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Refugee Documentation Centre

Country Marriage Pack

Afghanistan

Disclaimer

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1. Types of Marriage

Civil Marriages

A fact-finding mission report published by the *Finnish Immigration Service*, in a section titled "Marriage", states:

"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.6)

A report published by the *Landinfo Country of Origin Information Centre of Norway*, in a section titled "Registration of Marriages", states:

"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. In a report on social and economic rights in Afghanistan, the Afghanistan Independent Human Rights Commission states that even though Section 61 in the Afghan Civil Code stipulates a requirement for registration of all marriages, there are

no mechanisms available for registration of marriages and divorces.”
(Landinfo Country of Origin Information Centre (19 May 2011) *Afghanistan: Marriage*, p.22)

Article 61 of the 1977 Civil Code of Afghanistan (in the chapter on marriage) states:

“(1) 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.” (Republic of Afghanistan (5 January 1977) *Civil Law of the Republic of Afghanistan (Civil Code)*)

See also Article 77 which states:

“For the proper contract of marriage the observance of the following terms are required:

- 1 – Offer and acceptance should be affected correctly by the parties to the contract or by their guardians or deputies.
- 2 – Presence of two witnesses
- 3 – Non-existence of permanent or temporary legal prohibition between the man and the woman who resolve to get marry.” (ibid)

Religious Marriages

The 2013 *US Department of State* religious freedom report for Afghanistan, in a section titled “Religious Demography” (Section 1), notes that:

“Sunni Muslims comprise 80 percent of the population and Shia Muslims make up about 19 percent, including Ismailis, who self-identify as Shia and make up approximately 2 percent of the total population. Other religious groups comprise less than 1 percent.” (US Department of State (28 July 2014) *2013 Report on International Religious Freedom – Afghanistan*, pp.1-2)

A document published on the website of the *US embassy in Kabul*, in a paragraph headed “Religious Marriages”, states:

“If both or one of the parties are Muslim, the Family Court will register the marriage and perform the Muslim nekah ceremony. The nekah is comprised of the igaba wa qabul (acceptance agreement) and the khotba.” (Embassy of the United States, Kabul, Afghanistan (undated) *Marriage*)

An article by freelance writer Fazl ur Rahim Muzaffary, published on the *IslamOnline* website, states:

“Marriage in the traditional Afghan culture has a deep-rooted process through which it treads step by step. Rarely do young men and women have an opportunity to meet each other, and the to-be wife is usually chosen in a haste. When a young man wants to marry a young lady who is from an unknown family, first his parents do some kind of background check about her, trying to know more about her morals, beauty, and other family affairs. If

they are contented with what they find, his parents will send a female family member or a relative to her house in order to understand, indirectly or directly, and would disclose the proposal, if the situation is favorable. This consultation process takes some time, and a date is usually fixed to announce the decision among the relatives, if both sides are satisfied with this deal.” (IslamOnline (18 June 2008) *Afghan Muslim Wedding*)

In a paragraph headed “The Engagement” this article states:

“*Shereny khory* or *namzady* (Dari for: engagement) is the first step to formalize the affinity. The groom's father, accompanied by some kinfolk and elders, comes to the bride's home in a prefixed date with bags of sweets and gifts for the to-be bride, some money and clothes to some family members. After the food is served, the groom's father or a respected man from among the guests formally unveils the purpose for their coming and puts the demand as if the bride's father accepts his son ‘as a servant of him.’” (ibid)

See also paragraph headed “Pre-Wedding Arrangements” which states:

“The duration between the engagement and the wedding depends on several factors, including the financial ability of the groom. Soon after the engagement, the groom's family provides some amount of money to the bride's to buy things — like clothes, carpets, dishes, and jewelry — for the bride.” (ibid)

A document published on the *Muslim Marriage Guide* website, in a paragraph headed “The Nikah or marriage ceremony in Afghan marriage Customs”, states:

“The Afghan marriage customs demand that the festivities are spread over three days. The ceremonies are conducted between 6 p.m and 2 a.m. The ceremony begins with the bride and the groom exchanging vows in the presence of the mullah or priest. The priest will read sections from the Quran and direct the bride and the groom through the ceremony. This is a family event in which close family and friends participate. The next part of the wedding is similar to the western marriage reception. This is normally hosted by the groom's family and a large number of guests are invited to attend. In conservative Afghan families, the female and male guests are separated and entertained in exclusive areas. Lavish dinner is provided and after dinner, the bride and groom walk up the aisle as they are showered with sweets and flowers and a special song is played known as the Asta Burrow meaning “go slow”. The bride and groom then seat themselves on a raised stage. The bride and groom then go through several rituals and also exchange rings and cut the wedding cake. In the morning, breakfast is served and the bride and groom are conducted to their wedding chamber and left alone.” (Muslim-Marriage-Guide.com (undated) *The Engagement, Henna and Nikah in Afghan Marriage Customs*)

