

Study on Child marriage in Afghanistan

**S. Bahgam
W. Mukhatari**

May 2004



CONTENTS

Executive Summary

- 1. Introduction**
- 2. Methodology**
 - 2.1 Information and data already available
 - 2.2 Research goals and methods
 - 2.3 Problems with data reliability
- 3. Results and discussion**
 - 3.1 Examples of child marriage from medica mondiale's practice
 - 3.2 Data from hospitals
 - 3.2.1 Rabia Balkhi Hospital
 - 3.2.2 Malalai Hospital
 - 3.2.3 Karte-se Hospital
 - 3.2.4 Khair Khana HospitalDiscussion
 - 3.3 Data from schools
 - 3.3.1 Women's vocational high school
 - 3.4 Data from Kabul Women's Prison
 - 3.5 Data from medica mondiale survey in Herat
 - 3.6 Opinions of Ministers and Afghan authorities
- 4. Child marriage and law**
 - 4.1 Rights of women under the Constitution
 - 4.2 Child marriage in Civil Law
 - 4.3 Marriage in Shariah Law
 - 4.4 Marriage age in international law
- 5. Further discussion of the effects of child marriage in Afghanistan**
 - 5.1 Child marriage and education
 - 5.2 Child marriage and health
 - 5.2.1 Physical growth
 - 5.2.2 Pregnancy
 - 5.3 Child marriage and violence against women
- 6. Summary of Findings**
- 7. Recommendations**

About the authors

Tables:

Table 1: Kabul Maternity Hospitals, April-November 2003; total obstetrical patients and patients under ages 20, 18, and 16

Table 2: Number of students, and married and engaged students in sample schools

Table 3: Prisoners in Kabul Women's Prison under the age 16

Table 4: Legal marriage age recommended by ministers and authorities

Executive Summary

Child marriage has long been practiced in Afghanistan and justified by certain interpretations of Islamic texts and tradition. There is very little data on the problem. But work undertaken by medica mondiale e.V. (mm) suggest that child marriage appears more common than even our data currently shows. A random sample of educated people in Herat for example showed 28.5 per cent of respondents married before the age of 16 years. In order for accurate information to be available in the future there is a need for registering of all marriages, and for exact record keeping by institutions such as hospitals and schools.

Child marriage affects girls badly in many ways. It blocks them from education and any possibility of independent work. It subjects them to pregnancy and childbirth before they have reached physical maturity, a circumstance that often produces serious physical trauma, psychological disturbance, and sometimes lifelong physical and/or emotional incapacities.

Confusion about the legal status of child marriages results from widespread ignorance of the law by the majority of society. We found that even ministers were in many cases, unaware of the actual minimum ages for marriage. In Afghanistan marriage is regulated by civil law, various interpretations of Shariah law, and traditional and customary practices. Civil law sets the minimum marriage age for females at 16, but it permits a father to give his daughter in marriage at age 15, if he chooses. Shariah law sets the minimum age for females at 15. Customary practices approve marriage at earlier ages. In any case, Civil law takes precedence over both Shariah law and customary practice. (Shariah law is applied in matters not specifically set forth in the Civil codes.) In addition, Afghanistan is bound to end child marriage through its ratification of certain international conventions including The Convention on the Elimination of Discrimination Against Women (CEDAW) and The Convention on the Rights of the Child (CRC).

This paper is a preliminary examination of some of the dimensions of child marriage in Afghanistan and its consequences. It includes information about traditional views of marriage, current marriage laws, international standards, reports of mm psychologists and gynaecologists, opinions of Afghan experts and authorities, and data from prisons, schools, and hospitals. Almost all respondents interviewed in the course of this study, from school girls through to legal experts, felt that child marriage must be prosecuted and stopped with the will and efforts of relevant government agencies and institutions. Most suggested that a much higher minimum age of marriage is appropriate, usually somewhere in the twenties. The authors hope their modest study will help stimulate attention to this problem, and promote such efforts to bring child marriage to an end, and so ensure that a greater proportion of Afghan girls have their basic rights respected.

1 Introduction

medica mondiale e.V. ('mm') is a German Women's INGO that provides services and advocacy for women and girls in war and crisis zones, working particularly with those who have been subjected to sexualised violence by family members, other individuals, or the state. Founded in 1992, with headquarters in Köln, Germany, mm supports work in Albania, Bosnia, Iraq, Kosova, and since early 2002, Afghanistan. mm provides capacity building, advocacy, and support for Afghan women and girls in the following fields:

◆ Psychological Work

We provide training in gender sensitive, appropriate approaches for professionals working with traumatised women and girls. This work currently focuses on mental health care professionals within the State Medical sector, midwives, and INGO staff. In addition we offer group and individual counselling for women, and are providing expertise to the Afghan Professional Association of Psychologists.

◆ Women's Rights and Legal Work

We provide training and on the job support to defense lawyers for women, technical support to administrators and guards at Kabul's Women's Prison, and legal representation to women prisoners and women at risk in the community. We influence political decision-making through research, activism, case work, and lobbying on issues such as violence against women, women in detention, and women's legal rights.

◆ Other Programs

mm supports the development of women centred treatment in Kabul hospitals, through the placement of returnee exiled Afghan female doctors. These doctors have undergone additional training from mm in Germany in trauma oriented and psychosomatic interventions.

