



**August 2013**

**Refugee Documentation Centre**

**Country Marriage Pack**

**Afghanistan**

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**1. Types of Marriage**

**Civil marriage**

The *Afghan Independent Human Rights Commission* in December 2009 state in a report that:

“The present rules on marriage and family life are ambiguous and in contravention with the Constitution and international legal standards. The Afghan Civil Code contains certain provisions on marriage, its dissolution, and protection of family. The Code just alludes to these issues and more extensive regulations are needed to protect family life. A new law that is being codified bases family protection on the Afghan Constitution and applicable international law. The current rules have determined a marriage age of 18 years for boys and 16 years for girls.” *Afghan Independent Human Rights Commission (9 December 2009) Report on the Situation of Economic and Social Rights in Afghanistan IV, p.54*

**Religious marriage**

Reviewing events of 2012 a publication in January 2013 by *Freedom House* states:

“Legislation passed in 2009 derogated many constitutional rights for women belonging to the Shiite Muslim minority, leaving questions of inheritance, marriage, and personal freedoms to be determined by conservative Shiite religious authorities...Women’s choices regarding marriage and divorce remain circumscribed by custom and discriminatory laws, and the forced marriage of young girls to older men or widows to their husbands’ male

relations is a problem, with the UN Children's Fund (UNICEF) reporting that nearly 40 percent of Afghan girls are married before the legal age of 16." (Freedom House (January 2013) *Freedom in the World 2013, Afghanistan*)

This report also points out that:

"Women's choices regarding marriage and divorce remain circumscribed by custom and discriminatory laws, and the forced marriage of young girls to older men or widows to their husbands' male relations is a problem. Nearly 60 percent of Afghan girls are married before the legal age of 16, according to UNICEF, and in 2009 UNICEF ranked Afghanistan as the world's worst country in which to be born." (ibid)

### **Traditional/Other Marriages**

A report in May 2011 by *Landinfo* states:

"The different ethnic groups in Afghanistan have diverse traditions concerning agreements on – and entry into – marriage. In addition, these traditions are not uniformly practised within the groups, and large local variations may occur. Irrespective of kinship group, ethnicity and geographical region, most of the marriages in Afghanistan are arranged, in the sense that they are entered into following an agreement between families/groups." (Landinfo (19 May 2011) *Afghanistan: Marriage*, p.4)

This report also notes:

"Exchange marriage, or baadal, is an agreement between two families on "exchanging" daughters or other female family members through marriage. The daughter (the agreements may involve several women from each family) of one of the parties is married into the other party's family, and vice versa." (ibid, p.11)

It is also noted in this report that:

"Baad marriages are agreements concluded as a consequence of a family, a clan or a tribe acknowledging the responsibility to compensate the victim of a crime. It involves giving a young girl(s) to the victim's family/group. The marriages are agreed with a view to solving/ending conflicts that may involve, or have developed into, a blood feud. Often, local jirgas or shuras will decide that a conflict must or can be solved by intermarriage." (ibid, p.13)

Commenting on events of 2012, a document issued in April 2013 by the *United States Department of State* notes:

"The EVAW law criminalizes forced or underage marriage and baadh. An estimated 70 percent of marriages were forced, and despite laws banning the practice, a large proportion of brides were younger than the legal marriage age of 16 (or 15 with a guardian's and a court's approval)... Very few marriages were registered, leaving forced marriages outside legal control." (United States Department of State (19 April 2013) *2012 Human Rights Report: Afghanistan*)

This report also points out that:

“Despite a law setting the legal minimum age for marriage at 16 for girls and 18 for boys, international and local observers estimated that approximately 60 percent of girls were married younger than the age of 16. Under the EVAW law those who arrange forced or underage marriages may be sentenced to imprisonment of not less than two years, but implementation of this law remained limited. The Law on Marriage states that marriage of a minor may be conducted with a guardian’s consent.” (ibid)

In December 2010 a report published by the *United Nations Assistance Mission in Afghanistan* notes:

“A forced marriage is one in which the free and full consent of one or both of the intending spouses is missing. Forced marriage in Afghanistan encompasses baad (the exchange of girls for dispute resolution), baadal (exchange marriages), child marriage (by its very nature forced) and coercion of widows to marry a relative of a deceased husband. According to a 2008 report by UNIFEM, 70 to 80 per cent of Afghan marriages are forced. Through country-wide discussions and analysis of cases reported, UNAMA HR found that often a woman’s free and informed consent was not given in many marriages.” (United Nations Assistance Mission in Afghanistan (9 December 2010) *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, p.6)

The *Institute for War & Peace Reporting* in November 2010 states:

“In conservative Afghan society, many decisions about a woman’s future are taken by male family members. Observers say customary law takes precedence over Islamic law, which gives women the right to choose their own husband and forbids forced marriage.” (Institute for War & Peace Reporting (26 November 2010) *Afghan Runaways Flee Forced Marriages*)

The *United Nations Children’s Fund* in March 2010 states:

“Forced marriage is a cultural practice in Afghanistan. Marriages are used to settle debts or to strengthen family status through social alliances. Poor families consider a daughter as an economic burden who must be married quickly to reduce the financial strain. With the ongoing conflict in Afghanistan many parents aim to marry their daughters at young ages to secure their futures.” (United Nations International Children’s Fund (17 March 2010) *Forced and early marriages still common for girls in Afghanistan*)

A report published in December 2009 by *Human Rights Watch* states:

“Forced and child marriage in Afghanistan remain widespread and socially accepted. Though the data on prevalence varies, all surveys indicate that well over half of all marriages are forced or involve girls under age 16.” (Human Rights Watch (6 December 2009) *We Have the Promises of the World”, Women’s Rights in Afghanistan*, p.49)

This report also notes:

“Currently child marriage is not a crime in Afghan law, but is prohibited under the Civil Code. Article 70 states that marriage is permissible when a girl is 16 and a boy is 18, while article 71 states that the marriage of a girl under 15 is prohibited. If a girl is between 15 and 16 and she wishes to marry, her father or a court has the right to consent to her marriage. However, there are no punishments stipulated for those who violate these laws, so the law has little or no impact on marriage practices.” (ibid,pp.58-59)