A document published on the *SoundVision.com* website, in a section titled “Sermon” describes a Muslim marriage ceremony as follows:

“The assembly of nikah is addressed with a marriage sermon (khutba-tun-nikah) by the Muslim officiating the marriage. In marriage societies,

customarily, a state appointed Muslim judge (Qadi) officiates the nikah ceremony and keeps the record of the marriage contract. However any trust worthy practicing Muslim can conduct the nikah ceremony, as Islam does not advocate priesthood. The documents of marriage contract/certificate are filed with the mosque (masjid) and local government for record.”
(SoundVision.com (undated) *An-Nikah: The Marriage*)

Traditional/Other Marriages

A *Deutsche Welle* article, in a paragraph headed “Tradition takes priority”, states:

“According to Islamic law, a man and woman should agree on a marriage for it to be valid. However, tradition tends to take priority in Afghanistan. Parents often decide upon their daughters' future without asking them for an opinion. Men, on the other hand, are generally able to reject their family's choice of bride and can even choose their own bride sometimes.” (Deutsche Welle (18 April 2013) *Afghan women escape marriage through suicide*)

An *Institute for War & Peace Reporting* article 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) *Institute for War & Peace Reporting* (26 November 2010) *Afghan Runaways Flee Forced Marriage*)

A report published by the *Landinfo Country of Origin Information Centre of Norway*, in a section titled “Marriage in Afghanistan”, states:

“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. The extent to which the parties themselves are involved in the process leading up to an agreement tends to vary.” (Landinfo Country of Origin Information Centre (19 May 2011) *Afghanistan: Marriage*, p.5)

This section of the report also states:

“The marriage contract is thus an agreement between two families and not a confirmation of an emotional relationship between two individuals. In Afghanistan, arranged marriages are part of a complex set of traditions, loyalties and authorities. The marriage institution plays a key role in the establishment of alliances between families or in strengthening pre-existing networks. Marriage agreements have strong political and economical aspects.” (ibid, p.5)

With regard to the practice of polygamy Article 86 of the Civil Code of Afghanistan states:

“Polygamy can take place after the following conditions are fulfilled:

1 – When there is no fear of injustice between the wives

2 – When the person has financial sufficiency to sustain the wives. That is, when he can provide food, clothes, suitable house, and medical treatment.

3 – When there is legal expediency, that is when the first wife is childless or when she suffers from diseases which are hard to be treated.” (Republic of Afghanistan (5 January 1977) *Civil Law of the Republic of Afghanistan (Civil Code)*)

An *Immigration and Refugee Board of Canada* response to a request for information on the practice of temporary marriage in Afghanistan, in a paragraph headed “Overview”, states:

“Seigha (also spelled seegha, sigha, sighe; also known as fegha, mutah, nikah muta, nekah-e-mata, etc.) is a form of temporary marriage. Various sources indicate that it is practiced in Afghanistan by Shia [Shiite] Muslims. In correspondence with the Research Directorate, a representative of Women for Afghan Women, a women's human rights organization based in Kabul and New York, stated that seigha is practiced by the Jafari sect of Shia Muslims in particular, but that in general, it is not very common in Afghanistan. Additionally, a representative of the Afghanistan Independent Human Rights Commission (AIHRC), Afghanistan's constitutionally established national human rights institution, indicated in correspondence with the Research Directorate that seigha is not the ‘common’ form of marriage, but that Shia Muslims are allowed to practice it. In contrast, a professor of conflict studies at Saint Paul University in Ottawa who researches gender issues in Afghanistan stated in a telephone interview with the Research Directorate that seigha is ‘widely practiced’ among Shia Muslims in Afghanistan.” (Immigration and Refugee Board of Canada (24 October 2012) *AFG104238.E – Afghanistan: Whether seigha (temporary marriage) is practiced in Afghanistan and by which groups*)

In a paragraph headed “Legislation” this response states:

“According to the AIHRC representative, seigha is not a legally documented or sanctioned practice, but it is ‘implicitly allowed’ by the Shia Personal Law of Afghanistan.” (ibid)

See also paragraph headed “Conditions of Temporary Marriage” which states:

“Sources indicate that temporary marriages can be undertaken in secrecy. The duration of a seigha marriage is pre-established by a marriage contract. Sources state that the length of a seigha marriage ranges from ‘one hour to 90 years’ (AIHRC), ‘a day or till whenever the couple wants’ (PAN), and ‘a couple of hours to months or years’ (Instructor). The marriage automatically ends after the stipulated time period. According to the AIHRC representative, the marriage may involve a payment made from the groom to the bride, similar to the practice associated with traditional marriage. The professor stated that the payment is made from the groom to the bride's father or, in some cases, to the family of a widow's deceased husband if they have arranged the marriage. The AIHRC representative explained that temporary marriage differs from permanent marriage in that the husband does not provide *nafaqa* (maintenance money or alimony) to his wife, and the spouses

do not inherit anything from each other. Similarly, the professor stated that in a temporary marriage, the husband's responsibility for supporting his wife and children ends with the marriage, and the wife has no legal protection after the marriage ends, unlike in a permanent marriage.” (ibid)

A report published by the *Afghanistan Research and Evaluation Unit (AREU)*, in a section titled “Exchanging Daughters for a Bride, Exchanging Daughters for Money” (section 7), refers to the custom of exchange marriage, or *badal*, as follows:

“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. Likewise, many respondents reported the negative consequences of the practice of paying bride price for both the girl and boy who are getting married, as well as for their families. However, alternatives to these practices were rarely suggested or acted on.” (Afghanistan Research and Evaluation Unit (AREU) (February 2009) *Decisions, Desires and Diversity: Marriage Practices in Afghanistan*, p.41)

A report published by the *United Nations Assistance Mission in Afghanistan*, in a section titled “*Baadal* – exchange marriages” (section 3.3), states:

“Three ethnic Turkmen women told UNAMA HR they were exchanged in marriage by their families at very young ages. They described accepting the arrangement, having been told it was in their families’ best interest. They reported that they suffered physical and mental abuse at the hands of their in-laws – for not bringing sufficient gifts by way of dowry, for not producing children and for not carrying out household tasks satisfactorily. As one woman stated, “Other than running away, I had no option but to endure this violence.” (UN Assistance Mission in Afghanistan (UNAMA) (9 December 2010) *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, p.15)

See also *Landinfo* report referred to above which, in a section titled “Exchange marriage (*baadal*)” (section 1.8.1), states:

“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.” (Landinfo Country of Origin Information Centre (19 May 2011) *Afghanistan: Marriage*, p.11)

In a section titled “Compensation (*baad*)” (section 1.8.2) this report states:

“*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)

Proxy Marriages

A manual published by the *Max Planck Institute of Germany*, in a section titled “Marriage by proxy” (paragraph headed “Legitimacy”), states:

“In accordance with the general rules of Article 1554 CC and the subsequent articles, any transaction that can be performed directly by a principal is allowed to be concluded by a proxy as well (see further Article 1559 CC). According to Article 1554 CC, representation is a contract by which the principal appoints a proxy to represent them. Articles 534 and 541 CC also contain provisions which govern representation in concluding contracts. In accordance with Article 1574 CC, the representation provisions which are envisaged in Articles 534 and 541 CC also cover the interests of the proxy, the principal and any third party dealing with the proxy. In addition to this, according to Article 72(1) and Article 77(1) CC, choosing a proxy in a marriage is clearly permitted.” (Max Planck Institute (July 2012) *Max Planck Manual on Family Law in Afghanistan*, p.40)

Article 72 of the Civil Code of Afghanistan states:

- (1) Employing a procurator for a marriage contract shall be permissible.
- (2) The procurator cannot enter into marriage with his principal except that it is described in the procuration deed.” (Republic of Afghanistan (5 January 1977) *Civil Law of the Republic of Afghanistan (Civil Code)*)

Article 77:

For the proper contract of marriage the observance of the following terms are required:

- 1 – Offer and acceptance should be affected correctly by the parties to the contract or by their guardians or deputies.
- 2 – Presence of two witnesses (ibid)

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

Article 70 of the Civil Code of Afghanistan states:

“Marriage shall not be considered adequate until the male XXXX the age of 18 and the female the age of 16.” (Republic of Afghanistan (5 January 1977) *Civil Law of the Republic of Afghanistan (Civil Code)*)

See also Article 71 which states:

- (1) Where the girl does not complete the age provided under Article 70 of this law, the marriage may be concluded only through her father or the competent court.

