



Roundtable Conference

“Comparative Analysis of Family Law in the Context of Islam”

August 15-17, 2006
Kabul, Afghanistan

Report by Orzala Ashraf Nemat
Dari Translation by Jawed Nader

Contents

Acronyms	3
Foreword	4
Introduction	5
Executive Summary	6
Introducing the speakers	7
I. Marriage in the Islamic Context	9
Background paper on marriage in the context of Afghanistan	9
Marriage in the context of Bangladesh	11
Marriage in the context of Egypt	13
Marriage in the context of Malaysia	15
Marriage in the context of Pakistan	18
Major findings and lessons learned on marriage	22
II. Polygamy in the Islamic Context	24
Background paper on Polygamy in the context of Afghanistan	24
Polygamy in the context of Bangladesh	27
Polygamy in the context of Egypt	28
Polygamy in the context of Malaysia	29
Polygamy in the context of Pakistan	31
Major findings and lessons learned on polygamy	33
III. Divorce in the Islamic Context	34
Background paper on Divorce in the context of Afghanistan	34
Divorce in the context of Bangladesh	36
Divorce in the context of Egypt	38
Divorce in the context of Malaysia	39
Divorce in the context of Pakistan	41
Major findings and lessons learned on divorce	43
IV. Child Custody in the Islamic Context	44
Background paper on Child Custody in the context of Afghanistan	44
Child Custody in the context of Bangladesh	46
Child Custody in the context of Egypt	48
Child Custody in the context of Malaysia	49
Child Custody in the context of Pakistan	51
Major findings and lessons learned on child custody	53
V. An over all strategy on family laws in Afghanistan	54
VI: List of participants to the roundtable	55

Acronyms

AIHRC	Afghanistan Independent Human Rights Commission
CSO	Civil Society Organization
HBF	Heinrich Böll Foundation
MoI	Ministry of Interior
MoWA	Ministry of Women's Affairs
MoJ	Ministry of Justice
NGO	Non-governmental Organization
STD	Sexually Transmitted Diseases
UN	United Nations
UNIFEM	United Nations Development Fund for Women

Foreword

The Heinrich Böll Foundation was founded in 1997 and has its headquarters in Berlin, Germany. Most important area of the foundations activity are its projects in developmental co-operation and international policy with currently supporting about 130 projects in 60 countries in Asia, Africa, Europe and the Americas. The Foundation's primary objective is to support political education both within Germany and abroad, thus promoting democratic involvement, socio-political activism, and cross-cultural understanding. The Foundation also provides support for art and culture, science and research, and developmental co-operation. Its activities are guided by the fundamental political values of ecology, democracy, solidarity, and non-violence. The German writer and Nobel Prize laureate (1972) Heinrich Böll's call on citizens to meddle in politics is the example upon which the work of the Foundation is modeled: The Foundation strives to stimulate socio-political reform by acting as a forum for debate, both on fundamental issues and those of current interest. To realise it's objectives, the Foundation provides encouragement and support to groups and individuals living up to the responsibility of shaping a more peaceful world, of protecting the environment, and of promoting respect for human rights throughout the world. The Foundation places particular importance on gender equality - signifying a relationship between women and men characterised by freedom from dependence and dominance. In Afghanistan since 2003 the Foundation supports initiatives on women's rights and gender equality.

This paper is the outcome of a round table conference undertaking a comparative analysis of four aspects of family law in the context of Islam: marriage, divorce, polygamy and child custody. While legal experts from Afghanistan provide the reader with background analysis of the status of these aspects of family law, legal experts from Bangladesh, Egypt, Malaysia and Pakistan share their experience on law advocacy and talk about the status in their respective countries. It is hoped that the paper will contribute towards further lobbying and awareness raising on the governmental and civil society levels of Afghanistan and the proposal of amendments to the respective laws in the country. Being a corner stone of the Heinrich Böll Foundation's work on women's rights issues in Afghanistan, it is hoped that this conference report may be the basis for further discussion processes and detailed research on the issues of family laws in an Islamic context.

The Heinrich Böll Foundation at this stage would like to thank all the speakers of the conference for their prior analysis and professional input on the topics discussed. Also comments and questions from participants of government and civil society organizations during the round table conference were valuable for the finalization of the report. Moreover the Heinrich Böll Foundation would like to thank all those persons that have made the preparation of this report possible: Mrs. Orzala Ashraf Nemat who took over the difficult task of writing it, Mrs. Hangama Anwari who has provided her input in various steps of it's finalization, Mrs. Rachel Wareham for editing and Mr. Jawed Nader for the translation of the piece into Dari language.

Finally the Heinrich Böll Foundation would like to pay it's gratitude to the **Afghan Independent Human Rights Commission** in being a very committed partner in conceptualizing and organizing the conference.