A report published in February 2009 by the *Afghanistan Research and Evaluation Unit* commenting on the different forms of marriage states:

“Exchanging daughters in marriage (badal) is recognised by the communities where the research was conducted as a practice that perpetuates violence toward women in families. It was also said to be un-Islamic by some. Despite this, exchange marriage is one of the most common forms of marriage practised in the communities: marriages had been conducted by exchanging daughters in approximately half of the core households of the case study families where the research was conducted.” (Afghanistan Research and Evaluation Unit (February 2009) *Decisions, Desires and Diversity: Marriage Practices in Afghanistan*, p.41)

The *Afghanistan Independent Human Rights Commission* notes in a report published in December 2008 that:

“Forced marriage is prevalent, and couples that decide to marry without parental consent are often prosecuted and persecuted by respective family members.” (Afghanistan Independent Human Rights Commission (December 2008) *Economic and Social Rights Report in Afghanistan III*, p.8)

It is also noted in this report that:

“Most of the violations against the right to free marriage stems from the treatment of women as commodities. There are three types of marriage that fall under this category: sale, bad dadan, and badal. Sale marriage occurs when a women is sold for a fixed quantity of goods, cash, and/or to settle a debt.” (ibid, p.34)

In February 2008 research carried out by *Womankind Worldwide* states:

“Informal justice, or customary law, largely regulates marriage practice and disputes....” (Womankind Worldwide (February 2008) *Taking Stock Update: Afghan Women And Girls Seven Years On*)

This report also notes:

“The lack of rule of law and power held by local strongmen (usually military commanders) contributes to the prevalence of forced marriages, as girls are often forced to marry against their will at the command of a local militant or warlord who holds power and influence in the community.” (ibid)

The *Finish Immigration Service* in May 2007 report that:

“According to an official of the Ministry of Women’s Affairs, the modern western understanding of marriage is not valid in Afghanistan: marriage has more to do with power and economic interests than with love. Historically, gender roles and women’s status have been tied to property relations. In Afghanistan property includes livestock, land, and houses or tents. Women and children tend to be assimilated into the concept of property and to belong to a male. According to an official of the Ministry of Women’s Affairs, in the Afghan civil law it is clearly stated, that the minimum marriage age for girls is 16 and for boys 18 years. Theoretically a young couple can get married without the consensus of their parents, but if they want to register their marriage in a court, the court will check from the parents whether the couple has their approval for the marriage. If the court suspects that sexual intercourse has taken place before marriage, this can lead to prosecution.” (Finnish Immigration Service (1 May 2007) *Report from a fact-finding mission to Afghanistan; 5 - 19 September 2006*, p.5)

A paper issued in August 2006 by the *Heinrich Boll Foundation* states:

“Firstly, customs and traditions play a more significant role in determining the fate of marriages, instead of law. And very often customs and traditions take a far more influential position than the actual laws in our society. Secondly, most marriages do not occur based on the will of the man and woman but according to a decision taken by the elders. Articles 66 and 77 clarify the role of both man and woman in getting married. But practice in Afghanistan is otherwise....” (Heinrich Boll Foundation (August 2006) *Roundtable Conference “Comparative Analysis of Family Law in the Context of Islam”, August 15-17, 2006 Kabul, Afghanistan*, p.9)

### **Proxy marriage**

No information on this issue could be found among the sources available

## **2. Formalities of Marriage(Consent, Minimum Age and Registration of Marriage)**

A report in May 2011 by *Landinfo* states:

“The authorities do not register marriages in a systematic manner, and marriage statistics are not available.” (Landinfo (19 May 2011) *Afghanistan: Marriage*, p.8)

This document also points out that:

“According to Section 61 of the Afghan Civil Code, all marriages shall be registered. However, there is ample evidence to suggest that the requirement for registration is complied with only to a very limited extent.” (ibid, p.22)

An undated document published by the *International Centre for Human Rights and Democratic Development* states:

“Marriage registration is mandatory under Islamic law, or Sharia, and Afghanistan’s Civil Code, which regulates the rights and responsibilities of a

wife, husband and children.” (International Centre for Human Rights and Democratic Development (Undated) *Marriage Registration And The Marriage Certificate*, p.1)

This document also states:

“Typically marriages can be registered in two ways: either traditionally - which is the most common practice in Afghanistan - or legally through the Records and Registration Court.” (ibid, p.3)

This document also notes:

“It is common practice in Afghanistan that the person performing the marriage ceremony documents and records its details such as the amount of Mah'r, the conditions of the marriage (if applicable) and details about the witnesses on a blank paper. Both parties of the marriage and their relatives then sign this document or register their finger prints on it. This is an unofficial document and the courts do not recognize it as proof of marriage since it does not have any supporting legal documentation. An official and legally binding marriage document can only be obtained by applying to the courts or to the corresponding office for registration.” (ibid, p.3)

It is also stated in this document that:

“A couple may refer to the registration courts or the primary courts in the provinces and districts to register their marriage. Registration of the marriage in the courts is possible either before or after the actual wedding ceremony.” (ibid, p.3)

In March 2012 *Human Rights Watch* states in a report that:

“...in Afghanistan, marriage before the age permissible under Afghan law—16 for a girl (or 15 with approval of her father or a relevant court) and 18 for a boy.” (Human Rights Watch (28 March 2012) *“I Had To Run Away”, The Imprisonment of Women and Girls for “Moral Crimes” in Afghanistan*, p.97)

A report published in 2012 by the *Social Institutions and Gender Index* notes:

“The Constitution provides for the recognition of Sharia law. Under Sharia law, there is no minimum age for marriage, however it is generally recognised as the age of a child who has reached puberty.” (Social Institutions and Gender Index (2012) *Afghanistan*)

In November 2011 a publication issued by the *Afghanistan Independent Human Rights Commission* states:

“A marriage certificate basically includes marriage registration, entry into marriage, and the responsibilities of the two parties to marriage.” (Afghanistan Independent Human Rights Commission (November 2011) *Fifth Report, Situation of Economic and Social Rights in Afghanistan*, p.50)

This report also states:

“Lack of marriage registration facilities has led to the failure of the overall marriage registration plan.” (ibid, p.50)

In 2010 a report published by the *International Centre for Human Rights and Democratic Development* states:

“The 1977 Afghan Civil Code regulates marriage, outlines spousal responsibilities, and provides for formal registration of marriage through a contract called *nikahnama*. Marriage can be registered in family courts or, if unavailable, in civil courts. The marriage contract outlines rights and responsibilities for both parties and has provisions for dissolution of the marriage. While registration of marriages has never been a wide-spread practice in Afghanistan, the informal marriage contract is ubiquitous and is part of a process that begins with engagement and ends with the *nikah* (marriage ceremony). For the most part, registration of marriage takes place only when there is a need to prove the relationship, such as if the couple plans to travel outside the country. However, there are other documents that can be used as proof of marriage for travel or for dispute resolution.” (International Centre for Human Rights and Democratic Development (2010) *A women’s place, Perspectives on Afghanistan’s evolving legal framework*, p.27)

This report also states:

“The 1977 Afghan Civil Code is the most recent comprehensive code regulating marriage. Article 60 of the Civil Code defines marriage as a contract legalizing intercourse between man and woman with the objective to establish a family.” (ibid, p.28)

This document also states:

“Article 61 provides for registration of marriage through formalization of a marriage contract in a document called *nikahnama*, at the appropriate offices.” (ibid, p.28)

It is also noted in this report that:

“Formally, *nikahnama* is a document issued by the court following the registration of marriage. It outlines and formalizes all terms and conditions of marriage as negotiated by the families, as it is rare for the couple themselves to negotiate terms of their own marriage. Formal *nikahnama* can be used in courts to settle disputes and serves as proof of marriage. Informally, *nikahnama* refers to an agreement reached between a bride’s and groom’s family after lengthy negotiations concerning the conditions of marriage, rights of the wife, and any penalty in case of mistreatment or divorce. If there is a literate member of the family, this agreement is put in writing. If not, these agreements largely remain verbal and are concluded in the presence of male relatives of both parties. The groom could be present at these negotiations, but is rarely involved in the discussion of the terms and conditions, whereas the bride is always absent and is represented by her father and other male relatives. But the informal marriage contract is not recognized by the courts and cannot be used to resolve disputes in the formal justice system.” (ibid, pp.28-29)

This publication also reports that the:

“The Afghan Civil Code outlines conditions for the recognition of marriage. The ceremony of nikah (offer and consent by the parties or their guardians) is conducted between a man 18 years or older and a woman 16 years or older in the presence of two witnesses—provided there are no permanent or temporary marriage prohibitions for either of the parties. For 15-year old girls, consent of their legal guardian is required. The court may marry couples who are “of the Book,” in other words, Muslim, Jewish or Christian, but the ceremony must follow Islamic rules. A Muslim man can marry any woman of the Book, but if the woman practices a different religion she must convert to Islam before the marriage. A non-Muslim man cannot marry a Muslim woman unless he first converts to Islam. After the couple’s eligibility is confirmed and the marriage contract is signed, the court official performs the religious nikah ceremony (which may be omitted if the couple is either Jewish or Christian). The court usually takes a week to process and issue the document of nikahnama to the couple. There appears to be no provision in the Afghan Civil Code for the registration of couples who have had nikah performed by a mullah outside the family court system.” (ibid, pp.28-29)

It is also noted in this document that:

“Marriage registration, as evidenced by nikahnama, promotes the idea of consensual marriage through the ceremony of offer and consent. Since 2007, the idea of mutual consent is also central to the updated marriage contract. It could be used as a mechanism to counteract under-age marriage, forced marriage, and the practice of bad. The contract also offers a degree of protection for women while they are married, or in the case of their husband’s death, divorce or separation. But the prenuptial negotiations conducted by families are rarely written, and when they are these papers are not recognized by the court. Also, due to the nature of the engagement negotiations, women are not always able to access nor request that the community elders bear witness to their rights. As a result, it is hard for a woman to claim her right to alimony and mahr in the case of divorce; in the case of the death of her husband, she has no legal recourse to collect her inheritance. Women are usually vulnerable to abuse in the absence of a formal marriage registration.” (ibid, p.30)

This report also states:

“Currently, marriage may be registered in a family court or, if unavailable, in civil courts. In early 2008, the Supreme Court granted the power to register marriages to provincial court directorates. District is the lowest level where courts are present, although this is not true in all districts as only large and medium- sized districts will have a court. It is unclear how many of the courts are aware of the law and able to register marriages. Directives are not always implemented and judges function as a safeguard for established cultural practices rather than codified laws. In most cases, given the fact that the judicial system is slow and overloaded, not all courts have the capacity to register marriages. As a result, the system remains largely inaccessible. Typically, a couple will apply for a nikahnama when they have been blessed by a mullah and already had their wedding celebration. This is a departure from the legal guidance of the Afghan Civil Code. Application procedures

have been developed on the assumption that married couples will have to register their marriage, and in the hope that the campaign for marriage registration will increase the number of marriages performed by courts. To obtain a nikahnama, the couple must petition the family court in the capital city of their province. The petition should include the names of both parties.” (ibid, p.31)

This publication also notes:

“Articles 46 through 50 of the Afghan Civil Code mandate civil status registration of all people over 18 in special registration books, where residency address, marriage, births, divorce and death are noted. Nevertheless, such registrations happen rarely, if at all. Family matters in Afghanistan are almost exclusively seen as private domain and thus outside the state’s reach.<sup>92</sup> As a result, the need to protect women’s rights in marriage is a foreign idea: protection of women is usually seen as a matter of family pride and must be dealt with between the families in private.<sup>93</sup> Additionally, Afghans see the state at best as a neutral agency, and at worst as an invading entity that has no place in the highly intimate affairs of marriage. In this context, numerous barriers create an environment in which a campaign for enforcement of mandatory registration of marriages is doomed to fail. First, there is the lack of incentives to register marriage. Second, state institutions reach at best only half of the population in Afghanistan. Third, the registration process is lengthy and costly. Fourth, there is a lack of awareness about the fact that registration of marriages is available in Afghanistan. Fifth, there is no consensus on how to reform the system.” (ibid, pp.28-29)