Our newest program, is the Shelter Network Program. Through this we provide training and organisational support to improve the running of pre-existing women's shelters in Afghanistan. We also work with the Network of Shelters to improve attitudes regarding female victims of violence, and to develop appropriate referral services.

mm has found no research and very little data to document the extent of the practice of child marriage in Afghanistan. Marriages generally are not recorded in this country. Consequently, there are many questions we can't answer: we don't know the average age of Afghans at marriage, or why some places have many child marriages and others few, or whether the incidence of child marriage is increasing or declining, we don't know if it is equally prevalent among all social groups and ethnicities, we don't know what factors can best help reduce the problem, and how specific they might need to be depending on locality. But we do know that it exists and not just in rural areas - our direct contact with female legal and psychological clients in Kabul indicates that many girls are married off at a very early age, sometimes as young as nine years old, and with severe consequences.

2 Methodology

2.1 Information and data already available

Most available information reflects attitudes and anecdotes only, and occasional statistics seem unverifiable. Most of it has been taken from consultations held with children, where girls identified early marriage as a key concern.

Unicef: Unicef website states that 57% of Afghan girls marry before age 19, but it's not clear how or when this figure was obtained.

Afghan Aid: Report of child consultations from sessions in Argue and Warduj districts and in Faizabad province, August 9, 11, and 14, 2003. (138 participants, 56 boys and 82 girls). Argu participants mentioned specifically that "early and forced marriages should be avoided." They stressed the importance of girl's continuing education.

Save the Children UK, Afghanistan: Girls Voices, Kabul Consultation, December 2002, girls age 11-14: "When we see that the girls are not going to school, but getting married when they are very young, it makes us sad." Age 10-12: What makes us sad? "Forced marriages." Age 12-14: What are we not allowed to do? "We are not allowed to choose our husbands." Age 14-18: What makes us sad? "Early marriages." In consultations with children aged 11-14 between December 2002 and April 2003 most girls requested schooling and mentioned preventing early marriage as a key wish.

Save the Children UK, Afghanistan: Girls Voices, Kandahar Consultation, April 2003, girls age 11-14: What makes me sad? "Early marriages make me sad because we do not get higher education." "I am afraid of early marriage, I am afraid of marriage before graduation." "I wish I did not have to marry early."

Save the Children UK, Afghanistan: Girls Voices, Jalalabad Consultation, April 2003, girls age 11-14: "I wish they would not force me to get married at an age that is not appropriate for me." "Girls are not allowed to decide about their marriage."

2.2 Research goals and methods

Aims: We hoped to compile statistics on the extent of child marriage. We expected that the statistical data would be hard to obtain and incomplete, but sufficient to serve as a guideline to inform future research and action.

For practical reasons, we had to largely confine our research to Kabul. As Afghanistan's biggest urban center, Kabul is generally thought to be more sophisticated and less conservative than the villages and rural areas. Consequently, there's good reason to believe that the incidence of child marriage in Kabul is lower than in the rest of the country. An additional source of data came from some questions in a survey on attitudes to violence that mm Shelter Network team undertook in Herat.

Research design: Research included a literature review, reviews of existing files held in hospitals and schools, interviews with hospital and school directors, review of cases from our Psychological teams and Legal programs, interviews with Government officials and NGOs.

The two authors conducted surveys in three different types of locations, chosen to cover the poor and the middle classes. From September 10, 2003 to December 10, 2003, the two authors surveyed:

1. All 4 maternity hospitals run by the Ministry of Public Health in Kabul: Rabia Balkhi, Malalai, Karte-Se, Khair Khana.
2. All 15 schools in District 15, Kabul.
3. The women's vocational High School in Kabul (this caters for married women of school age).
4. Ministers, members of NGOs, and health care professionals.

In addition we reviewed 686 questionnaires completed in May and June 2004 in Herat. These were distributed by our Shelter Network Team of mm, between males and females, most of whom were educated and professional, spanning all ages over the age of 16, both married and single. Three questions were asked of respondents appropriate to this paper: age at marriage, age of parents at marriage, and minimum age believed most appropriate for girls to marry.

We also drew upon cases and data from mm's Psychological and Legal programs, including work conducted in Kabul Women's Prison.

2.3 Problems with data reliability

In Afghanistan, marriages are usually not registered with the State, or even with the religious authorities. Nor did we find any other current data on the age of girls and women at marriage. Hospital registers and other records were found to be filled in with various amounts of completeness.

It is unusual for Afghans to have exact records of the year or date of birth. If asked most can only guess. This means that any statement of age must be taken as an approximation. At times when age might affect a legal judgement, as when minors charged with a crime are to receive lower sentences than adults, a dental exam is performed—with equally inexact results.

3 Results and Discussion

3.1 Cases of child marriage from medica mondiale's practice

In providing psychological, medical, and legal aid to women and girls in the city of Kabul, mm regularly comes across women who were married at age 14 or 15, or younger. The following women, all of whom were pregnant or had recently given birth, were visited as part of regular medical support during two days in December 2003. They were seen by our child rights researcher and a representative of Terres des Hommes, a Swiss NGO. Together they provide a snapshot of the later lives of child brides.

1: From Khair Khana: Five years ago, when she was 14 years old, her parents married her off. She lives with her husband who beats her. She lost two babies from lack of proper medical care. She recently gave birth to a third child.