Kabul, August 2007

Introduction

The Family Law in Afghanistan is part of the Civil Law under the judiciary and legal system.

The Civil Law of Afghanistan, however, was endorsed 30 years ago in 1355¹ (1976) and to date no amendments have been made. The law has mainly been made with reference to Egyptian and French laws.

In general, the laws in Afghanistan derive from Islamic Sharia Law. Article 3 of the Constitution of Afghanistan of 1382 (2003)² further emphasizes this: "In Afghanistan no law can be in contrary to the sacred religion of Islam and the values of this constitution".

In addition, based on its Constitution, Afghanistan is obliged to implement and respect its international commitments. As mentioned in Article 7 of the Constitution: "The state should abide by the UN Charter, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights".

Meanwhile, Article 54 of the constitution clarifies the obligation of the government to support and ensure the family's safety and eliminate those customary traditions contrary to Islam.

However the laws and articles of the Constitution mentioned above are perceived to be contradictory to each other in one way or another. At the very least there is some incompatibility and inconsistency in parts of one or more aspects. Some articles of the International Declaration of Human Rights are conflicting with the constitution or vice versa.

The Heinrich Böll Foundation/ HBF in partnership with the Afghanistan Independent Human Rights Commission/ AIHRC, conducted a roundtable titled "Comparative Analysis of Family Law in the context of Islam" between August 15 and 17, 2006 with the participation of experts on law from Bangladesh, Egypt, Malaysia and Pakistan. The objective of the round table was to examine the status of the Civil Law of Afghanistan within an international context and analyze impacts of this law on the lives of families and especially women in Afghanistan.

Opening the roundtable conference, Ahmad Fahim Hakim from the AIHRC discussed the importance of strengthening family relations, the role of customs and traditions within family relationships as well as issues such as domestic violence with their roots in male dominance and customary traditions.

¹ Measured according to the solar calendar

² See for further information on the Afghan Constitution English version at http://www.afghan-web.com/politics/current_constitution.html or as PDF file at: <http://www.mfa.gov.af/Documents/Constitution%20of%20afghanistan.pdf>

The deputy speaker of the National Assembly of Afghanistan, Ms. Fauzia Kofi discussed the importance of legislative institutions such as the parliament in the process of legal reforms. She also raised the need for supplementary laws which can avoid misuse of existing provisions and set preventive measures.

Mr. Bahauddin Baha, member of the Supreme Court of Afghanistan, in his opening remarks spoke about gaps in Afghan civil laws and mentioned that it is not only important to focus on reforming laws. Rather there is a need to ensure that existing laws are being implemented sufficiently. He also discussed the difference between permission and obligation with some examples. Baha described conditions under which polygamy can be practiced that are far from what is seen in the reality of current society. 'Women's access to the legal system is also crucial for reforming the laws.' Baha said.

The following document is an analysis of the roundtable, recommendations. It suggests initial steps that should be taken in the future for better implementation of laws and towards a process of reforming civil law in Afghanistan.

Executive Summary

This report articulates an analytical perspective to four different topics under the civil law - marriage, divorce, polygamy and child custody which are considered in need of reform based on changes in family dynamics and the social spheres of the country.

The report goes into further deep analysis of each topic with studies and experience from four other countries having the same basis for their laws. In other words, like Afghanistan, Bangladesh, Egypt, Malaysia and Pakistan are among those Islamic countries whose laws are based on Sharia Law and on the Hanafi school of thought.

The aim of this report is to reflect the experiences of the other four countries in tackling reforms of civil laws as well as introducing different strategies helping to reform laws in the most advantageous way and ensuring protection for women and children. And how will it be used in Afghanistan?

The report provides four separate sections, one on each topic with details of the presenters' main points. Then, it introduces the major findings under each topic. In conclusion the report recommends some overall strategies to be implemented by different stakeholders in order to enhance and reform civil law in Afghanistan.

Introducing the speakers

Commissioner Dr. Soraya Rahim Sobrang

Doctor Soraya Rahim Sobrang was born in Herat, Afghanistan. After completing her higher education in the faculty of medicines of Kabul University, she worked with Aliabad and Malalai Zezhanton hospital before migrating to Germany. Dr. Sobhrang then completed training courses in the fields of management, women's rights development, gender and psychology in Hamburg, Germany. After returning to her homeland in 1381 (2002) she was appointed to the post of Technical and Political Deputy Minister with the Ministry of Women's Affairs. In 1384 (2005), she was appointed advisor for Women's Rights Protection and Development Unit of Afghanistan Independent Human Rights Commission. She was selected as a Commissioner in 1385 (2006).