It is also recorded in this document that:

“Nikahnama is not the only legal means to provide proof of a relationship. There are a number of documents that a couple can obtain for travel or to resolve disputes. These include:

- Pilgrimage Nikahnama, obtained solely for a couple to travel for hajj<sup>87</sup>.
- Mahramyat Khat, obtained to indicate that a woman is traveling with her husband as her chaperone.
- Nikahnama, obtained as proof that a couple is indeed married and had a marriage ceremony in the presence of both families.
- Zoujat Khat (spousal letter), obtained to certify that a couple is married and that any offspring are legal children; could be obtained after the couple has their first child.
- Worasat Khat (inheritance letter), describes a woman’s entitlement to inheritance after her husband’s death.
- Talaq Khat (divorce letter), proves that a woman has been divorced from her husband.
- Islah Khat (reformation letter), could be obtained as proof that a husband has promised to stop mistreating his wife.
- Solitary Letter, used when youths travel outside the country to prove that they are single and eligible for insurance or other benefits.
- Zoryat Khat (power/ability to manage letter), issued as proof that one can manage property, including land; used to establish rightful ownership of the

property obtained by means of marriage or purchase; and could be used to solve disputes over property after divorce or separation.” (ibid, p.27)

In March 2010 a report published by the *United Nations International Children’s Fund* states:

“The Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women both condemn the deprivation of girls’ rights implicit in forced and early marriage. Afghanistan has signed these documents, and The Afghan Constitution states: “Any kind of discrimination and privilege among citizens of Afghanistan is forbidden. Citizens of Afghanistan, men and women, have equal rights and responsibilities in front of the law.” Despite these laws, only one out of five Afghan women possesses a national identification card, which makes it difficult for them to fully defend their rights.” (United Nations International Children’s Fund (17 March 2010) *Forced and early marriages still common for girls in Afghanistan*)

A *Human Rights Watch* report issued in December 2009 states:

“In March 2008, the AIHRC and the Ministry of Women’s Affairs succeeded in persuading the Supreme Court to accept a new marriage registration certificate that includes a signature or sign of consent from both bride and groom and some form of proof that they are old enough to marry. Since hardly any birth certificates are issued in Afghanistan, proof of age is still difficult to provide. This is a useful step to begin to reduce the prevalence of child and forced marriage, though it is at present not compulsory, charges are made for the certificate which may act as a deterrent, birth certificates (to prove age) are rare, and awareness and take up still very low.” (Human Rights Watch (6 December 2009) *“We Have the Promises of the World”, Women’s Rights in Afghanistan*, p.59)

In December 2009 a report published by the *Afghan Independent Human Rights Commission* states:

“Lack of registration of marriage and divorce has caused the ill-treatment of women.” (Afghan Independent Human Rights Commission (9 December 2009) *Report on the Situation of Economic and Social Rights in Afghanistan IV*, p.54)

This report also notes:

“A marriage certificate comprises registration of marriage, entrance into marriage, and the responsibilities of the intending spouses. Article 61 of the Afghan Civil Code requires all marriages to be registered. But to date there has been no mechanism to register marriages and divorces.” (ibid, p.54)

The *United Nations Economic and Social Council* in July 2009 states:

“According to article 70 of the Civil Law, the legal marriage age is 18 years for men and 16 years for women. A couple can marry without an agreement if they are over 18 years old. The Government, especially the Ministry of Women Affairs (MOWA) has made significant efforts to raise public

awareness of this law through media campaign. Enforcement of this law and underage marriage of girls continues to pose a significant challenge in Afghanistan, where reports indicate there are approximately one half of the population of girls less than 16 years old are married. In Afghanistan, especially in rural areas, it is common for poor families to marry off their daughters while they are still young, by receiving cash.” (United Nations Economic and Social Council (9 July 2009) *Implementation of the International Covenant on Economic, Social and Cultural Rights; Second to fourth periodic reports submitted by States parties under articles 16 and 17 of the Covenant; Afghanistan [E/C.12/AFG/2-4]*, p.24)

In May 2009 a report issued by the *International Centre for Human Rights and Democratic Development* notes:

“Family law, as a codified statute, has existed in Afghanistan since the 1920s through an ordinance concerning marriage (nezaamnameh Nekah). In 1961, principles concerning marriage (usulnaameh-e-Ezdewaadj) took effect. The document stipulated that 15 years old was marriageable age and made it illegal to exchange girls in reparation for a crime. In 1971, a new marriage law was promulgated....Consent to marriage and registration of marriage, including the contractual authority of women to divorce (tafwiz-e-talaq), were the main progressive provisions, even though there were no provisions concerning polygamy...In 1977, the civil code (qanuon-e madani) “introduced only minor reform on child marriage, polygamy and divorce which, however, fell short of an adequate response to the demand for more effective measures.”<sup>2</sup> This law, has many shortcomings: different marriageable ages (16 for girls and 18 for boys), lacks explicit provisions related to mutual consent to marriage, unequal powers for the termination of marriage, absence of provisions concerning children’s interests and rights, and discriminatory articles on inheritance.” International Centre for Human Rights and Democratic Development (May 2009) *Afghanistan, Submission To The Universal Periodic Review (Upr) Of The Human Rights Council (Hrc), Fifth session of the UPR Working Group (4-15 May 2009, p.2)*

A report issued in February 2009 by the *International Centre for Transitional Justice* states:

“Criminalization of child marriage has had little impact, in part because neither births nor marriages are routinely registered.” (International Centre for Transitional Justice (February 2009) *Addressing Gender-specific Violations in Afghanistan*, p.13)

This report also notes:

“Article 77 of the Civil Laws allows marriages to be contracted without the woman’s consent....” (ibid, p.18)

In December 2008 a report published by the *United Nations Security Council* states:

“On the one hand, the Marriage Registration Act, which had been in force since March of 2008, should help to prevent forced marriages, multiple marriages and the use of marriage as a means of resolving disputes between

communities.” (United Nations Security Council (12 December 2008) *Report of the Security Council mission to Afghanistan, 21 to 28 November 2008*, p.10)

The *Afghanistan Independent Human Rights Commission* in December 2008 states that:

“...the main government registries for issuing IDs, birth and marriage certificates, and divorce registrations are dysfunctional.” (Afghanistan Independent Human Rights Commission (December 2008) *Economic and Social Rights Report in Afghanistan III*, p.33)

This report also states:

“The marriage certificate includes registration procedures, marriage contract, and the responsibilities of the parties. The 1976 Civil Law of Afghanistan in article 61 says that all marriages must be registered. To date, however, there has been no enforcement mechanism to make marriage and divorce registration a routine process.” (ibid, p.7)

This report also notes:

“Current marriage and family life regulations are vague and contradict the Constitution and adopted international legal norms. There are provisions for the process of entering marriage and its dissolution and for family protection principles in the current civil law of Afghanistan.” (ibid, p.34)

In February 2008 *Womankind Worldwide* state in a report that:

“Currently, women are not provided with a marriage contract or certificate....” (Womankind Worldwide (February 2008) *Taking Stock Update: Afghan Women And Girls Seven Years On*, p.23)

A report published by *EurasiaNet* in January 2008 states:

“The country has recently changed the legal age for marriage for girls from 16 to 17. Men who want to marry girls under 17 are not entitled to obtain a marriage certificate, although rights activists say many men simply do not bother with officially registering their marriages.” (EurasiaNet (3 January 2008) *Afghanistan: Marriage Practice Victimizes Young Girls, Society*)

In December 2007 the *Immigration and Refugee Board of Canada* report from research that:

“In a 22 November 2007 interview conducted by the Research Directorate, the Embassy Official stated that most Afghan citizens do not apply for marriage certificates from the government. Integrated Regional Information Networks (IRIN) likewise notes that the "vast majority" of Afghans do not appear to be officially registering their marriage (UN 14 Mar. 2007). The report of a Finnish fact-finding mission to Afghanistan states that wedding documents are uncommon (Finland Sept. 2006, 37).” (Immigration and Refugee Board of Canada (18 December 2007) *Afghanistan: Issuance of*

*birth certificates and marriage certificates; types of documents required by the applicant in Afghanistan or in embassies to obtain official documents)*

This document also states:

“Integrated Regional Information Networks (IRIN) reported on 14 March 2007 that the Supreme Court of Afghanistan has approved a new marriage contract (UN 14 Mar. 2007). The Canadian International Development Agency (CIDA) corroborates that there is a new national marriage contract (12 July 2007). The new formal marriage contract is reported to be 15 pages long and is intended to prevent forced marriages and marriages involving women under 16 years of age (UN 14 Mar. 2007).” (ibid)

This research also reports that:

“On 5 May 2006, the Counsellor of the Embassy of the Republic of Afghanistan in Ottawa stated in correspondence with the Research Directorate there are two types of marriage documents: the marriage certificate and the marriage record book (Afghanistan 5 May 2006). The marriage record book is the official marriage document (ibid.). However the Counsellor also said that the marriage certificate is a recognized document issued by tribunals or cultural centres (ibid.). In 16 April 2006 correspondence, the Representative of the AREU indicated that the marriage certificate “is a document prescribed in Shari’a law and national law, is prepared by local elders or the mullah, and is then registered in the court documents.” These documents are called “Nakahnama or Nekahnama” (Afghanistan 5 May 2006). In 13 April 2006 correspondence, the Counsellor of the Embassy of Afghanistan in Ottawa indicated that Afghan authorities issue a marriage record book of 14 pages in several formats and colours; its dimensions are 13cm x 17cm (13 Apr. 2006). The marriage record book is usually yellow or white (Afghanistan 5 May 2006). The marriage certificate is a one-page document, has different formats (ibid.), and includes the essential information that appears in the marriage record book (Afghanistan 13 Apr. 2006): identity of the groom and the bride, identity of legal representatives, identity of the marriage witness and name and title of person performing marriage ceremony (ibid. 5 May 2006).” (ibid)

An *IRIN News* story in March 2007 states:

“The Supreme Court of Afghanistan has approved a new marriage contract which is expected to help stop child and forced marriages in the country. The new 15-page formal marriage contract, the ‘Nikah Nama’, has been welcomed by women’s rights NGOs in a country where 60 to 80 percent of marriages are forced, according to the Afghan Independent Human Rights Commission (AIHRC). “The new marriage contract is a strong legal instrument that will end child marriages and will empower women’s legal status after marriage,” said Nibila Wafiq, a women’s rights programme officer for German NGO Medica Mondiale. In Afghanistan, the legal age for marriage is 16 for girls and 18 for boys, but human rights groups say every year thousands of Afghan girls are forced to marry at a younger age.” (IRIN News (14 March 2007) *Afghanistan: New contract to curb child marriages*)

Research undertaken by the *Immigration and Refugee Board of Canada* in July 2006 states:

“The Counsellor of the Embassy of Afghanistan in Canada noted in correspondence dated 5 May 2006 that the birth certificate and the marriage record book are both called "Nakahnama or Nekahnama" and that the Afghan authorities issued both documents. According to the Counsellor, the marriage record book is the official document but the Certificate is a recognized document issued by tribunals or cultural centres (Afghanistan 5 May 2006).” (Immigration and Refugee Board of Canada (14 July 2006) *Afghanistan: National identity documents issued by government authorities that are currently in circulation in Afghanistan including passports, tazkiras, birth and marriage certificates, and the voter registration card; descriptions of these documents; the procedures and requirements under which holders obtain(ed) them; the dates of their introduction or last issuance (May 2006)*)