2: From Khair Khana: She was 12 when she was married to a 40-year-old man. She has lived with him for 16 years. She has 4 children and she is pregnant. Her husband can't

work because of “weakness” and she can’t work because of her pregnancy. So she sends her daughters into the streets to beg.

3: From Qalai Bakhtyar: She was 15 when her parents married her off, very much against her will. She now has 6 children and a psychological problem. She hates the noise her children make, and she often beats them. She doesn’t want to have any more children.

4: From Qalai Bakhtyar: She was 15 when she was married. She now has 8 children—7 daughters and 1 son—and she is pregnant again. Her husband wants more sons and beats her whenever she gives birth to a daughter.

5: From Qalai Wazir: She was 14 when she was married. She said, “It was forced marriage and I hated him for 11 years.” Now at age 25 she reports that her relationship with her husband has changed and they don’t hate each other any more. They have a newborn daughter who weighed 1.8 kg at birth.

6: From Nemroz: She was 15 when her parents arranged her marriage. She lived with her husband for two months and then realized that he was having sexual relations with his brother’s wife. She then left the house and went to her family with her husband’s permission. Later, however, he came and attacked her family, killing three family members. The husband is now in prison. The woman herself is seriously injured.

3.2 Data from hospitals

Hospital administrators stated that some of their patients are middle class, but most are poor and illiterate, and their husbands jobless. Administrators reported that most patients don’t know their birth date, and that hospital staff often record their own estimate of the patient’s age, based on her appearance. Consequently the data is not totally reliable.

We reviewed the files and registration books of all maternity patients. The patient records generally are supposed to include: name of patient, father’s name, husband’s name, age of patient, date of admission, sex of new born, medical status of new born. They do not include information on the number of children the mother already has. Approximately 30% of the entries are incomplete and do not give the age of the patient.

3.2.1 Rabia Balkhi Hospital

We reviewed all 7,886 obstetrical patients’ files for the six months from April to November 2003. Among them we found 500 patients (6.24%) under the age of 18. Among them were fifty mothers 16 years old, fourteen mothers 15 years old, three mothers 14 years old, and two mothers 12 years old.

3.2.2 Malalai hospital

We reviewed all 10,323 obstetrical patients’ files for the six months from April to November 2003. Among them we found 372 mothers (3.6%) under 20 years of age, including forty-six mothers 16 years old, fifteen mothers 15 years old, two mothers 14 years old, three mothers 13 years old, and three mothers 12 years old. There was no age registered for 30 % of all obstetrical patients during this period.

3.2.3 Karte-se Hospital

We reviewed all 1,728 obstetrical patients' files for the six months from April to November 2003. Among them we found ninety-seven mothers (5.6%) under the age of 20. Among them were seven mothers 16 years old, four mothers 15 years old, and two mothers 14 years old.

3.2.4 Khair Khana Hospital

We reviewed all 4,980 obstetrical patients' files for the six months from April to November 2003. Among them we found ninety mothers (1.8%) under the age of 20. Among them were three mothers 16 years old, two mothers 15 years old, five mothers 14 years old, and one mother 13 year old.

No	Hospital Name	# of Obst patients in 6 months	Patients under 20	%	Patients under 18	%	Patients under 16	%
1	Rabia balkhi	7886	500	6.24%	156	1.9%	19	0.24 %
2	Malalai	10323	372	3.6%	120	1.16 %	23	0.22 %
3	Karte-se	1728	97	5.6%	24	1.38 %	6	0.34 %
4	Khair Khana	4980	90	1.8%	24	0.48 %	6	0.12 %
Total	4 hospitals	24917	1059	4.25%	324	1.3%	54	0.21 %

Table 1: Kabul Maternity Hospitals, April-November 2003; total obstetrical patients and patients under ages of 20, 18 and 16

3.2.5 Discussion

The available percentages of young girls giving birth are low. But several factors suggest that the actual percentages of young mothers are higher. First, the records do not indicate the age of the mothers at the birth of their first child. It is quite possible that 20-year-old mothers may already have borne one, two, or even three children. Secondly, a large proportion of poor women deliver their children outside the hospitals. We can assume that the incidence of child marriage is higher among the least educated and most conservative people: that is, the poorest urban people, who can not afford professional health care, and the poor in rural areas.

For practical purposes, however, we can take these low percentages at face value. They still suggest the need to put an end to child marriage. The only acceptable percentage of mothers under 16 is zero.

3.3 Data from schools

It was hard to gather meaningful data in the schools. Normally one could assume that all high school girls are under 18, but because many women were denied education under Taliban rule, many who have returned to school are now older than 18. A rule of the Ministry of Education requires schools to transfer married girls to the Women's Vocational High School. (That rule may be changed. In discussions with mm, the Minister of Education, Mr. Unis Quanooni, said that in 2004 all married women would be allowed to continue their studies in their neighborhood schools.) Nevertheless, in the schools we surveyed, some students were hiding the fact that they were married because they didn't want to be sent to the Vocational High School, which was far from their

houses and generally believed to be inferior. In some schools, administrators were permitting the married girls to stay. To protect their students, administrators did not want to give information about marital age or the number of married and engaged students, and in some schools, administrators said they had no knowledge of such matters.

