) and 12(1) of the ICESCR, respectively.

III. The right to employment

The proposed Comprehensive Population and Family Excellence Plan aims to “increase the pregnancy rate to 2.5% of the quantitative population growth until the year 2025”.¹⁹¹ To achieve this, the State is intending to deny some women, particularly single women, access to jobs in the hope that it would encourage them to stay home and bear children.¹⁹² In addition to violating a woman's right to work,¹⁹³ the policy is an infringement of the prohibition of arbitrary interference with a woman's privacy and family.¹⁹⁴

a. Gender-based discrimination in the judiciary

Women are specifically discriminated against in the judicial sector; *fatwas* were issued in 1979 preventing women from becoming judges.¹⁹⁵ All female judges were subsequently stripped of their judgeships.¹⁹⁶ Effectively, according to legal expert Nayyeri, the new Constitution in Iran grants men the exclusive right to become a judge, as supported by the Process of Appointment of Judges Act of 1981.¹⁹⁷ In 1995, amendments were made to the 1981 Act that allowed for women to be appointed as part of the judiciary, but women were not granted authority to become judges. Instead, women received entitlements for subsidiary positions within the judiciary, taking up positions such as counsellors and investigators.¹⁹⁸

¹⁸⁹ Justice for Iran, “Thirty-five years of forced *hijab*: The widespread and systematic violation of women's rights in Iran” (2014), available at: <<http://justice4iran.org/english/wp-content/uploads/2014/03/Hejab-Report-JFI-English.pdf>>, p.24

¹⁹⁰ Justice for Iran, “Thirty-five years of forced *hijab*: The widespread and systematic violation of women's rights in Iran” (2014), available at: <<http://justice4iran.org/english/wp-content/uploads/2014/03/Hejab-Report-JFI-English.pdf>>

¹⁹¹ International Campaign for Human Rights in Iran, “650 activists say new population and family plan would stifle women” (*International Campaign for Human Rights in Iran*, 7 January 2014), available at: <<http://www.iranhumanrights.org/2014/01/women-population/>>

¹⁹² *Ibid*: Iranian.com, “Iran: Old challenges continue for women under new president” (2014), available at <http://iranian.com/posts/view/post/27982>

¹⁹³ Article 6(1), ICESCR

¹⁹⁴ Article 17(1), ICCPR

¹⁹⁵ Mohammad Nayyeri, *Gender Inequality and Discrimination: The Case of Iranian Women* (Iran Human Rights Documentation Centre, 8 March 2013), p.50 and footnote 70, available at: <<http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U4cUrpRdU6E>>

¹⁹⁶ Nikki R. Keddie, *Women in Iran since 1979* (Iranian Chamber Society, 2000), available at: <http://www.iranchamber.com/society/articles/women_iran_since_1979.php>. One female judge who was dismissed was Shirin Ebadi, a Nobel Peace Prize winner and the first woman President of Tehran's City Court (Yale Law School, “Dr Shirin Ebadi delivered Gruber Distinguished Lecture in Global Justice” (20 February 2014), available at: <<http://www.law.yale.edu/news/18031.htm>>

¹⁹⁷ Mohammad Nayyeri, *Gender Inequality and Discrimination: The Case of Iranian Women* (Iran Human Rights Documentation Centre, 8 March 2013), available at: <<http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U4cUrpRdU6E>>

¹⁹⁸ Mohammad Nayyeri, *Gender Inequality and Discrimination: The Case of Iranian Women* (Iran Human Rights Documentation Centre, 8 March 2013), p.56, available at: <<http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U4cUrpRdU6E>>

There are over 1,000 branches of General and Revolutionary Courts in Tehran alone, but none of these courts are presided over by a female judge.¹⁹⁹ The Human Rights Committee has expressed its concern regarding: the low number of women in decision-making positions in the public sector; the fact that certain public positions, such as positions in the Guardian Council or high-level positions in the Expediency Council, have never been filled by a woman; and the fact that women are excluded from certain public positions, such as the post of judge.²⁰⁰ These policies directly and specifically breach a woman's right to gain her living by work which she freely chooses or accepts.²⁰¹ The State has an obligation to safeguard this right.²⁰² Furthermore, a woman's right to engage in work of her choice is restricted by the limitations on her freedom of movement,²⁰³ as discussed above.