Part of the description of the Nekahnama in the same document includes:

“Document Description

Page 1 The symbol for the Republic of Afghanistan

The word Nakahnama in Persian

[Persian writing]

Page 2 Blank

Page 3 The symbol:

Islamic Republic of Afghanistan

Supreme Court

Nakahnama

No.: xxx/xxx

Date of marriage: Solar Hegira calendar

Place of issue: the court of ... (province or administrative district)

Date of registration: of the booklet

Mahr (the dowry): equivalent to 300 afghanis = approximately US \$10

Document tax: 100 afghanis = approximately US\$2

Court seal:

Page 4 Some quotations from the Koran regarding marriage” (ibid)

In April 2005 the *Max Planck Institute for Foreign Private Law and Private International Law* states:

From the communist era until 1992, every marriage had to be written in an official marriage certificate available in every district. The marriage certificate was an official certificate distributed by the Supreme Court. For a marriage, three copies of the marriage certificate were produced. One was left with the religious man who concluded the marriage, one was sent to the Supreme Court (its branch in the district) where the marriage contract would be registered in the registration book, and the third copy was given to the couple. Every nikāh-nāmāh had a number. The first page contained the insignia of the Supreme Court. The certificate of marriage had to be signed by all participants: the bride, the groom, the witnesses, and the mullah who wed the couple. In the past 20 years, however, most marriages have not been registered in the Supreme Court. Due to the disruption of the administrative structure in Afghanistan, these rules are not observed today. Today the nikāh-nāmāh consists of a simple piece of paper without an official insignia. It is a white piece of paper on which the mullah writes the names of the bride and the groom, their proxies, and the witnesses. The proxies and the witnesses must sign the paper. The mullah then recites verses from the

Koran and concludes the nikāh. He gives the handwritten paper to the groom. In case an issue arises requiring them to prove that they are married, the copy of the marriage contract will be the only proof and must be presented to the requesting authority. Under Islamic law and the AfgCC, the nikāh-nāmah, the contract of marriage can include stipulations such as the transfer of divorce rights from the husband to the wife. However, this possibility is hardly known. Interviews conducted with women of different social strata ranging from highly educated urban women to illiterate rural women revealed that not even in a single case had women demanded the delegation of divorce rights in case of serious threat or grave misbehaviour. The Deputy Chief Justice of the Supreme Court of Afghanistan explained that Afghan women lack knowledge about their religious and legal rights. The abnormality of the social conditions, the lack of education, and the strict traditional structures have deepened their financial dependencies on their husbands and have significantly contributed to their desolate situation.” (Max Planck Institute for Foreign Private Law and Private International Law (May 2005) *Family Structures and Family Law in Afghanistan - A Report of the Fact-Finding Mission to Afghanistan January – March 2005*, pp19-20)

A Danish Immigration Service report issued in November 2004 states:

“The Vice Minister for Women’s Affairs explained that when a marriage is due to take place, contact is made with a mullah who performs the ceremony. The respective families of the couple and witnesses for both partners are present. The mullah asks the man and the women each three times whether they will take one another as their spouse. The woman is often under pressure to agree upon the marriage, because if her answer is no she runs the risk of being rejected by her family, and thus not having any possibility for survival. If a woman does not answer yes to the question from the mullah, the witnesses step forward and answer yes on her behalf. An international NGO mentioned that a marriage can be performed by a substitute. The NGO explained that there have to be three witnesses present during a marriage ceremony.” (Danish Immigration Service (1 November 2004) *The Political Conditions, the Security and Human Rights Situation in Afghanistan, Report on Fact-Finding Mission to Kabul, Afghanistan: 20 March - 2 April 2004*, p.64)

This report also notes:

“The Ministry for the Interior informed that there are very few Afghans who have a marriage certificate and that in general such certificates are not issued at all outside large towns. The source pointed to the fact that there does not exist systematic registration of marriages making it impossible to check whether or not two Afghan citizens are in fact married to one another.” (ibid, p.64)

This document also points out that:

“Both the Ministry of the Interior and the international NGO said that a marriage certificate can be issued after the marriage. In such cases one should approach the court where a form has to be filled in. It is necessary to go to the court accompanied by persons who can testify being witnesses to the marriage, e.g. the witnesses who took part in the marriage ceremony, or the families of the partners.” (ibid, p.64)

In March 2003 the *Danish Immigration Service* reports that:

“The Deputy Minister of Justice said that most marriages take place without the involvement of the authorities. Consequently, for more than half of the marriages concluded, there is no marriage certificate. This particularly applies in the rural districts, where marriages take place in accordance with local traditions, which means that the wedding does not involve authorities, and as such, there is no record of the marriage, and no marriage certificate is issued.” (International Commission of Jurists (7 February 2003) *Afghanistan’s Legal System and its Compatibility with International Human Rights Standards*, p.55)

A report published in February 2003 by the *International Commission of Jurists* states:

“In actual legal practice the provisions of the 1977 Civil Law no longer appear to be applied. The demise of governmental institutions across Afghanistan means that marriages are generally no longer registered. This would render them void under the 1977 Law. In practice, however, unregistered marriages are regarded as valid. The withering away of the 1977 Civil Law has reintroduced largely unreformed Hanafi family law and customary law into the sphere of family law. There appears to exist a large degree of confusion over the exact rights of women and their legal status.” (International Commission of Jurists (7 February 2003) *Afghanistan’s Legal System and its Compatibility with International Human Rights Standards*, p.25)

Articles 60 to 216 of the Civil Code published by the *Government of Afghanistan* in 1977 deal with marriage issues. Article 60(1) states:

“Marriage contract shall be registered in the official marriage deed by the respective office and shall be prepared in three copies. The original shall be kept with the respective office and the two copies shall be supplied to the concluding parties. After having been registered, the marriage deed shall be brought to the notice of the identification Registration office as provide under Article 46 of this law.” (Government of Afghanistan (1971) *Law of Marriage*)