Commissioner Fahim Hakim

Commissioner Fahim Hakim is a qualified social and development worker with over 12 years experience as an activist and mobilizer for peace building and human rights activities. He was the director of the Afghan network 'Co-operation for Peace and Unity' before joining the Human Rights Commission. As an active member of the Afghan civil society he attended the Bonn Conference. He has an MA on Post-war Recovery, from the University of York, UK. Currently he is deputy chair of the Commission.

Commissioner Hangama Anwari

Commissioner Hangama Anwari is an Afghan lawyer with extensive working experience on community based initiatives and a well-known advocate and activist for human rights, particularly women's rights. She worked in senior positions with UN-Habitat as well as a member of the United Nation human rights consultative group and as a founding member for culture and civil society organizations. She has been involved in various research activities in the field of human rights and women's rights.

Commissioner Farid Hamidi

Commissioner Farid Hamidi is a lawyer with extensive experience on criminology and investigation. He had attended various national and international conferences and events relating to human rights promotion and protection. Before joining the Human Rights Commission, Mr. Hamidi was a member of the Emergency Loya Jirga and responsible for developing rules and regulation for the elections. He has worked closely with the Judicial Reform Commission in training of lawyers and judges on international human rights laws and standards.

Judge Marzia Basel

Judge Marzia Basel graduated from Kabul University Faculty of Law and Political Science and earned her master degree in International Law and Comparative Studies from George Washington University in Washington DC in 2005. She has more than twenty years experience with national and international legal organizations. She is also a human rights activist focusing on the area of women and juvenile rights in Afghanistan since 1985. She is the founder of the Afghan women judges Association and currently works as its director in Kabul

Prof. Dr. Begum Asma Siddiqa - Bangladesh

Begum Asma Siddiqua is a Professor of Law and Dean of the Faculty of Law of Rajshahi University in Bangladesh. She is also a member of the Bangladesh Judicial Service Commission. She obtained her LL.B (Hons.) from Dhaka University and proceeded to Brussels for doing a Masters in International and Comparative Law (MICL) with the University scholarship of 'Vrije Universiteit Brussel.' Later she was awarded a Commonwealth Scholarship to do her LL.M and Ph.D from London University (SOAS).

She is associated with various law and human rights organizations in Bangladesh and is specialized in the law of evidence, Muslim comparative law of succession, family justice system, human rights, migration, women rights and gender issues.

She has served as a consultant to the UNDP assisted government project on disadvantaged women and has been awarded with a SSRC Fellowship and Senior Fellowship of the Forum on Women in Security and International Affairs (FOWSIA). She is author of 'The Family Courts of Bangladesh: An Appraisal of Rajshahi Sadar Family Court and the Gender Issues'. She has participated in many national, regional and international workshops, seminars and conferences.

Judge Ali Ibrahim Kamouna - Egypt

Judge Ali Ibrahim Kamouna is a Chief Prosecutor in Egypt. He specializes in the field of personal status and family laws. He was District Attorney for sixteen years and then continued as Chief Judge. Currently he is the Chief Prosecutor at the Technical and Professional Bureau of the Court of Cassation which is the Highest Court in Egypt's judicial and legal system. Among his many tasks are to execute the rules and to interpret the context of laws.

Noraini Binti Ab Murat - Malaysia

Noraini Binti Ab Murat is the Legal Officer and Acting Spokesperson of Sisters in Islam, a progressive Muslim women's organization working on the rights of Muslim women within the framework of Islam. The group's activities in research, advocacy and public education help to promote development of Islam that upholds principles of equality, justice, freedom and dignity within a democratic state. Noraini Binti Ab Murat is one of Sisters in Islam's spokespersons and trainers. She gives public talks and trainings on Islam and women's rights, rape laws, and fundamental liberties, specializing in Islamic Family Law and Interfaith relations. She is a qualified lawyer in both the civil and the Sharia system in Malaysia. She is currently pursuing her doctorate.

Dr. Shaheen Sardar Ali - Pakistan

Dr. Shaheen Sardar Ali is currently teaching at the Faculty of Law, University of Warwick, UK. She received initial education in the highlands of Swat, north of Pakistan. She was Professor of Law in University of Peshawar, Pakistan and regularly acts as a consultant for a range of international bodies, including DFID, NORAD, UNICEF, UNIFEM. She served as Minister for Health, Population Welfare and Women's Development in the Government of the North West Frontier Province (Pakistan), was Chair of the National Commission on the Status of Women of Pakistan and one of the founder members and coordinator of the South Asian Research Network on Gender, Law and Governance (SARN). Dr. Shaheen believes that law has to speak to the women on the ground and the gap between reality and law's platform has to be closed.