b. Gender-based discrimination in the office of President

Controversy remains as to whether women are entitled to be elected President in Iran. The wording of article 115 of the Constitution is ambiguous, in that it makes provisions for political or religious *rejal* to be elected President, but the definition of *rejal* (an Arabic term; singular: *rajol*, meaning "man") is unclear.²⁰⁴ The majority view in Iran is that the term refers exclusively to men, although this is not definitive.²⁰⁵ Following its review by the UN Human Rights Committee, the Iranian delegation asserted that Constitutional article 115 includes both men and women. Nevertheless, the Spokesperson of the Guardian Council – the body responsible for interpreting the Constitution²⁰⁶ – confirmed that "women still may not be elected as President" under article 115.²⁰⁷ Moreover, the *travaux préparatoires* of the Experts of the Constitution, who drafted the Constitution in 1979, reveal that the majority opposed women ascending to the Presidency; therefore, women were excluded by virtue of the term *rejaal*, an Arabic term intended to decrease sensitivity and add ambiguity to the issue.²⁰⁸ A

[discrimination-the-case-of-iranian-women.html#.U4cUrpRdU6E](http://www.dastour.ir/brows/?lid=%20%20%20108505)>; Process of Appointment of Judges Act (1981), as amended in 1995, available at: <<http://www.dastour.ir/brows/?lid=%20%20%20108505>>

¹⁹⁹ Mohammad Nayyeri, *An Analysis of the Responses Given by the Iranian Delegation to the Human Rights Committee* (Iran Human Rights Documentation Centre), available at:

<<http://www.iranhrdc.org/english/publications/legal-commentary/3536-an-analysis-of-the-responses-given-by-the-iranian-delegation-to-the-human-rights-committee.html#.U57qKY1dU6E>>; Process of Appointment of Judges Act (1981), as amended in 1995, available at: <<http://rc.majlis.ir/fa/law/show/91044>>

²⁰⁰ Human Rights Committee, *Concluding Observations on the third periodic report of the Islamic Republic of Iran*, UN Doc CCPR/C/IRN/CO/3 (2011), para 8

²⁰¹ Article 6(1), ICESCR

²⁰² *Ibid*

²⁰³ Article 1114, Iranian Civil Code; articles 18-19, Passport Law, 1973; article 12(1)-(2), ICCPR

²⁰⁴ For full discussion of this issue, see Human Rights in Iran Unit, "Electoral Process in Iran: Analysis of Political Participation and Iran's Compliance with International Human Rights Obligations". *Human Rights in Iran Unit Legal Research Series* (2014), p.20, available at: <<http://www.essex.ac.uk/hri/documents.aspx>>

²⁰⁵ Mohammad Nayyeri, *Gender Inequality and Discrimination: The Case of Iranian Women* (Iran Human Rights Documentation Centre, 8 March 2013), p.52, available at:

<<http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U4cUrpRdU6E>>

²⁰⁶ By virtue of article 98, Constitution of Iran

²⁰⁷ See Jam Online, "The Guardian Council's interpretation of 'Political Refugee' has not changed" (*Jam Online*) available at: <http://www.jamejamonline.ir/newstext.aspx?newsnum=100004167229>

²⁰⁸ Principle 88/1, soorat-e mashrooh-e mozakerat-e majlis-e Barresi-e nahayee-e qanun-e asasi [Summary Record of the Discussions of the Assembly of Experts for Constitution] vol. 3 (Tehran: The Islamic Consultative Assembly Publications, 1368), p. 1770-71; Mohammad Nayyeri, *Gender Inequality and Discrimination: The Case of Iranian Women* (Iran Human Rights Documentation Centre, 8 March 2013), p.53, available at: <<http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U4cUrpRdU6E>>; S Hechemi, *Iranian Constitutional Law: Governance and Political Institutions* vol. II (Mizan Publication 5th ed, 1391), p.275.

woman's ability to assume the office of President is also restricted by the limitations on her freedom of movement²⁰⁹ and right to work,²¹⁰ which are dictated by her husband, as outlined above.