### **3. Divorce**

Research issued in May 2013 by *ACCORD/Austrian Centre for Country of Origin and Asylum Research and Documentation* states:

“In a May 2011 report on laws, traditions and practices related to marriage in Afghanistan, the Norwegian Country of Origin Information Centre Landinfo notes that “[i]n accordance with Islam, Afghan legislation allows for divorce, although it is far easier for a man to obtain divorce than it is for a woman”. As regards the social acceptability of divorce, the report adds that “divorce is associated with loss of esteem. In general, the stigma is greater for the woman, but even men lose status as a consequence of divorce.” (Landinfo, 19 May 2011, p. 20). In its report on a fact-finding mission to Afghanistan and Pakistan (22 September – 5 October 2002), published March 2003, the Danish Immigration Service (DIS) provides the following information with regard to divorce: “The Director of Secretariat of the [Afghanistan Independent] Human Rights Commission and the Commissioner [at the

Afghanistan Independent Human Rights Commission] advised that a man can easily get divorced from his wife. This is done by a verbal declaration before the wife, in the presence of two witnesses. The declaration must be repeated three times.” (DIS, March 2003, p. 56). Similarly, Afghan lawyer Mukarama Akrami writes in the annex of a report published by the International Commission of Jurists (ICJ) in February 2003: “The meaning of divorce in civil and Islamic law is that if the husband repeats the word ‘divorce’ three times to his wife without any pressure, unless he has lost his self-control or is drunk, or has mental problems or an illness, then after using these words, his wife is divorced and their relationship is over.” (Akrami, 7 February 2003, pp. 56-57) According to Mukarama Akrami, Articles 136, 138 and 141 of the Afghan Civil Code contain the following provisions regarding divorce: “According to the article 136 of civil law: ‘A women can be divorced if she is legally the wife of someone or in the ‘return’ period. A ‘return’ divorce is when a husband uses the divorce word only once to his wife and has three months to return to her, otherwise she will be automatically divorced. According to the article 138 of civil law: ‘A husband can divorce his wife orally, in writing, or, if he can’t write, point to a part of his body to indicate divorce.’

Article 141 of civil law: ‘According to the civil law any word in Afghan culture and tradition meaning divorce can be used to divorce a women [sic]. A father-in-law cannot divorce his son’s wife.’

According to article 141, divorce is not legal if the man is:

1. Mad or insane.
2. Under pressure.
3. A teenager.
4. Mentally ill.
5. Without self-control and incapable of understanding his own words.” (Akrami, 7 February 2003, p. 57).” (ACCORD - Austrian Centre for Country of Origin and Asylum Research and Documentation (6 May 2013) *Query response on Afghanistan: 1) Divorce of marriage (compliance with Islamic law, conditions under which husband can initiate divorce, conditions under which wife can initiate divorce); 2) Polygamous marriage (conditions under which man can marry more than one wife; role and duties of first wife)*

A report in May 2011 by *Landinfo* states:

In accordance with Islam, Afghan legislation allows for divorce, although it is far easier for a man to obtain a divorce than it is for a woman.” (Landinfo (19 May 2011) *Report Afghanistan: Marriage*, p.20)

A report published in March 2012 by *Human Rights Watch* notes:

“Laws governing divorce in Afghanistan are discriminatory against women. The Afghan Civil Code of 1977, the key source of statutory family law in Afghanistan, allows men to divorce women very easily. Article 139 of the Afghan Civil Code states that: (1) A husband can divorce his wife orally or in writing. When a husband lacks these two means, divorce can happen by usual gestures which clearly implies divorce. (2) Divorce happens with clear wordings which, in customs, convey the meaning of divorce without intention...Women, however, face far greater obstacles in obtaining a divorce. Absent consent from their husband, women can only obtain a divorce through a court and must show cause on the grounds of 1) defect, for example because of illness; 2) harm; 3) non-payment of alimony; or 4) absence.”

(Human Rights Watch (28 March 2012) *"I Had To Run Away", The Imprisonment of Women and Girls for "Moral Crimes" in Afghanistan*, p.97)

In December 2009 a report published by the *Afghan Independent Human Rights Commission* states:

"A man can divorce his wife without any due process of law." (Afghan Independent Human Rights Commission (9 December 2009) *Report on the Situation of Economic and Social Rights in Afghanistan IV*, p.54)

A *Reuters* news story in July 2009 states:

"Under Afghanistan's Islamic law, a man can divorce without needing his wife's agreement. But if a woman seeks a divorce then she has to have the approval of her husband and needs witnesses who can testify in court that the divorce is justified. "A man can, with great ease, tell the court that his wife's behaviour is inappropriate, that she does not behave in the home, and wants to divorce her. A man decides a woman's future with one piece of paper," said Maria Bashir, chief prosecutor in Herat. A woman can appeal for a divorce on grounds that her husband is absent for a long time, he cannot adequately provide for the family, either financially or because he is physically incapable, or if he is impotent or abuses her to the point where her life may be at risk, Bashir said. To get their husbands' agreement for the divorce, women were usually forced to let the husband and his family keep the children, a prospect that dissuaded many battered women."Women prefer death to the pain of being separated from their children ... This is why many women, before consulting the law, will resort to self-immolation, or suicide or running away." (Reuters (23 July 2009) *Divorce, suicide; 'Hell' in Heart*)

In December 2008 the *Afghanistan Independent Human Rights Commission* states:

"In the absence of officially enforced marriage and divorce registration women remain particularly open to abusive practices. A woman can remarry three months after divorce period (Edat). However, if challenged, she will have to provide witnesses to prove her divorce in court. The woman can initiate the divorce process if she has enough reasons to do so; accepted reasons among others include: her husband must be sick and it endangers her; her husband must fail to provide for the family; her husband must be absent for more than four years in the house or be sentenced for imprisonment of 10 years or more. In this case, the court will assign her mahr – divorce maintenance – and custody of girls until they reach their ninth birthday and boys until their seventh birthday." (Afghanistan Independent Human Rights Commission (December 2008) *Economic and Social Rights Report in Afghanistan III*, p.33)