Administrators acknowledged, however, that some students marry very young. They said that some girls were married and engaged from class 6 to class 12.

The result of the research conducted in the 15th district schools is shown in Table 2. There are 15 schools in this district, and there are 82,646 students. Data was collected from 73,896 girls and boys; 3,247 of these students, or 4%, admitted to being engaged or married. The percentage varies greatly from school to school, from a high of 10.7 % in the Sidal Naseri high school to a low of 0.6% in Khair Khana high school. For technical reasons we were unable to distinguish between the genders, but we can assume that when an engaged or married boy is young, his fiancée or bride is even younger.

No	Name of School	No of students	No of married and engaged students	% of married and engaged students
1.	Sidal Nasery High School	10277	1100	10.7%
2.	Marim High School	8517	657	7.7%
3.	Gulam Haidar Khan	2222	200	9%
4.	Sarwari Sangari High School	4403	220	4.96%
5.	Number 12 Khair Khana	8750		
6.	Pangsad Family High School	6482	85	1.31%
7.	Prozha Jaded Khair Khana	7044	405	5.54%
8.	Maryam Secondary School	7955	105	1.31%
9.	Ghafoor Nadim	3866	75	1.93%
10.	Naswan Zulikha High School	5462	150	2.24%
11.	Tahia Maskan High School	5960	70	1.17%
12.	Number 16 Khair Khana High School	2612	52	1.9%
13.	Khalil Ullah Khalily	5011	80	1.5%
14.	Naswan Number 8	570	10	1.7%
15.	Number 15 Khair Khana	6127	38	0.6%
Total	15 schools	82646	3247	3.9%

Table 2: Number of students, and married and engaged students in sample schools

3.3.1 Women's vocational high school

Students in this high school follow the normal curriculum of Kabul high schools, but in addition they have vocational classes to learn particular skills such as tailoring, knitting, embroidery, cooking, carpet weaving, and food processing.

There are 250 students in this high school, of whom 90% are married and 10% are engaged. The youngest student is 15, and she is married; 40 other married students, or about 16 % of the total number of students, are under 18.

3.4 Data from Kabul Women's Prison

Data taken from prison records and backed up by mm's lawyers' records from the population of Kabul Women's Prison show that many prisoners married at ages 12, 13, or 14. Prisoners interviewed by mm's legal staff in the past six months said that when they married they knew nothing about marital relations or what to expect from their husband and his family. Misunderstandings partly arising from such ignorance resulted in their husbands and their families abusing and beating them. In these cases the women tried to escape from their husbands, or in a few cases, to kill them.

One case study documented by the legal aid program of mm illustrates a typical story of a girl forced to marry as a child, then beaten and sexually abused by her husband until she runs away, only to be picked up by the police and imprisoned. Elements of abuse, violence, underage marriage, lack of choice etc come up in the vast majority of cases taken by medica's legal and counseling programs.

Typical case study from mm's legal program: When Z was 10 years old her parents sold her in marriage (for 60,000 Afs.) to a 50-year-old man who was deaf and dumb. She was raped on her wedding night. During the next years she ran back to her father's house some 7 or 8 times, but each time her father beat her and held her in chains until her husband came to get her again.

At last she escaped into the city where she met a kind woman who took her in. After some time she met a young male relative of the woman, became engaged, and married him. They had been happily married for six months, and Z was pregnant, when she told her second husband her true history. The second husband went to meet her parents and told them of their daughter's whereabouts and her happy marriage. He invited them to visit their daughter, but instead they reported the couple to the police and had those both imprisoned for illegal marriage.

mm defense attorneys argued successfully in court that Z's forced marriage at age 10 was illegal, and her second voluntary marriage at legal age was lawful.

Of all 32 inmates in Kabul Women's Prison from September to December 2003, 60% were married when they were under the age of sixteen. The data strongly suggest a connection between child marriage, family abuse and violence, and subsequent use of law against such women.

No	Prisoner	Age at marriage	Status	Charge
1	A	12	Prisoner	Murder
2	B	13	Prisoner	Murder
3	C	14	Prisoner	Unclear
4	D	16	Released	Kidnapping
5	E	16	Prisoner	Elopement
6	F	15	Prisoner	Elopement
7	G	15	Prisoner	Divorce
8	H	15	Prisoner	Murder
9	I	13	Prisoner	Murder
10	J	13	Prisoner	Elopement

Table 3: Prisoners in Kabul Women's Prison (Sept – Dec 2003) under the age 16

3.5. Data from Survey in Herat

An 11 question survey undertaken by members of mm Shelter Network team, in Herat city during May 2004, included three questions about marriage: 1. The age considered appropriate that girls are married. 2. The age at which the respondent married. 3. The age combinations of parents at marriage. The conclusions show almost 100 per cent of respondents in favor of marriage for girls only over the age of 16 years, and a high percentage of respondents (over one quarter) who had experienced marriage under the age of 16 years themselves.

The total number of surveys completed was 686. Respondents were mixed by age. It was undertaken in Herat city, surveyed during May and June 2004. Most respondents were literate. These questions were part of larger survey and the survey was not designed specifically to attain information about child marriage.

Question: 1. Ages at which girls are ready for marriage:

Responses: 9 years (1), 12 (4), 13(4), 14(20), 15 (38),
16 (38), 17 (27), 18 (224), 19 (25),
20 (159), 21 (6), 22 (34), 23 (3), 24 (7), 25 (37),
28 (4), 30 (2), 35 (1).