In any event, the provision prohibits non-Shia Muslims from holding the office of President;²¹¹ as such, women belonging to minority religious groups are unequivocally barred from the office.²¹² In addition to the existing impediments that women already experience in exercising the right to work, women belonging to minority religious groups face further discrimination in their right to free choice of employment. This is in clear violation of article 5(e)(i) of ICERD which prohibits racial discrimination in all its forms. Moreover, it guarantees the right to everyone, without discrimination as to race, colour or national or ethnic origin, to free choice of employment.²¹³

c. Discrimination against minorities

As noted, the discrimination that women face in the sphere of employment is further exacerbated where a woman is a member of an ethnic or religious minority group. The unemployment rate of women countrywide in Iran was 20.9% in 2011,²¹⁴ suggesting that a significant proportion of unemployed ethnic minorities are likely to be women. This is because the unemployment rates for both women and ethnic minorities in Iran are high; the likelihood of overlap between these two groups is therefore significant.

The Special Rapporteur on Violence against Women, during her country visit to Iran in 2005, noted that women from marginalised ethnic groups face additional challenges, which are compounded by their existing diminished status in society.²¹⁵ These women also experience multiple forms of discrimination, which enhances discriminatory treatment in accessing employment.²¹⁶

IV. The Right to health and the right to an adequate standard of living

a. Right to health

The Committee on Economic, Social and Cultural Rights has recognised health as a “fundamental human right”.²¹⁷ Under its international legal obligations, Iran is required to

²⁰⁹ Article 1114, Iranian Civil Code; articles 18-19, Passport Law, 1973; article 12(1)-(2), ICCPR

²¹⁰ Article 1117, Iranian Civil Code; article 6(1), ICCPR

²¹¹ Article 115 of the Constitution of Iran stipulates that the President must hold a “convicted belief in the fundamental principles of the Islamic Republic of Iran and the official madhhab of the country”. The Iranian delegation confirmed that only Shi'a Muslims are eligible to the Presidency. See Human Rights Committee, *Islamic Republic of Iran's third periodic report of States parties*, UN Doc CCPR/C/IRN/3 (2010), para. 609.

²¹² Selection Law based on Religious and Ethical Standards (1995); Unrepresented Nations and Peoples Organisation, *Alternative Report to the Human Rights Committee: consideration of the 3rd periodic report of the Islamic Republic of Iran*. (2011) p.12, available at: < <http://www.unpo.org/downloads/331.pdf> >

²¹³ Article 5(e)(i), ICERD

²¹⁴ Statistics as stated in CESCR, *Concluding observations on the second periodic report of the Islamic Republic of Iran*, UN Doc E/C.12/IRN/CO/2 (2013), para 11

²¹⁵ Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Mission to the Islamic Republic of Iran, UN Doc E/CN.4/2006/61/Add.3 (2006), para 32

²¹⁶ *Ibid*

²¹⁷ CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, UN Doc

recognise “the right of everyone to the highest attainable standard of physical and mental health.”²¹⁸ Article 29 of the Iranian Constitution guarantees the right to health care as a universal right. Recent policy developments in Iran have led to the initiation of a universal health insurance scheme.²¹⁹ While the Constitutional provision on the right to health is not qualified, guaranteeing all people an equal right to health care *de jure*, the situation in practice is different.

Reports indicate that Iranian authorities have instituted new policies to tackle a declining population rate,²²⁰ which have impacted the universal right to health. In a reversal of past initiatives encouraging population control, some of the measures announced include a cancellation of cost-free vasectomies²²¹ and revocation of State subsidies for condoms and birth control pills.²²² This policy has led to a drastic decline in persons utilising these services: one doctor claimed that his average rate of vasectomies performed per month declined from 60 to, at most, 10.²²³

While a right to sterilization measures is not explicitly mentioned within the ICESCR, the right to health, as enshrined in article 12(1) of the ICESCR, requires States parties to ensure that measures are taken to improve access to affordable family planning of an individual’s choice.²²⁴ Importantly, States parties should also guarantee that women and men have access to information on sexual and reproductive health,²²⁵ and “have the freedom to decide if and

E/C.12/2000/4 (2000), para. 1.