A report published in February 2008 by *Womankind Worldwide* states:

"Afghan civil law contains numerous provisions that protect women's human rights in the family, such as their right to divorce if they are being maltreated. While seldom enforced, existing law provides a basis from which to advocate for enforcement and education about women's human rights." (Womankind Worldwide (February 2008) *Taking Stock Update: Afghan Women And Girls Seven Years On*, p.23)

In February 2008 a report by *Radio Free Europe/Radio Liberty* states:

“Moreover, women usually cannot leave their families or seek a divorce, because in many parts of Afghanistan divorce is considered dishonorable. A divorced woman cannot return to her parents' family and, in an impoverished country with widespread unemployment, she cannot rebuild her life on her own, either.” (Radio Free Europe/Radio Liberty (20 February 2008) *Afghanistan: New Party To Focus On Women's Rights*)

The *Finnish Immigration Service* in May 2007 note:

“Marriage is commonly sealed by the village mullah, who also has the right to grant a divorce. Usually there are no written marriage documents, which fact makes witnesses very important...An official with the Ministry of Women's Affairs in Kabul stated that divorce for women is possible, but harder to get than for a man, who only needs to repeat three times “I divorce you”. According to the law, there are circumstances, when a woman is allowed to divorce her husband. These are: the mental illness of the husband or another form of untreatable sickness, the husband's inability to provide for the family, the husband's impotency and the long absence of the husband from his wife.” (Finnish Immigration Service (1 May 2007) *Report from a fact-finding mission to Afghanistan; 5 - 19 September 2006*, p.7)

In August 2006 the *Heinrich Boll Foundation* reports that:

“According to the Family Law of Afghanistan, the right to divorce lies with the man. A woman can apply for separation only if sufficient reasons are available.” (Heinrich Boll Foundation (August 2006) *Roundtable Conference “Comparative Analysis of Family Law in the Context of Islam”, August 15-17, 2006 Kabul, Afghanistan*, p.34)

In March 2005 a report by the *Institute for War & Peace Reporting* states:

“Women now have an additional option that was not available under the Taleban. Hamida, the president of the family court in Kabul, which handles divorce cases in the capital, said a woman will also be granted a divorce if her husband agrees to end their marriage and she consents to pay him an agreed amount of money. Interpretation of the nation's divorce laws often depend on attitudes of the regime in power. According to Ali Mateen, a family court judge, a husband needed to be missing for 90 years before a woman could be granted a divorce under the Taleban regime. But under the current regime, that period has been reduced to three years. This difference is because the Taleban follow the Hanafi branch of Islam, and the current administration adheres to the Shafee variant.” (Institute for War & Peace Reporting (3 March 2005) *Divorce – Afghan Style*)

It is also noted in this article that:

“Most men prefer, however, to obtain divorces without going through the court system, which is their right according to civil law, Mateen said. Payenda Mohammed, an official with Kabul's city government, explained that a man could divorce his wife under Islamic law, in the following ways: by simply declaring to her, without becoming angry, that she is no longer his wife and

that they are divorced; angrily telling his wife that she is divorced; or telling her three times that they are divorced.” (ibid)

Research published by the *Danish Immigration Service* in November 2004 notes:

“The source stated that usually only the male part of a marriage can initiate a divorce. A divorce happens if the husband says three times aloud that he is divorcing his wife. It is unlikely that witnesses are present. Upon a divorce, the woman is given the custody of the children up to the age of seven years for boys and nine years for girls. Thereafter, the custody is transferred to the children’s father. It is very difficult for women to file for a divorce. Related to the obtainment of a divorce document, the source mentioned that both partners could approach the court and apply for a divorce document. The document can be issued if the couple approach the court together or if the man’s family accompany the woman. In case of a divorce, the man should repay a certain amount to the woman. The amount has been agreed upon in connection with the marriage ceremony. If the man or his family disagree with the woman’s wish for a divorce the document is not issued, according to the deputy minister.” Danish Immigration Service (1 November 2004) *The Political Conditions, the Security and Human Rights Situation in Afghanistan, Report on Fact-Finding Mission to Kabul, Afghanistan: 20 March - 2 April 2004*, p.65)

A report from the *International Commission of Jurists* issued in February 2003 states:

“The right of divorce of women continues to be restricted to a judicial divorce whilst a husband can divorce his wife through the extra-judicial pronouncement of a divorce either orally or in writing. The grounds for judicial separation include the husband suffering an incurable disease, his failure or inability to maintain his wife, his absence from his wife without reason for more than three years or his imprisonment for ten years or more, in which event the wife can ask for a divorce after the first five years imprisonment.” International Commission of Jurists (7 February 2003) *Afghanistan’s Legal System and its Compatibility with International Human Rights Standards*, p.25)

#### **4. Marriage between Non Nationals and Nationals**

The *Embassy of the United States in Kabul, Afghanistan* states in an undated document that:

“Under Afghan law, civil and religious marriage ceremonies may be performed for some foreigners. Afghans who are dual nationals are treated solely as Afghan under the law. It is not possible for a non-Muslim man to marry a Muslim woman in Afghanistan, but it is possible for a Muslim man to marry a non-Muslim, foreign, woman.” (Embassy of the United States in Kabul, Afghanistan (Undated) *If You Want to Get Married in Afghanistan . . .*)

A paper issued by *Accord* in November 2007 states:

“Women married to foreigners do not generally experience problems, if the husband/wife converts to Islam. There might be possible security problems, if the man is recognizable as European, American, or African, for example.”  
(Accord (November 2007) *11th European Country of Origin Information Seminar; Vienna, 21 - 22 June 2007; Country Report; Afghanistan*, p.54)

The *Government of Afghanistan* in 1971 states:

“In case one of the contractors (of the marriage) or both are citizens of any foreign state, if they have residence in Afghanistan, the provisions of Article 13 will be applied, in the absence of objections based on the Sharia... .”  
(Government of Afghanistan (1971) *Law of Marriage*, p.3)

## **Marriage between two Non Nationals**

No information on this issue could be found among sources available.

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