After finishing education and aware of rights (52).

67 said under the age of 16. This is 9.7 per cent of respondents.

314 said between age of 16 and 19. This is 45.7 per cent of respondents.

217 said between the age of 20 and 25. This is 31.6 per cent of respondents.

7 said between the age of 28 and 35. This is 1 per cent of respondents.

- ↓# **The vast majority of respondents 90.3 per cent, believe that women should only be married after the age of 16. Whereas 32.6 cent think women should only be married over the age of 20.**

Question: 2. Age at which respondents were married:

Responses: Two respondents married at age 7: one of these now between 20 and 29 years, one over 50 years.

Five respondents married at age 9: two are now under 20 years old, one between 20 and 29, two over 40 years old.

Three respondents married at age 10: two are now between 20 and 29 years old, the other is over 40 years old.

Three respondent married at age 11: one is now under 20 years, two between 20 and 29 years old.

Thirty respondents married at age 12: two are now under 20 years, three between 20 and 29 years, 24 over the age of 30 years, one not clear age.

Seventeen respondents married at age 13: five are now between 20 and 29 years, two unclear, all others over age of 30 years.

Thirty eight respondents married at age 14: all now over age of 20 years.

Thirty one respondents married at age 15: two now under 20 years old, all others over the age of 20.

Two hundred and thirty four respondents were unmarried at the time of responding to the question.

- ↓# **A total of 129 respondents married before age of 16. This is 28.5 per cent of the total 452 married respondents.**

A total of 166 respondents were married between the age of 16 and 20. This is 36.7 per cent of married respondents.

A total of 99 respondents were married between the age of 21 and 29. This is 21.9 per cent of married respondents.

A total of 10 respondents were married between the age of 30 and 35. This is 2.2 per cent of married respondents.

- ↓# **Of those now under 20 year old (36 respondents), 17 per cent married before the age of 16.**

3.6. Opinions of Ministers and Afghan authorities

We interviewed the following prominent Afghan authorities concerning their knowledge and opinions about child marriage:

Dr. Sohaila Seddiki, Minister of Health.

Ms. Habiba Sarabi, Minister of Women's Affairs.

Dr. Abdul Rahim Karimi, Minister of Justice.

Mr. Abdul Hamid Mubarez, Deputy Minister of Culture and Information.

Dr. Sima Samar, Head of the Afghan Independent Human Rights Commission.

Dr. Zohra Rakesh, Head of Women Rights in Ministry of Foreign Affairs.

Professor Nasrullah Stankzai, Kabul University Law Department
 Laila, Head of Afghan Women's Network.
 Shinkay, Head of Afghan Women's Education Center.
 Riahana, President, Kabul University Women

All the respondents said they believe that child marriage is common in Afghanistan. Dr. Sima Samar, Head of the Afghan Independent Human Rights Commission, for example, said that surveys conducted by the Commission found that "many girls aged 6 and 7 get married with men aged 30 to 40 years old." The respondents said they believe the practice arises from poverty (the financial needs of the parents) and from misinformation about sexuality, safe motherhood, and health.

Dr. Sohaila Seddiki, Minister of Health, said: "Being a doctor I have seen that early marriage represents a gross problem in Afghanistan. Presently, parents marry their children at any age, even though such a thing is prohibited by law, by Islam and by standards of normal decency."

All the respondents agreed that child marriage is a great problem that should be urgently addressed. All felt that a national campaign is needed to raise awareness. Such a campaign, they said, could be undertaken by Ministries in cooperation with NGOs and civil organizations. They requested that the international community and UN agencies in particular support such campaigns with expertise and funding. The President of Kabul University Women requested that the UN provide a shelter for girls at risk of child marriage and a consultative body to provide advice. (nb: Four shelters currently exist in Kabul for female victims of violence).

Despite the great concern and sense of urgency expressed by all the respondents, none of the ministries or institutions they represent has yet addressed the issue.

Although the majority of respondents did not know the exact legal age for marriage, all the respondents said that the current legal age is too low, and they recommended higher ages. The data, as set forth in Table 4, shows that the age suggested for girls varied from 16 years at the lowest (the actual legal age at present) to 25 at the highest. For boys the lowest suggested age was 18 (again the actual legal age at present) and the highest was 35. Most respondents felt that the legal age for men should be higher than that for women.

No	Respondent	For men	For women	Age difference
1	Minister of Health	22	20	2 years
2	Minister of Women's Affairs	24	22	2 years
3	Minister of Justice	18	16	2 years
4	Deputy Minister of Culture & Information	20	18	2 years
5	Head of Women's Rights, Ministry of Foreign Affairs	35	25	10 years
6	Professor Stanzkai	22	22	None

7	Head of AIHRC	25	18	7 years
8	Head of AWN	20	20	None
9	Head of Afghan Women's Resource Center	20	18	2 years
10	President Kabul University .	25	18	7 years

Table 4: Legal marriage age recommended by ministers and authorities

4 Child Marriage and Law

This information was gathered from mm Legal Team, the Afghan Justice Commission, and the Shariah Law Faculty at Kabul Univerisity.