²¹⁸ Article 12(1), ICESCR; also see article 2(2), ICESCR

²¹⁹ Financial Times, “Iran launches insurance plan to tackle high healthcare costs” (*Financial Times*, 6 March 2014), available at: <<http://www.ft.com/cms/s/0/c30c25a6-a2cd-11e3-9685-00144feab7de.html#axzz34jBgm3e>>

²²⁰ The proposed Comprehensive Population and Family Excellence Plan; Thomas Erdbrink, “Urged to multiply, Iranian couples are dubious” (*New York Times*, 7 June 2014), available at: <http://www.nytimes.com/2014/06/08/world/middleeast/iran-tehran-offers-incentives-to-middle-class-families-to-have-more-children-as-population-declines.html?_r=0>. See also Mehrnaz Samimi, “Iran’s billboard guide to family planning teaches ‘the more, the merrier’” (*Al-Monitor Iran Pulse*, 27 December 2013), available at: <<http://www.al-monitor.com/pulse/originals/2013/12/iran-billboards-samimi.html#>>; Scott Peterson, “Iran ends free vasectomies with ‘maximum-baby’ push” (*Christian Science Monitor*, 15 May 2014), available at: <<http://www.csmonitor.com/World/Middle-East/2014/0515/Iran-ends-free-vasectomies-with-maximum-baby-push>>; Vahid Salemi, “Iran urges baby boom, slashes birth control programs” (*USA Today*, 29 July 2012), available at: <<http://usatoday30.usatoday.com/news/world/story/2012-07-29/iran-baby-boom/56576830/1>>

²²¹ Vasectomies are a relatively minor operation that cuts, blocks or seals the tubes that allow men’s sperm to be carried from the testicles to the penis. Men undergo this surgery as a form of permanent contraception (National Health Service, “Vasectomy (male sterilization)”, available at: <<http://www.nhs.uk/Conditions/contraception-guide/pages/vasectomy-male-sterilisation.aspx>>. It should be noted, however, that vasectomies can be reversed if a couple decides that they want to have a child (Nuffield Health, “Men’s health”, available at: <<http://www.nuffieldhealth.com/mens-health/vasectomy-reversal>>).

²²² Thomas Erdbrink, “Urged to multiply, Iranian couples are dubious” (*New York Times*, 7 June 2014), available at: <http://www.nytimes.com/2014/06/08/world/middleeast/iran-tehran-offers-incentives-to-middle-class-families-to-have-more-children-as-population-declines.html?_r=0>; nevertheless, it is important to note that the new policies do not abolish family planning services altogether (Farzaneh Roudi, “Iran is Reversing its Population Policy” (Wilson Centre, August 2012), available at: <http://www.wilsoncenter.org/sites/default/files/iran_is_reversing_its_population_policy.pdf>).

²²³ As cited in Tho Thomas Erdbrink, “Urged to multiply, Iranian couples are dubious” (*New York Times*, 7 June 2014), available at: <http://www.nytimes.com/2014/06/08/world/middleeast/iran-tehran-offers-incentives-to-middle-class-families-to-have-more-children-as-population-declines.html?_r=0>

²²⁴ CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, UN Doc E/C.12/2000/4 (2000), para. 14 and footnote 12

²²⁵ *Ibid*, para. 11

when to reproduce”.²²⁶ The lack of free family planning services and high costs of contraception may also engage the right to life under article 6(1) of the ICCPR.²²⁷ Furthermore, the policy is in violation with a woman’s right to found a family, and non-interference with family life.²²⁸ The Human Rights Committee has asserted in order to protect the right to found a family, family planning policies should be compatible with the provisions of the ICCPR, and should not be discriminatory or compulsory.²²⁹

Family planning measures adopted by the State “should not be discriminatory”,²³⁰ in accordance with the right to found a family (article 23(2), ICCPR) and the general principle of non-discrimination (article 2(1), ICCPR). Specialist services providing information on sexual and reproductive health should be made available, without bias.²³¹ Concerns have been raised that by encouraging women to produce more children, the State is indirectly encouraging women to remain within the home and outside the employment sector.²³² These implications could lead to further discrimination of women in relation to unequal access to employment; whether the State has intended such effects is irrelevant, as laws must be non-discriminatory both *de jure* and *de facto*.²³³

A woman’s right to health might be further infringed where her ability to seek medical attention and services from other areas of the country, or abroad, may be impeded by a restriction on her freedom of movement. There is, therefore, an inherent connection between the freedom of movement (article 12(1)-(2), ICCPR) and the right to health care (article 12(1), ICESCR) for women in Iran. An infringement upon a woman’s right to health may, further, violate her right to family life,²³⁴ as well as a woman’s rights to work²³⁵ and education,²³⁶ where a failure to obtain medical care may render her physically or mentally

²²⁶ CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, UN Doc E/C.12/2000/4 (2000), para. 14 and footnote. 12. See also CEDAW’s *Concluding Observations on the second periodic report of the Czech Republic*, UN Doc A/57/38 (2002), para. 101-102, which expresses concern with regard to the fact that voluntary sterilization is only allowed for health reasons. This further implies that women and men are expected to have an equal choice in relation to their decisions on sterilization, regardless of whether these reasons are directly health-related.