(2) The marriage of a minor girl whose age is less than 15 shall never be permissible. (ibid)

A report published by the *International Centre for Human Rights and Democratic Development*, in a section titled “Family law / law on marriage” (paragraph 2), states:

“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.’ 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 ((15 May 2009) *Submission to the Universal Periodic Review (UPR) of the Human Rights Council (HRC): Fifth session of the UPR Working Group (4-15 May 2009)*)

A report published by the *Landinfo Country of Origin Information Centre of Norway*, in a section titled “Registration of Marriages”, states:

“In 2007, the Afghan Supreme Court approved a new marriage contract (registry book), and this new contract is 15 pages long. There are two forms of documentation: the marriage contract (*nikah-nama*, *nakah-nama* or *nekah-nama*), and documentation of registration of the marriage. The registration certificate is regarded as the official marriage document (certificate) and “is a one-page document, has various formats and contains key information found in the registry book” (Migrationverket 2009). There are various reports regarding who is entitled to register marriages: councils of elders, mullahs and ‘tribunals or cultural centres’ are said to be able to report marriages to local courts, which subsequently issue documentation of the marriage.” (Landinfo Country of Origin Information Centre (19 May 2011) *Afghanistan: Marriage*, p.23)

An *Immigration and Refugee Board of Canada* response to a request for information on the issuance of marriage certificates in Afghanistan, in a paragraph headed “Marriage certificates: Prevalence and process for obtaining marriage documents”, states:

“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. The report of a Finnish fact-finding mission to Afghanistan states that wedding documents are uncommon. The report goes on to relay an anecdote in which an Afghan man said that a government-issued marriage document was unnecessary for his daughter because everyone would know she was married by virtue of her wedding celebration and a wedding video.” (Immigration and Refugee Board of Canada (18 December 2007) *AFG102679.E – Afghanistan: Issuance of birth certificates and marriage certificates; types of documents required by the applicant in Afghanistan or in embassies to obtain official documents*)

In a section headed “Types of marriage documents” this response states:

“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. The marriage record book is the official marriage document. However the Counsellor also said that the marriage certificate is a recognized document issued by tribunals or cultural centres. 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’. 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 . The marriage record book is usually yellow or white. The marriage certificate is a one-page document, has different formats, and includes the essential information that appears in the marriage record book: 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)

A manual published by the *Max Planck Institute of Germany*, in a section titled “Registration of marriage in Afghanistan”, states:

“Current reports and surveys with regard to the marriage registration in Afghanistan indicate that in most parts of the country marriages are neither certified nor registered. According to interviews, only 5% of all marriages in Afghanistan have been registered. In spite of the existing regulations, registration authorities which could function systematically have not yet been created in Afghanistan.” (Max Planck Institute (July 2012) *Max Planck Manual on Family Law in Afghanistan*, p.52)

In a section titled “Forced marriage in the Afghan society” this manual states:

“According to observations reported by national and international organisations, forced marriages do take place in Afghanistan. These are marriages of under-age children, married by their parents or other persons, as well as marriages of adults, mostly women, against their free will and consent. According to the Afghan Independent Human Rights Commission, 60- 80% of the marriages in Afghanistan are concluded without the consent or against the will of one of the spouses.” (ibid, p.32)

An article on child marriage published by the *UN Population Fund (UNFPA)* states:

“Afghani civil law sets the minimum marriage age for females at 16. Moreover forced marriage is forbidden in Islam, which holds that marriage should be entered into with total commitment and full knowledge of what it involves. In Afghanistan, however, coerced child marriage persists. Although getting reliable data is difficult, the most recent surveys estimate some 46 per cent of Afghani women are married by age 18, 15 per cent of them before age 15.

According to the Afghanistan Independent Human Rights Commission, between 60-80 per cent of all marriages in Afghanistan are forced.” (UN Population Fund (UNFPA) (4 October 2012) *Escaping Child Marriage in Afghanistan*)

The 2013 *US Department of State* country report on Afghanistan, in a section titled “Women”(sub-section headed “Harmful Traditional Practices”), states:

“The EAW law criminalizes forced or underage marriage and baadh. According to the UN and Human Rights Watch, an estimated 70 percent of marriages were forced. Despite laws banning the practice, many brides continued to be younger than the legal marriage age of 16 (or 15 with a guardian’s and a court’s approval). A survey of married women between the ages of 20 and 24 found that 39 percent had been married before the age of 18. Very few marriages were registered, leaving forced marriages outside legal control. There were reports that women who sought assistance under the EAW law in cases of forced marriage or rape were subjected to virginity tests.” (US Department of State (27 February 2014) *2013 Country Reports on Human Rights Practices*, p.39)

In a section titled “Children” (sub-section headed “Forced and Early Marriage”) this report states:

“Despite a law setting the legal minimum age for marriage at 16 for girls and 18 for boys, international and local observers estimated that 60 percent of girls were married before the age of 16. During the EAW law debate, conservative politicians publicly stated that it was un-Islamic to ban marriages of girls younger than 16. Under the EAW law, those who arrange forced or underage marriages may be sentenced to imprisonment for not less than two years, but implementation of the law remained limited. The Law on Marriage states that marriage of a minor may be conducted with a guardian’s consent. By law a marriage contract requires verification that the bride is 16 years of age, but only a small fraction of the population had birth certificates. Following custom, some poor families pledged their daughters to marry in exchange for ‘bride money,’ although the practice was illegal. According to local NGOs, some girls as young as six or seven were promised in marriage, with the understanding that the actual marriage would be delayed until the child reached puberty. Reports indicated, however, that this delay was rarely observed and that young girls were sexually violated by the groom and by older men in the family, particularly if the groom was also a child. Media reports also noted the ‘opium bride’ phenomenon, in which farmer families married off their daughters to settle debts to opium traffickers.” (ibid)

A report published by the *United Nations Assistance Mission in Afghanistan*, in a section titled “Forced marriage” (section 3.1), states:

“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.²⁰ 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.” (UN Assistance Mission in Afghanistan (UNAMA) (9 December 2010) *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, p.6)

In a section titled “Child marriage” (section 3.4) this report states:

“Underage marriage is common across Afghanistan, in all regions and among all ethnic groups. According to UNIFEM and the Afghan Independent Human Rights Commission, 57 per cent of Afghan marriages are child marriages – where one partner is under the age of 16.55 In a study of 200 underage girls who had been married, 40 per cent had been married between ages 10 and 13 years, 32.5 per cent at 14, and 27.5 per cent at the age of 15. In spite of widespread child marriage in Afghanistan, UNAMA HR found in all focus group discussions that men and women identified child marriage as one of the most serious harmful traditional practices in the country.” (ibid, pp.18-19)

See also section titled “Forced marriage of widows and inheritance rights” (section 3.6) which states:

“Harmful traditional practices not only curtail Afghan women’s rights before and during marriage but also after their husband dies. Forced marriage of widows stems in part from widows being considered the property of their in-laws, but is also often due to the desire to deny a widow her right to inheritance by marrying her to a relative and keeping any inheritance within the family. The woman concerned is thus forced into a marriage against her will, contrary to all national and international law, as well as Sharia law – where consent is a prerequisite for any marriage.” (ibid, p.27)

A report published by the *Afghanistan Research and Evaluation Unit (AREU)*, in a section titled “Understanding forced marriage in Afghanistan” (section 5.1), states:

“The archetypical notion of a forced marriage and the image that the expression ‘forced marriage’ conjures in the imaginations of many is of a young girl being forced into a marriage, usually to a much older man. It is also commonly used to refer to marriages that are seen as abusive, violent and or illegal. If a girl had no say in her marriage or if she did not want to get married or to be married to a particular man, but in the end the marriage is relatively non-violent and described as happy by the couple, and they are closer in age, this is highlighted as a forced marriage. A number of respondents in this study described their marriages as forced but also described themselves as being happy in their marriages now. The questions, therefore, must be asked: is forced marriage only seen as a problem if the marriage is violent, the wife is abused or the man is considerably older than the woman? Is it only girls who are forced into marriages against their will? As well as girls and women, boys and men are sometimes made to marry against their wishes, which can have detrimental consequences for both them and the women they are forced to marry. A family may also be forced by another family to marry a child against their will.” (Afghanistan Research and Evaluation Unit (AREU) (February 2009) *Decisions, Desires and Diversity: Marriage Practices in Afghanistan*, pp.24-25)

In a section titled “Consent — informed or forced?” (section 5.2) this report states:

“In a social order where obeying elders, particularly parents, is deeply entrenched as the correct way to behave, it is very difficult for a child, regardless of their age or gender, to object to a decision a parent has made for them. Many children will consent to marriages that they are not entirely happy with if they feel that not consenting will disappoint their parents or because doing so would go against cultural expectations. For instance, Yar Mohammad from rural Herat explained that he did not want to marry his cousin but that if he had not accepted the marriage, his father would have rejected him. He loves and respects his father and so felt compelled to agree to the marriage. His consent to the marriage could be seen to have been given by choice, even though he was not happy about it; for him the consequences of not agreeing at the time seemed worse than those of going through with the marriage. The pressure to consent to marriages is often even greater for girls, for whom there is less chance of exercising independence from the family and who are judged far more severely than boys if they go against their parents’ wishes.” (ibid, p.26)