4.1 Rights of Women under the Constitution

Under Chapter 2, Fundamental Rights and Duties of Citizens:

Article 22: The citizens of Afghanistan—whether man or woman—have equal rights and duties before the law.

4.2 Child marriage in Civil Law

The Civil Law states in Article 40 that marriage is a contract between a male and female for the establishment of a family. It specifies the rights that both sides have with respect to each other.

Some of the basic conditions for a legally valid marriage are that:

- 1- Both parties have legal capacity.
- 2- In the case of under-aged partners, a guardian be present.
- 3- The contract be made in the presence of beholders.

Legal capacity as a condition for marriage is fulfilled if the party has reached the legal age as specified by law and is mentally competent.

The Civil Law specifies legal age for marriage:

Article 70: Legal capacity for marriage is accepted for boys when they have completed 18 years and for girls when they have completed 16 years.

Article 71: Subsection 1: When a girl has not reached the age written in article 70 of this law, her marriage rights belong to her father or a competent person.

Subsection 2: Marriage contracts for minors younger than 15 are not allowed by any means.

4.3 Marriage in Shariah law

Shariah embodies the rule ordained by the Prophet and through which Muslims are to be governed in their relationship with fellow human beings and with him. The primary source of Shariah is the Quran. The second source for Shariah is the Hadith, comprised of the sayings, practices and action of the Prophet. The third source of Shariah is Ijma, the consensus of opinion of knowledgeable people in the community on any given question. The fourth source is the Qiyas, meaning individual analogical deduction. Legal

discretion (istihsan) and the public good (istislah) are also secondary sources used in developing Shariah over the years.

Shariah law is generally referred to as the Islamic law, but there are different viewpoints about what exactly constitutes Shariah law, and there are at least five different schools of Islamic law each with its specific interpretation of many matters. Four of them are Sunni and are named after their founders: Mali bin Anas, Abu Hanifah, Al-Shafi, Ahmad bin Hanbli. The fifth school, the Imamiyyah, is Shia.

Shariah law and age of marriage (largely after Muhammad Jawad Maghniyyah, 1997)

Regarding marriage, Islamic scholars agree that:

- # There should be adulthood and sanity of both parties
- # In case of non-adulthood, guardianship of father or grandfather is required for marriage.
- # Father and grandfather are proprietors of their children and can marry them off.

Islamic scholars disagree about the definition of adulthood. A girl is said to attain adulthood when she starts menstruating, which according to the different schools is arbitrarily set at an age between 9 years (Imamiyya) and 17 years (Hanifa).

With some variations, most scholars agree that in cases where a child has not attained adulthood, the father or guardian can marry the child nonetheless. ("The marriage of under-age children is not allowed but if father wants to marry his under-age child, he can." Mortaze.) Some say that the consent of the child is not important.

4.4 Marriage Age in international law

The declarations of the International Women's Conference in Beijing in 1995 held that marriage of underage children should be illegal, and that efforts should be made to establish an official minimum age for marriage. In most western societies the legal age for marriage varies between 18 and 21 for men and between 16 and 18 for women.

The first article of the international Convention for Children's Rights states: "A child is a person aged less than 18 years." Afghanistan is one of the countries that has ratified this Convention and agreed to abide by its rules.

5 Further Discussion on the Effects of Child Marriage

Child marriage violates the human rights of children. It is traumatic for young girls. It impedes their personal growth. It deprives them of education and other opportunities for personal development. Our staff have observed that child marriage for both girls and boys has profound physical, intellectual, and psychological consequences.

5.1 Child marriage and education

Child marriage greatly limits married girls' access to education or completely ends it. After marriage, husbands and/or parents-in-law usually refuse to allow the child-wife to go to school. If she attempts to go to school, she faces violence from her husband and his family.

In some cases, married girls succeed in getting family permission to continue their education, only to be denied access by the school. Many school administrators argue that the presence of married girls in the school harms the morals of unmarried girls. On closer questioning, some of the administrators in district 15 schools of Kabul, admitted that even with an edict from the Ministry of Education approving mixed schools for married and unmarried girls, they would have severe problems from other parents and religious leaders if it was believed they had married girls studying alongside unmarried girls. They felt they had no support or ability to deal with such anticipated objections. These attitudes take place alongside a moral fear which results in a complete lack of education about sexual relations. The researchers tried to point out to the school officials that in 21st century Kabul, boys have extensive access to internet and therefore are certainly less than innocent about female physiology. Such logic could not persuade educators that it was worth their while to risk inflaming the community.

In any case, school administrators must abide by the ruling of the Ministry of Education that married girls may not attend school with unmarried girls. There is a great deal of confusion about whether this ruling still holds: with members of schools claiming that it does, and members of the Ministry of Education claiming that it is no longer valid. In Kabul, the Ministry set up one vocational high school for married girls in the Ministry of Women's Affairs. Girls forced to transfer from their neighborhood schools face transportation problems, taxing both time and money. (Many who want to continue their education are adult married women who were forced to stay at home for six years under Taliban rule. The rule banning married students from their own neighborhood academic high schools unfairly discriminates against these women as well as against child brides.) Girls who are engaged face similar problems even before marriage.

5.2 Child marriage and health

5.2.1 Physical growth

Child brides are not physically mature. During sexual intercourse they may suffer injuries, sometimes resulting in permanent damage. Duties of wives necessitate heavy physical housework over long periods which also can cause damage to underdeveloped bodies.