²²⁷ See the Human Rights Committee’s *Concluding Observations on the fifth periodic report of Poland*, UN Doc CCPR/C/82/POL (2004), para. 9, where the Committee points to the “high cost of contraception, the reduction in the number of refundable oral contraceptives [and] the lack of free family planning services” as cause for concern under the right to life (article 6 ICCPR).

²²⁸ Article 17(1), article 23(2), ICCPR

²²⁹ Article 23(2), ICCPR; Human Rights Committee, *General Comment No. 19: Article 23 (The Family) Protection of the Family, The Right to Marriage and Equality of the Spouses*, (1990), para. 5.

²³⁰ Human Rights Committee, *General Comment No. 19: Article 23 (The Family) Protection of the Family, The Right to Marriage and Equality of the Spouses*, (1990), para. 5.

²³¹ Office of the United Nations High Commissioner for Human Rights. *The Right to Health*, p.13, available at <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>

²³² As stated by sociologist Azadeh Kharazi in Thomas Erdbrink, “Urged to multiply, Iranian couples are dubious” (*New York Times*, 7 June 2014), available at:

http://www.nytimes.com/2014/06/08/world/middleeast/iran-tehran-offers-incentives-to-middle-class-families-to-have-more-children-as-population-declines.html?_r=0

²³³ CESCR, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)*, UN Doc E/C.12/2005/4 (2005), para. 10; HRC GC 28, para. 3-4

²³⁴ Article 17(1), article 23(2), ICCPR

²³⁵ Article 6(1), ICESCR

²³⁶ Article 13(1), ICESCR

unable to exercise these rights. Furthermore, a violation of a woman's right to health may constitute a breach of the non-derogable,²³⁷ inherent right to life.²³⁸

It is noteworthy that an infringement of a woman's right to exercise her right to health in Iran may impact the rights of her children to access health. For example, prevention of infant and child mortality,²³⁹ preventing and remedying traditional practices prejudicial to the health of children such as female genital mutilation,²⁴⁰ and the registration of a child after birth²⁴¹ may be adversely affected.

As part of its legal obligations under the ICCPR and the ICESCR, Iran is required to take affirmative action to create an environment for women, who already assume an inferior status in Iranian society, to realise their right to health.²⁴² The CESCR has stressed the importance of positive discrimination with regard to the economic, social and cultural rights of women in General Comment 16.²⁴³ The omission, in Iran's law, to address the particular health needs of women in Iran may violate the right to health under ICESCR article 12(1), and constitute gender discrimination contrary to article 2(2).

Indirect discrimination in the right to access to health

Much of the discrimination in exercising the right to health that women in Iran face is compounded by a woman's particular circumstances.²⁴⁴ Discrimination in accessing the right to health care is often experienced by members of minority ethnic groups in Iran who live in underserved rural regions. The province of Sistan-Balochistan, where the Baloch people form a majority of the population, is the least developed region in Iran, with the worst indicators for life expectancy, access to water and access to sanitation.²⁴⁵ The nine-year difference

²³⁷ Human Rights Committee, *General Comment No. 6: Article 6 (The right to life)*, UN Doc HRI/GEN/1/Rev.9 (Vol. I) (1982), para. 1.

²³⁸ Article 6(1), ICCPR

²³⁹ Article 24(2)(a), CRC

²⁴⁰ Article 24(2)(a), (f), article 24(3), CRC

²⁴¹ Article 24(2), ICCPR and article 7(1), CRC

²⁴² The Human Rights Committee has recognised that "the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help perpetuate discrimination". While the right to health is not explicitly included in the ICCPR, access to adequate health care and gender discrimination are inextricably linked. It is thus clear that measures taken to address the disparity between equality for women and men must also address issues with regard to women's right to health.

Accordingly, the CESCR has similarly encouraged States parties to adopt measures of affirmative action in areas of gender discrimination (see, e.g., CESCR, *Concluding Observations on the initial periodic report of Kenya*, UN Doc E/CN.12/KEN/CO/1 (2008), para. 14; CESCR, *Concluding Observations on the initial periodic report of Latvia*, UN Doc E/CN.12/LVA/CO/1 (2008), para. 39). In addition, the ICESCR states in its article 11(1) that States parties must "create conditions which would assure to all medical service and medical attention in the event of sickness".

