

**Afghanistan Independent Human Rights Commission**

**Submission on Child Marriage for the High Commissioner Report**

**September 1, 2018**

**Child Marriage**

Child marriage or underage marriage has been practiced for centuries in Afghanistan. According to the statistic with the Ministry of Health of Afghanistan (2010), 21.3 % of all women between 25 and 42 have married at 15-years old and 53 % of them have married at 18 and one third of these women have given birth when were 19-year old.

According to the National Vulnerability Survey in Afghanistan (2011-2012), among those women between 20 and 15, 17% of them have married at 15.

The existing data with the Afghanistan Independent Human Rights Commission (AIHRC) indicates that the number of child marriage cases has been increased since 2013 as: 226 cases of child marriage in 2013; 225 cases in 2014; and 235 cases of child marriage have been recorded in 2015. The joint UNICEF and the Afghan Ministry of Work, Social Affairs and Disability reported on July 2018 that child marriage has reduced to 10% in the course of last 5 years. This survey conducted only in five provinces out of 34 provinces in Afghanistan.

In reality none of these figures indicate the real number of child marriage cases because it is not common in Afghanistan to register the marriage contract with the courts. The AIHRC’s fifteen months information data (2015-and three months of 2016) shows that those children forced to marriage have been mostly at 11-15 years. Fifty-seven percent of children marriage has been ateken place at 11-15, 36.4 % of married children have been at 16-18 years and 6.6 % have been at 7-10 year. All of the child marriage victims have been girls.

**The reasons of child marriage**

The outcome study of the AIHRC shows that in cases of child marriage, the decision makers mostly are the parents of girls and boys, sometimes, their grandfather and uncles as well. Sometimes it also happened that, based on the decision of both boys and girls’ parents, a girl of under 18 has been engaged with a man, while neither the boy nor the girl have seen each other before, or their engagement ceremony have been taken place at the absence of each others. However, the main reasons of child marriage in Afghanistan are as follow:

**Social and cultural factors:**

The irrational traditions, dominance of patriarchal society and the traditionalized thoughts of parents on the reality of marriage are a part of the social and cultural reasons that children become victims of child marriage practice. Child marriage in Afghanistan is considered as internal family matter that managed by traditions and religion codes, and in some other cases , child marriage is practiced as a tool to prevent violence between two families, strengthening relation between parents of the boy and girl. Sometimes very severe violence happens between two families, such as cases of murders or other crimes. Instead of referring such cases to a judicial office, but based on the informal justice or tribal code, the murder’s parents are forced by elders of the village to force one of their girls, regardless of her age, to marry a man of the murdered family, regardless of his marital status and age- whether he has already a wife or he is a twenty or seventy years old man, or is already a married man). This forced married girl would be treated as a punished girl in the husband’s family and always receives ill-treatment. In some cases, child marriage is as a result of deal happened on land and property between two parents of boys and girls.

**Economic reasons**

In rural and urban areas of Afghanistan, the whole marriage cost has to be paid by the husband side, including preparing a lot of gifts to the bride’s family members and close relatives, preparing different dresses and purchasing golden jewelries for the bride and all cost for performing the wedding ceremony. According to the tradition, before wedding, first engagement happened (sometimes at high cost) between the bride and groom, which last up to wedding ceremony, maybe for six month even to several years unless the groom’s family could save adequate money for paying all the cost of the marriage and wedding ceremony. In addition to all marriage cost, the bride parent also request cash from the groom sides, which could be at least equivalent to 5000 $ US up to 20,000 $ US or more.

Due to high marriage cost including the bride’s price, sometimes two families agree that their daughter marry their sons. For example the girl of “X” family marries the boy of the “Y” family, and in the time being the boy of the “X” family marries the girl of the “Y” family, which is traditionally called “*Badal”.* In most cases this type of marriage arrangement is done regardless of the girls and boys’ desire.

**Women education**

Girls are at risk of early marriage or child marriage all over Afghanistan. The main reason of this risks are community illiteracy, inaccessibility to school education in rural areas, poverty, lack of knowledge on national laws and Sharia law, and low level of knowledge about the health, social, and economic problems arises from early marriage. Due to poor economy, in most cases parents in rural areas encourage their daughters to marry as soon as the chance become available and the parents hope to benefit of reducing living cost of their daughters at home. Parents in Afghanistan always are in concern if their daughters couldn’t find good husband, therefore, they always force their daughter to marry soon with a rich man or relative, regardless of her desire. Since under-age girls always are at risk of sexual harassment, their parents try to arrange their marriage soon even under 18.

The number of girls attending schools are less than boys. There are several reason behind this differences. 1) In all rural areas boys and girls works at home and in the farm land. They are un-paid family workers all over rural areas. Girls have to work more at home to help their mothers in child care, cooking, house cleaning, animal husbandry and post-harvest activities. 2) Due to overshadowing of conservative environment, girls in rural areas are not allowed by their parents or community to attend schools after thirteen years old in the same schools with boys, unless the girl schools are available nearby villages. 3) security also is an obstacle for girls that prevent them to attend schools in the areas far from their homes. 4) poverty is another reason that parents seeking early marriage for their girls in order to rid of her living expense.

**Legal context**

The legality of marriage age in terms of internationally accepted age limit is not valid by the religious code, but the puberty/adolescent is the determinant factor for marriage rather than age. A number of clergies also believe that under-age marriage could be as a way of preventing immoral practice, particularly by girls. Single young girls are always facing sexual harassment, sexual abuse and even rape. Engagement sometimes happens even under 15.