5.2.2. Pregnancy

Immature child brides often cannot sustain pregnancy. The fetus may not be carried to term, or the baby may be undersized and poorly developed. The children of these mothers also run a high risk of mental retardation. Underage expectant mothers also require higher rates of caesarian section than do mature women. The whole experience of pregnancy may be traumatizing to the mother who is still a child herself and totally in the dark about the transformation of her own body. Health education is not available and even mothers of child brides we spoke to refused to countenance that they had any role in informing their daughters of the reality of physical relations between men and women. It is unlikely that a mother who is still a child herself, and has never received care, can successfully care for others. mm doctors have observed severe dislocation and inability of child mothers to bond with their children. This should not surprise us, considering that the sexual act that has led to this birth is highly unlikely to be

consensual: therefore all the emotional reactions to the birth of a child as a result of rape can be predicted.

5.3 Child marriage and violence against women

Afghan culture is characterized by an extremely strong patriarchal system in which the family is central. The social system is extremely gender stratified. The marriages of both men and women are almost always arranged by their families. Such unions commonly take place between relatives, and within communities and clans. Neither the male or female are expected to resist to the will of their family regarding their marriage partners. Even highly educated women who work for INGOs report that they are unable to negotiate to change their family's choice of husband or timing of marriage. When international mm staff have been involved in discussions on behalf a girl who is resisting, they have similarly failed to get families to change their minds. In one case where an educated daughter did successfully refuse a marriage, her family married the man to her teenage sister instead.

Daughters are brought up for marriage, the time when they leave their father's home to serve their husband's family. The money the parents expended on the daughter's upbringing is considered recoverable, resulting in the customary payment by the potential groom of a bride price. To gain a bride price, parents may sell a young daughter into marriage. Widows working outside the home, in discussion with mm in 2002, who married their daughters under the age of 13, declared that this was done because they could not afford to feed them anymore, in order to secure support for themselves in their old age, and because family members were telling them that the girls were unattended and in danger of losing their virginity.

In a practice known as exchange marriage, a daughter may be given in marriage in exchange for another young girl from the bridegroom's family to marry the bride's brother or even her father. In these ways girls and women become commodities, being sold for money, obligation, or honor.

Girls are so thoroughly trained to respect their elders and men that self-assertion is extremely difficult for them. When a girl marries and moves to the house of her husband's family, she is expected to respect and obey them. The uneducated, unskilled, obedient child bride, without parental support or means of her own, is completely dependent upon her husband and his family. She has no place to go, and when she becomes a mother, she doesn't want to be parted from her children. In these circumstances the powerless young wife is a likely subject for beating (domestic violence) especially if she shows any resistance or disrespect, for violence against women is a manifestation of the unequal power of men and women. Powerless and increasingly traumatized, the young wife absorbs violence from her husband and his family as her fate.

6 Summary of Findings

- 1) **Lack of Data:** There is an almost total lack of data already available on which to base quantitative or qualitative research regarding child marriage in Afghanistan. The data mm compiled is strongly suggestive that child marriage remains a problem in Afghanistan.

- 2) **Belief that child marriage is common:** All people we questioned believe child marriage is extensive and common throughout Afghanistan. There is a belief that it is more common in poorer, uneducated families. We can not yet substantiate either belief but we certainly did not find a lack of cases in Kabul or Herat cities.
- 3) **Opposition to child marriage:** The vast majority of people questioned, were against child marriage and believed that it is bad for the girl, the family, and society.
- 4) **Lack of knowledge of law:** Very few people we spoke with, educated or uneducated, could state the correct legal age for marriage under Civil Law.
- 5) **Impunity for breakers of the law:** We could not find a single case of a man prosecuted for marrying a child in Afghanistan. But we could find many cases of girls in jail for other crimes who were known to have been married under the legal age, without any negative legal consequence to their husbands or families.
- 6) **Recommended minimum age of marriage:** The overwhelming majority of Afghans we talked with suggested a much higher minimum age for girls to marry – usually twenty years or above.
- 7) **9 year olds married in cities:** It is possible to easily find in Kabul and Herat girls who have been married under the age of sixteen years old, including those married as young as nine years old. This practice does not appear to be rare. The youngest reported age of a married girl to mm was seven years old The Deputy Minister of Women’s Affairs has also stated that she knows of cases this young.
- 8) **Frequency of child marriage among mm clients:** In the last two years, virtually every female prisoner in the Kabul Detention Center (Welayat/Prison), and virtually every female client of mm psychologists, was married under the age of sixteen.
- 9) **Relationship between child marriage and family violence:** The vast majority of female clients seen by home visitors and mm psychologists in Kabul, who experience family violence have been married off at an early age.