²⁴³ CESCR, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)*, UN Doc E/C.12/2005/4 (2005), para. 21. See also CESCR, *Concluding Observations on the initial periodic report of the Democratic Republic of the Congo*, UN Doc E/C.12/COG/CO/1 (2013), para. 15, which "requests the state party to provide full information on the legal and material situation of women and on the steps taken to combat discrimination against them", including factors such as their enjoyment of the right to health and access to social services.

²⁴⁴ Poverty, economic dependence, gender-based violence, discrimination on the basis of race and other factors, limited power over sexual and reproductive lives and a lack of influence in decision-making are all social realities that negatively impact women's health: Office of the United Nations High Commissioner for Human Rights. *The Right to Health*, p. 12, available at <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>

²⁴⁵ Unrepresented Nations and Peoples Organisation, "Alternative Report to the UN Committee on Economic, Social and Cultural Rights: consideration of the 2nd periodic report of the Islamic Republic of Iran". (2013),

between life expectancy in Tehran (over 70 years in 1996) and Sistan-Balochistan (61 years) reflects “a lack of investment in health clinics and other facilities in remote rural areas.”²⁴⁶ A reported “complete lack” of basic health services in areas where Kurds reside may also indicate the discrimination that ethnic minorities face in accessing health care.²⁴⁷ Arab minority women are also often deprived of basic infrastructure and services, including hospitals.²⁴⁸ It is specifically because particular ethnic groups largely populate rural areas that the impeded access to health care can be seen as discrimination also on ethnic grounds. This discrimination has negative impacts upon the lives of women in particular, due to both the additional health risks posed by pregnancy and other female-specific health issues, as well as the multifaceted discrimination that women of an ethnic minority community face.

The Committee on Economic, Social and Cultural Rights has specifically emphasised the “essential element” of accessibility regarding the right to health; not only does it include the dimension of non-discrimination, but it also includes physical accessibility. Health facilities, goods and services must be within safe physical reach for “all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities [and] women”.²⁴⁹

The discrimination in access to health care may be linked to racial discrimination. The Constitution does not adequately prohibit racial discrimination. The reference to equal rights without prejudice to “colour, race, language and the like” in article 19 of the Constitution does not sufficiently cover the forms of racial and ethnic discrimination prohibited under article 1 of the Convention on the Elimination of All Forms of Racial Discrimination 1966, to which Iran is party.¹ Racial discrimination in article 1(1) of ICERD is vast and dynamic, defined as:

[A]ny distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The racial discrimination in exercising the right to health that ethnic minority women in Iran may face is in direct contravention of article 5(e)(iv) of ICERD, which recognises the right to public health and medical care without distinction as to race, colour, or national or ethnic origin. The Committee on the Elimination of Racial Discrimination has expressed its concern over Iranian women of minority origin facing double discrimination and urged the State to pay particular attention to such women.²⁵⁰

p.10, available at: <<http://www.unpo.org/downloads/618.pdf>>; CESCR, *Concluding observations on the second periodic report of the Islamic Republic of Iran*, UN Doc E/C.12/IRN/CO/2 (2013), para. 25

²⁴⁶ Unrepresented Nations and Peoples Organisation, “Alternative Report to the UN Committee on Economic, Social and Cultural Rights: consideration of the 2nd periodic report of the Islamic Republic of Iran”. (2013), p.10-11, available at: <<http://www.unpo.org/downloads/618.pdf>>; United Nations Country Team in Iran.