The Article 22th of the National Constitution of Afghanistan forbids any discrimination and guarantee the equal rights of man and women before the law. According to the Article 70th of the Civil Law of Afghanistan, the legal marriage age for boy is eighteen and sixteen is for girls. The Article 71st of the same Law allows a girl, who have completed fifteen years old, to marry by her own desire, either upon the agreement of her parents or based on the permission of an authorized court.

In accordance with the Afghanistan’s law on Elimination of Violence Against Women (Came into force in 2009) any parents or relative who force or arrange under age marriage are prosecuted and punished. According to the Article 28th of this Law under-age marriage is forbidden and perpetrators are sentenced not less than two years of imprisonment.

Afghanistan has signed and ratified the CEDAW in March 2003 and the National Constitution of Afghanistan (2004) recognized the women human rights. Afghanistan has signed the UN Protocol on Elimination of Child Marriage in 2005.

**Negative impact of child marriage**

Child marriage has several negative impact in terms of health, education, social and economic.

1. A number of girls who marry at early age faces health problems such as inability of becoming pregnant, abnormal and difficult delivery, high child mortality, birthing children with mental or physical disability, becoming overweight, bone pain, neuron problems and other gynecological problems.
2. It also happened that a girl who has married at early age, has not been able to become pregnant for several years because of her physical inability/preparedness for bearing child. In this case she has been faced violence from her husband and her husband family, Therefore, child marriage mostly faces violence, even ends to divorce.
3. Child marriage also deprives the girls to maintain schooling because she becomes very busy at home and child care, and they lose their chance to learn from school and also from communication with others in community.
4. Since child marriage mostly happened in families who are illiterate or low educated people and having more children is considered as the traditional value, therefore, over-birthing increases the chance of maternity death or causing chronic illness of mothers**.**

**A few sample cases of child marriage in Afghanistan**

This is the reality that neither the AIHRC statistic nor the Afghan government statistics are the true indicator of child marriage cases in Afghanistan, because the AIHRC staff and also the government staff have very limited access to insecure areas; It is said that more that around 40% of the country is under the control of the Anti-Government Element which is insecure for the employees of the AIHRC, the Government and NGOs. On the other hand, child marriage is a traditional practice that villagers not considered as crime and people very rarely report it to any judicial or other organization, unless being faced violence.

**Case No. 1**

A girl of 14 submitted a complaint to the Mazar regional office of the AIHRC in April 2016. She has complained that her parent due to poor economy has forced her one year ago to marry a man of 40 against paying the cost of a piece of land plot for house making to her parents. During one year she has struggled with different violence faced in her family, and she was seeking for divorce. The AIHRC after investigation found this case a violation of the domestic law and human rights law, refer it to the provincial Family Court for remedial purpose.

**Case No.2**

In June 2015, an under-age girl complained to the AIHRC’s office in Bamyan province that her sister forcibly married a man but after a couple of years, due to family violence, she escaped from her home, and the complainer’s parent, to compensate the escaping of their daughter, forces her to marry the husband of her escaped sister. Since this force marriage was against the domestic and international human rights law, the AIHRC office manager interfered and referred the case to the family court, and finally the court demolished the marriage contract.

In another case of child marriage, a father wanted to forcibly marry her two daughters of 10 and 14 years old to two men against paying 320,000 Afghanis, as a result of the AIHRC’s interference this two forced marriages were prevented.

**Case No 3**

A women complained to the AIHRC regional office in Kandahar in 2016 that her 70-year old husband wants to marry anther 18 years old girl and now, to pay the marriage cost of his second marriage, her husband is forcing her to agree for her 10 years old daughter to marry a 37-years old man, enabling him to get enough money for the cost of his second marriage. In this respect the AIHRC urged the relevant court to prevent of this deal because this is against the domestic laws and also International Human Rights Law.

**Violence**

Considerable number of cases of family violence is referenced to early marriage. Underage marriage are faces different problems such as: inability of bearing child in the first years of marriage, chronic illness, deprived of education, economic problems and over birthing, which are the reasons of violence that a women faces at home. Early married girls, due to excess home works and child care, are unable to keep update their knowledge on various areas, which brings stress and depression that reflexes in form of violence.

**How to prevent child marriage in Afghanistan?**

1. **Empowerment of young girls through:**

* Raising the required skills among young girls and boys on health, access to legal information, communication skill and decision making
* Raising economic opportunities for young girls, particularly in rural areas, to become self- sufficient and reduce the economic pressure on parents
* Public awareness raising among different walks of the society to support young girls in preventing child marriage or early marriage
* Supporting youth organizations for campaigning on prevention of early marriage
* Awareness raising among youth groups, school teachers and mothers on reproductive health issues
* Strengthening NGO/CSOs and media outlets for raising public awareness on the right to marriage based on the couples’ own choice and on negative impact of early marriage on mother and child health
* Inclusion of reproductive health issues into the school textbooks

1. **Improvement of legal frameworks such as:**

* Reviewing the civil law of Afghanistan and making amendment to eliminate the differences on marriage age between the man and women, and adopt equal marriage age ( 18 years old) for both man and women.
* Compulsory registering of marriage contract and providing birth certificate
* Realization of the formal age, based on the NIC of man and women, in time of filling marriage contract form
* Advocacy and public awareness raising on execution of the laws in respective of marriage
* Formulation and adopting the practical monitoring mechanism at national level in order to prevent early marriage. The Ministry of Justice, the NHRI of Afghanistan and CSOs should be involved in the monitoring process.
* Providing easy mechanism pf submitting complaint and compliant investigation of the cases of child marriage by the attorney general office.

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