The Introduction to a *US Institute of Peace* (USIP) report states:

“On paper, women in Afghanistan enjoy significant rights. The 2004 constitution extends equality to both men and women (Article 22). The Afghan Civil Code (1977) provides rights for women to inherit or own property, sets the minimum age for marriage (Articles 70 and 71), and codifies a woman’s right to choose her partner (Article 80) or to initiate marital separation. The Afghan Criminal Code (1979) protects eloped couples by creating a distinction between elopement and kidnapping.” (US Institute of Peace (28 May 2014) *Sharia and Women’s Rights in Afghanistan*, p.2)

This Introduction also states:

“Many of the legal protections, however, have failed to translate into practice. Despite the ban on child marriage, the Afghan Ministry of Public Health estimates that 21 percent of all women were married by age fifteen and another 53 percent by age eighteen... In other words, despite formal guarantees, the courts and society at large still act within the framework of conservative social norms that restrict women’s rights in economic and political spheres. These restrictions include limitations on women’s free movement as well as on rights to choose a spouse, divorce, and maintain child custody after a divorce.” (ibid)

A *Danish Immigration Service* fact-finding mission report, in a section titled “Dishonoring the family or breaking social norms with regard to marriage and relationships between men and women” (section 5), refers to information provided by an Afghan law practitioner as follows:

“The Afghan law practitioner pointed out that there is a contradiction in Afghanistan’s legal system which on the one hand permits young people to get married with whom they want, but on the other hand puts them in prison if they run away to be able to marry each other. The law practitioner referred to article 425 of the Afghan Penal Code.” (Danish Immigration Service (29 May

2012) *Afghanistan. Country of Origin Information for Use in the Asylum Determination Process: Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan – 25 February to 4 March 2012*, p.34)

A *New York Times* article on honour killings in Afghanistan states:

“Neither Amina nor Zakia and Mohammad Ali did anything against the law — or, more specifically, against two of the legal systems in effect in Afghanistan: the body of civil law enacted over the past decade with Western assistance, or the classic Islamic code of Shariah that is also enshrined in law. Both protect the rights of women not to be forced into marriage against their will. But in Afghanistan, an unwritten, unofficial third legal system has remained pervasive: customary law, the tribal codes that have stubbornly persisted despite efforts at reform. ‘In Afghanistan judges stick to customary law, forget Shariah law, let alone civil law,’ said Shala Fareed, a professor of law at Kabul University.” (New York Times (3 May 2014) *In Spite of the Law, Afghan ‘Honor Killings’ of Women Continue*)

3. Divorce

A report published by the *Landinfo Country of Origin Information Centre of Norway*, in a section titled “Divorce” (section 1.9.3) 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. However, 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. In his *Culture and Customs of Afghanistan*, Hafizullah Emadi points out that: ‘Termination of marriage by either party is regarded as a disgrace, and the social stigma attached to it usually compel couples to remain married’.” (Landinfo Country of Origin Information Centre (19 May 2011) *Afghanistan: Marriage*, p.20)

This section of the report also states:

“The Civil Code provides women with the right to apply for divorce only on certain conditions, and such an application for separation must be processed by a court. In Landinfo’s interpretation of the Afghan Civil Code, the legal base for dissolution of marriage is grouped into four categories that can allow for a divorce following a court order:

- 1)
Separation due to a defect (tafreeq) in accordance with Sections 176 to 182 of the Code. An application for divorce can be approved if the husband is unable to fulfil his marital obligations, for example because of illness.
- 2)
Separation due to harm (zarar) in accordance with Sections 183 to 190 of the Code.
- 3)
Separation due to non-payment of alimony (al-infaq) in accordance with Sections 191 to 193 of the Code.
- 4)

Separation due to absence in accordance with Section 194 to 197 of the Code.