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²⁴⁷ Unrepresented Nations and Peoples Organisation, “Alternative Report to the UN Committee on Economic, Social and Cultural Rights: consideration of the 2nd periodic report of the Islamic Republic of Iran”. (2013), p.11, available at: <<http://www.unpo.org/downloads/618.pdf>>

²⁴⁸ Unrepresented Nations and Peoples Organisation, *Alternative Report to the Human Rights Committee: consideration of the 3rd periodic report of the Islamic Republic of Iran*. (2011), p.6, available at: <<http://www.unpo.org/downloads/331.pdf>>

²⁴⁹ CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, UN Doc E/C.12/2000/4 (2000), para. 12(b)

²⁵⁰ Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Islamic Republic of Iran*, UN Doc CERD/C/IRN/CO/18-19 (2010), para. 9. The Committee issued a General Recommendation on

b. Right to an adequate standard of living

Iran is legally bound to respect, protect and guarantee the right “of everyone to an adequate standard of living for himself and his family ... including adequate food, clothing and housing”.²⁵¹ The reference to “himself and his family” is to be understood in a wide sense, including women and female-headed households.²⁵² Article 31 of the Iranian Constitution guarantees the right of every Iranian to possess housing commensurate with their needs. Nevertheless, adequate housing is constrained by the State’s failure to respect its legal obligations with regard to the country’s ethnic minorities, many of whom live in rural areas. The CESCR has highlighted its concern over the poor living conditions in regions of Iran “traditionally inhabited by ethnic minorities, in some cases lacking basic services such as electricity, plumbing, sewage systems, public transport, medical facilities or schools”.²⁵³ The UN Special Rapporteur on adequate housing also noted that the living conditions of regional minorities in Iran remain unsatisfactory.²⁵⁴

Women, in particular, are adversely affected, as unsanitary conditions may cause complications and health risks related to sexual and reproductive health. The right to an adequate standard of living is therefore linked to the right to health²⁵⁵ and freedom of movement.²⁵⁶ There is an inherent overlap between the right to an adequate standard of living and the right to health care, as the right to health encompasses “a wide range of socio-economic factors”, including food and nutrition, housing, access to safe and potable water, and adequate sanitation.²⁵⁷ Moreover, where a lack of an adequate standard of living leads to fatal medical complications, a woman’s right to life may be violated.²⁵⁸

Given the remote and isolated locations of many ethnic minority communities in Iran, the rights to access work,²⁵⁹ education²⁶⁰ and justice²⁶¹ may also be engaged. The Committee on the Rights of the Child has made it clear that “adequate housing must be in a location which allows access to” exercising these rights.²⁶²

this particular issue, which should serve to guide the policies of the Islamic Republic of Iran: CERD, *General Recommendation 25: Gender-related Dimension of Racial Discrimination*, UN Doc A/55/18 paras. Annex V (2000)

²⁵¹ Article 11(1), ICESCR. This requirement applies equally to reproductive health services. See CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, UN Doc E/C.12/2000/4 (2000), para. 8, 14, 21 and 36; CESCR, *Concluding Observations on the initial periodic report of Turkey*, UN Doc E/C.12/TUR/CO/1 (2011), para. 29.

²⁵² Human Rights Committee, *General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant)*, UN Doc E/1992/23, (1991), para. 6.

²⁵³ CESCR, *Concluding observations on the second periodic report of the Islamic Republic of Iran*, UN Doc E/C.12/IRN/CO/2 (2013), para 23

²⁵⁴ Report of the Special Rapporteur on the right to adequate housing, Mission to the Islamic Republic of Iran, UN Doc E/CN.4.2006/41/Add.2 (2006), para. 76 (ethnic minorities), 81-82 (religious minorities).

²⁵⁵ Article 12(1), ICESCR

²⁵⁶ Article 12(1)-(2), ICCPR

²⁵⁷ CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, UN Doc E/C.12/2000/4 (2000), para. 4.

²⁵⁸ Article 6(1), ICCPR

²⁵⁹ Article 6(1), ICESCR

²⁶⁰ Article 13(1), ICESCR

²⁶¹ Article 14, article 26, ICCPR

²⁶² CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, UN Doc E/C.12/2000/4 (2000), para. 8(f).

V. Conclusion

This study has considered Iran's compliance with its international human rights obligations to secure non-discrimination and to uphold the human rights of women within its jurisdiction. While CEDAW is not applicable to the Islamic Republic of Iran, this study has shown how other relevant treaties, such as the ICCPR, ICESCR, ICERD and the CRC are consistently violated in the case of women. The status of women in Iran is governed by a domestic framework of laws. That framework finds its basis in the Constitution, in particular the requirement of conformity with Islamic criteria with regard to women, and its expression across specific civil and criminal laws.

This study has analysed in particular how women's rights in Iran fall short of international human rights standards in a number of areas, namely: marriage, criminal law, employment, right to health and living standards. Moreover, the particular situation of various groups of women in Iran has been noted, including ethnic and religious minorities.

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