7 Recommendations

- 1) **Action must be taken by the widest range of organisations:** To prevent abuse of girl children’s rights by marriage a wide range of individuals and organizations, from community leaders and policy makers to governmental and international bodies, must take action. Because child marriage is a customary practice in Afghan culture, leadership must come from Afghan nationals. It is suggested that the Ministry of Women’s Affairs, and the Ministry of Education, with the support of agencies such as UNIFEM and UNICEF take the lead.
- 2) **The Government should regularly publicly clearly state the minimum legal age, and should publicly affirm their concerted will to prevent and prosecute child marriages.**

- 3) **Education programs should be developed to educate young people and parents about the law and realities of child marriage:** A key step is community education to inform parents and young people about the negative implications of child marriage, and the legal age of marriage so they can choose to prevent it. Such programs could be undertaken by the Ministry of Education, the Ministry of Justice, the Ministry of Women's Affairs, Educational INGOs, and NGOs, alongside agencies such as UNICEF.
- 4) **School attendance until age 16 should be made compulsory:** Education is a key in this process. Parents must be persuaded to keep their daughters in school and to postpone marriage. School attendance for both girls and boys should be made compulsory until at least age 16.
- 5) **Systems should be put in place by the State to ensure registration of all marriages:** Community and national governmental bodies should register births and marriages. Marriage registration should record the accurate ages of the parties being married. Schools and hospitals should also keep better records. Religious leaders such as Mullahs who commonly 'officiate' at marriages should also be educated regarding law and should keep records.
- 6) **Prosecutions must take place of men who marry girls:** Men who marry girls under the Legal Age of 16, should be prosecuted. Marriages with a large age differential (of more than 10 years) should be heavily discouraged.
- 7) **Hospital and School data collection should be standardised:** In order to bring attention to a wide range of problems of violence against women and its effects, hospitals and schools can collect data in a more useful and consistent way. In particular it is suggested that all maternity patients have their age recorded, and their age at marriage recorded. It is suggested that all schools record details of students who are married or engaged and their age.
- 8) **Marriage Education:** It is suggested that the Ministry of Education investigate the possibilities of providing education on marriage to school and University pupils. This should include information about the lowest legal age.
- 9) **Clarity on regulations regarding married girls remaining in school with unmarried pupils:** The Minister of Education told mm that married girls can remain in normal schools, whereas Head Teachers told mm that Edicts passed ensure that married girls are denied access to regular school and forced to attend the Vocational High School. It is essential that the Ministry of Education makes clear to all parents and teachers what the position is.
- 10) **Campaigns to encourage girls to remain in higher education:** It is the experience of other women's groups worldwide (such as in Kosova and India), that community based campaigns that give positive images of girls staying in education, have the effect of reducing early marriage. INGOs and NGOs with support and funding from international donors are appropriate actors to undertake such campaigns.
- 11) **Further research and actions into ways of preventing high drop out rate from female students:** Teachers report a lack of motivation among female students because they expect their fate to be marriage. This then becomes a self-fulfilling prophecy. Female students who try and reach University either fail to gain entrance because they lack basic skills due to lack of education during Taliban period, or drop

out on discovering that they cannot keep up. Most then find that the only acceptable alternative is to marry. It is recommended that the Ministries of Education and Higher Education take these issues up urgently.

- 12) **Continued lobbying by the international community on rights issues with Afghan authorities:** It is vital that donors and governments continue to forcefully raise issues of children and women's rights with counterparts in Afghanistan. In particular Afghan Ministers have stated their need to have strong external support to help raise the profile of the problem of violence against women, trauma, and child marriage.
- 13) **Police education:** A special course should be introduced into the Curricula of police, which outlines law on marriage and women's rights under it. This could be done in collaboration with mm's Community Education project of the Legal Aid Fund.
- 14) **Use of best practice to reduce child marriage:** It is recommended that best practice to effectively reduce child marriage is gathered by women's groups to help them develop programs to stop marriage in Afghanistan.

About the Authors

Ms S Bahgam is a Women's Rights Worker at mm. She is also a student at Kabul University, Faculty of Law, and a member of the Women and Leadership Course at the University. She has been active in Civil Society particularly regarding the role of youth, for more than 7 years. Previously she has written for the media on women and youth problems. This is her first research publication.

Ms W Mukhatari is a Women's Rights Worker at mm. She is currently assisting in translation and project design for the Women's Shelter Network in Afghanistan. She is also a student at Kabul University, Faculty of Medicine. Previously she has researched problems for women in the medical sector. This is her first research publication.

We would like to thank Ann Jones from PARSA who provided invaluable editorial assistance and Tahmina Baluch who undertook some of the research on Shariah.

To Contact Us

Website in German and English: <http://www.medicamondiale.org/>

Email: Heads of Mission Kabul: rachelwareham@yahoo.com,
Stefanie_kuenzel@yahoo.de

General Cologne: info@medicamondiale.de

Telephone – Afghanistan: 00-93-70-274446 , 00-93-79-211160.

Telephone – Germany: 00-49-221-9318980

Address - Afghanistan: medica mondiale Afghanistan
Qali Fatullah, Street One, House 36
Kabul.

Address – Germany: medica mondiale e.V
Hülchrather Strasse 4
50670 Cologne
Germany

Our donors: medica mondiale e.V. is able to undertake our work in Afghanistan due to the generous support of the German Foreign Ministry (Auswaertiges Amt), the German Development Agency (GTZ), InWent Germany, and UNHCR.

Public donations enable us to increase the amount of support we can give to Afghan women and girls. For more information on how you can support us, or be involved in our programs please visit our website or contact us via email or post.

Bank transfer to our donations account:

Name of bank: Sparkasse Bonn
Bank code: 380 500 00
Account number: 45 000 163
IBAN: DE24380500000045000163
BIC: BONSDE33