With regards to all four categories, the woman must provide evidence that grounds for a divorce are present. As far as Landinfo can discern, the text of the Code provides very few guidelines for the deliberations of the court, which appears to be able to base its verdicts in specific cases on relatively unrestrained discretionary judgement.” (ibid, pp.20-21)

A manual published by the *Max Planck Institute of Germany*, in a section titled “Dissolution of Marriage”, states:

“In accordance with the provisions of Article 131 CC, a marriage can be dissolved during the lifetime of the couple by annulment (*faskh*), repudiation (*talāq*), divorce by mutual consent (*kholc*) or judicial divorce (*tafrīq*). These four types of marriage dissolution are regulated in detail in Articles 132-197 CC.” (Max Planck Institute (July 2012) *Max Planck Manual on Family Law in Afghanistan*, p.71)

In a section titled “Repudiation (*Talāq*)” (paragraph headed “Definition”) this manual states:

“In Afghan law, repudiation - in accordance with Article 135(1) CC - is the dissolution of a marital relationship validly established between the husband and the wife, with immediate or future effect, using words which clearly express the repudiation. Repudiation is the right of the husband. He may end the marriage without giving any reasons but in compliance with certain conditions. However, the wife may also dissolve the marriage. She may repudiate herself in particular when her husband has granted her the right to repudiation (Article 142 CC). As such, *talāq* may be exercised by a woman if she has reserved this right for herself in the marriage contract or if the husband authorizes her after the conclusion of the marriage. (p.73)

A *Finnish Immigration Service* fact-finding mission report, in a section titled “Divorce”, states:

“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. Nowadays it’s very common to make a wedding film, which is, at least in Faryab, Mazar-i Sharif and Bamyān also recognized by the authorities as sufficient proof that a wedding has taken place in reality. 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*, p.8)

An article published on the *Pashtun Women Viewpoint* website states:

“In Afghan society, marriages are supposed to last for life. The divorce rate is low, but when a marriage does fail, it is always the woman’s fault. Statements

such as ‘She should have compromised’ or ‘She should have listened to her husband’ are common, and it is never the other way around. While a divorced man can easily find another wife and move on, a divorced woman’s chances of finding another husband are paper-slim. Divorce is seen as a disgrace, and a divorcée is often seen as a bad influence because she failed to protect her marriage — even if she ended it because of extreme abuse.” (Pashtun Women Viewpoint (28 January 2013) *To Be Divorced — and Disgraced — in Afghanistan*)

This article also states:

“Even if she has no children, it is nonetheless difficult for a divorced woman to get remarried, simply because most Afghan men dislike marrying a woman who has been married before, no matter how young, beautiful, or how good a person she is. Afghan mothers don’t like their sons marrying divorcées, either. Usually the only new husband a young divorcée can find is an older, divorced, or widowed man, and these matches are often encouraged by the girl’s family because it is one of her few options. This bad cultural practice is another reason why many Afghan women quietly accept abuse.” (ibid)

4. Marriage between Non Nationals and Nationals

Article 21 of the Civil Code of Afghanistan states:

“Under circumstances defined in Articles 19 and 20 of this Act, if one of the spouses at the time of the marriage contract is an Afghan citizen, except the condition of capacity, the provisions of the law of Afghanistan shall be applicable only.” (Republic of Afghanistan (5 January 1977) *Civil Law of the Republic of Afghanistan (Civil Code)*)

Marriage between Two Non Nationals

A document published on the website of the *US embassy in Kabul*, in a paragraph headed “If You Want to Get Married in Afghanistan”, states:

“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. Additionally, the court will not register marriages involving Afghans who claim not to be Muslim, unless the couple consents to a Muslim religious ceremony. Afghan law considers all Afghans Muslim by default.” (Embassy of the United States, Kabul, Afghanistan (undated) *Marriage*)

In a paragraph headed “Marriage Registration” this document states:

“Foreigners who want to marry in Kabul must first register the marriage at the Family Court, located in the Kabul Governor’s House Compound. In the provinces, outside of Kabul, marriages can be registered at the civil courts. The couple must appear at the Family Court in Kabul with two witnesses and photo identification (preferably their passports). Witnesses should also have

photo identification. If one of the individuals who wish to marry is Muslim, a religious Muslim ceremony will be performed at the time of registration. If both individuals are foreigners and non-Muslim, a civil ceremony may be performed. After the court ceremony, the couple is considered married under Afghan law; they may then conduct the family or religious ceremony/celebration of their choice. After the marriage is registered, the court will issue a marriage certificate upon request. In Kabul, court officials say, it will take about a week to receive the certificate.” (ibid)

References:

- Afghanistan Research and Evaluation Unit (AREU) (February 2009) *Decisions, Desires and Diversity: Marriage Practices in Afghanistan*
<http://www.areu.org.af/UpdateDownloadHits.aspx?EditionId=35&Pdf=905E-Marriage Practices-IP-web.pdf>
- Danish Immigration Service (29 May 2012) *Afghanistan. Country of Origin Information for Use in the Asylum Determination Process: Report from Danish Immigration Service’s fact finding mission to Kabul, Afghanistan – 25 February to 4 March 2012*
<http://www.nyidanmark.dk/NR/ronlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>
- Deutsche Welle (18 April 2013) *Afghan women escape marriage through suicide*
<http://www.dw.de/afghan-women-escape-marriage-through-suicide/a-16750044>
- Embassy of the United States, Kabul, Afghanistan (undated) *Marriage*
<http://kabul.usembassy.gov/marriage.html>
- Finnish Immigration Service (1 May 2007) *Report from a fact-finding mission to Afghanistan*
http://webcache.googleusercontent.com/search?q=cache:FSQijWSHRWIJ:www.migri.fi/download/14515_AFG_Fact_finding_2006.pdf%3F7934b7c6c359d188+&cd=1&hl=en&ct=clnk&gl=ie
- Immigration and Refugee Board of Canada (24 October 2012) *AFG104238.E – Afghanistan: Whether seigha (temporary marriage) is practiced in Afghanistan and by which groups*
<http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=454214&pls=1>
- Immigration and Refugee Board of Canada (18 December 2007) *AFG102679.E – Afghanistan: Issuance of birth certificates and marriage certificates; types of documents required by the applicant in Afghanistan or in embassies to obtain official documents*
<http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=451630&pls=1>

Institute for War & Peace Reporting (26 November 2010) *Afghan Runaways Flee Forced Marriage*
<http://iwpr.net/report-news/afghan-runaways-flee-forced-marriages>

International Centre for Human Rights and Democratic Development (15 May 2009) *Submission to the Universal Periodic Review (UPR) of the Human Rights Council (HRC): Fifth session of the UPR Working Group (4-15 May 2009)*
http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/AF/Rights_Democracy_AFG_UPR_S5_2009_TheInternationalCenterforHumanRights_Democratic_Development.pdf

IslamOnline (18 June 2008) *Afghan Muslim Wedding*
<http://archive.today/GMuFx#selection-1295.0-1295.22>

Landinfo Country of Origin Information Centre (19 May 2011) *Afghanistan: Marriage*
http://www.landinfo.no/asset/1852/1/1852_1.pdf

Max Planck Institute (July 2012) *Max Planck Manual on Family Law in Afghanistan*
http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

Muslim Marriage Guide (undated) *The Engagement, Henna and Nikah in Afghan Marriage Customs*
<http://www.muslim-marriage-guide.com/afghan-marriage-customs.html>

New York Times (3 May 2014) *In Spite of the Law, Afghan 'Honor Killings' of Women Continue*
http://www.nytimes.com/2014/05/04/world/asia/in-spite-of-the-law-afghan-honor-killings-of-women-continue.html?emc=eta1&_r=1

Pashtun Women Viewpoint (28 January 2013) *To Be Divorced — and Disgraced — in Afghanistan*
<http://www.pashtunwomenvp.com/index.php/2013-01-28-03-21-27/social/382-to-be-divorced-and-disgraced-in-afghanistan>

Republic of Afghanistan (5 January 1977) *Civil Law of the Republic of Afghanistan (Civil Code)*
<http://www.asianlii.org/af/legis/laws/clotroacogn353p1977010513551015a650/>

SoundVision.com (undated) *An-Nikah: The Marriage*
<http://www.soundvision.com/info/Islam/marriage.nikah.asp>

UN Assistance Mission in Afghanistan (UNAMA) (9 December 2010) *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*
<http://www.refworld.org/docid/4d00c4e82.html>

UN Population Fund (UNFPA) (4 October 2012) *Escaping Child Marriage in Afghanistan*

<http://www.unfpa.org/public/home/news/pid/12296>

US Department of State (28 July 2014) *2013 Report on International Religious Freedom – Afghanistan*

<http://www.state.gov/documents/organization/222535.pdf>

US Department of State (27 February 2014) *2013 Country Reports on Human Rights Practices*

<http://www.state.gov/documents/organization/220598.pdf>

US Institute of Peace (28 May 2014) *Sharia and Women's Rights in Afghanistan*

<http://www.usip.org/sites/default/files/SR347->

[Sharia and Women's Rights in Afghanistan.pdf](http://www.usip.org/sites/default/files/SR347-Sharia_and_Women%E2%80%99s_Rights_in_Afghanistan.pdf)

Sources Consulted:

Afghanistan Research and Evaluation Unit
Danish Immigration Service
Electronic Immigration Network
European Country of Origin Information Network
Finnish Immigration Service
Google
Immigration and Refugee Board of Canada
Landinfo
Max Planck Institute
Social Institutions and Gender Index
UNHCR Refworld
US Department of State
US Embassy Kabul
US Institute of Peace