I. Marriage in the Islamic context

Background paper on marriage in the context of Afghanistan

Based on article 60 of the Civil Law of Afghanistan, ratified in 1355 (1976), marriage is defined as "a contract which legalizes intercourse between man and woman with object to establish a family, and it creates rights and obligations for both parties." But unfortunately, in the reality of our societies it has mostly been contrary to the above definition.

Challenges and barriers associated with legal marriages in our society that affect marriage and the future of spouses:

Firstly, customs and traditions play a more significant role in determining the fate of marriages, instead of law. And very often customs and traditions take a far more influential position than the actual laws in our society.

Secondly, most marriages do not occur based on the will of the man and woman but according to a decision taken by the elders. Articles 66 and 77 clarify the role of both man and woman in getting married. But practice in Afghanistan is otherwise:

Unfortunately the elders are the ones who decide about marriage for their children based on their own interests such as tribal and economic relations. And if there are marriages happening away from their decision, they are perceived as alteration of the elders influence and power and are therefore rarely accepted.

Thirdly, economic dependency on the part of the boy and the girl is another example. Financial power increases the authority of parents and elders even if the children do not agree with their parents' decision. Thus, the marrying couples become spectators not having any vote about their own future life.

The fourth issue is the issue of marriage expenses. Often marriage expenses and deciding about them is the task of the father of the family. It is the father in the family who is the main decision making authority for the marriage. He for example will discuss about the dower or *Mahar*, its price and so on. This also moves the interest on both sides from social to financial relationships. In other words, men are in search of cheaper wives and women seek the kind of men who can pay the highest. If a marriage contract is based on such facts, the couple has to take any step in their life for their family's interest and this often causes complexity in their relations and problems they face in their daily life.

Problematic types of Marriage in Afghanistan:

- Marriages that happen in the absence of the man: These are the marriages happening while the man is abroad and the girl is being married to someone whom she never met before. Very often, such kinds of marriages fail and there are many researches and stories about this type of marriage.

- A large gap/difference between the age of husband and wife. In my opinion this is not appropriate at all, as both relate to totally different generations and the consequences of such marriages is very often very negative
- Exchange marriages (girl against girl): In this case, a girl is being exchanged with another. This happens regardless of their wishes and interests and thus there is no respect for the human dignity of both girls and their marriages. In such cases very often the misfortune of one couple affects the life of the other. This happens while our holy prophet says that exchange is totally forbidden in Islam.
- Bad or honour marriages: This is the worst type of marriage. It happens in order to resolve a conflict between two enemies or families who have a dispute. In other words, a girl that may be five years old has to pay the price for the crimes committed by her brother/father/uncle. It is clear that this type of marriage is in total contradiction with article 26 of our constitution which states that crime is a personal act and no one else can pay for it³.
- Marriage of widows: Although based on Islamic laws a widow has the full right to decide about her life and re-marrying, unfortunately an old custom has remained in place which only allows the widow's marriage with her husband's closed relatives. Due to two decades of war we have more than 700,000 widows in our country and their future should be a matter of concern.
- Child engagements/marriages and engagement while the child is not even born: This custom binds the two persons without their will and without even knowing each other from the childhood. Due to the customary believes they can not separate or refuse in order to respect their families. And in case a girl refuses such marriage, it is again very hard for the girl to marry again.

So what are the consequences of following such kind of marriages? In our society, divorces, domestic violence, escape from homes, self immolation, suicide, prostitution, depression and psychological illnesses are among the direct effects and consequences of these types of marriages. Based on a report that the AIHRC has recently prepared, there are many of such cases occurring. For instance, we have a record of seventeen self-immolation cases; three cases of burning by other family members; committing of suicide in forty-four cases; physical violence or beating in sixty-two cases; one case of forced abortion; four cases of escaping from home (elopement) and three cases of rape in July 2006⁴. In total we have had 238 cases recorded in this one month.

Recommendations:

- Awareness raising through media and educational systems on different levels;
- Family courts at the provincial level should be established;
- Legal Counselling Centres should be established;
- Psychosocial Therapy Centres should be established;
- Shelter houses for women and girls at risk should be established;
- Mandatory registration of marriages to be enacted;
- Long-term loans for youth should be provided;
- Feasible jobs and employments should be created for youth;
- The civil law of Afghanistan should be reviewed in order to overcome the gaps in it and make it less prone to misuse;

³ Article 26th: 'Crime is a personal act. Investigation, arrest and detention of an accused as well as penalty execution shall not incriminate another person.', Afghanistan constitution, 2003.

⁴ Afghan Independent Human Rights Commission (AIHRC), Annual Report, July, 2006, Kabul

- Article 71 of the Afghanistan Family Law should be amended because it is more prone for misuse. It also is in contradiction with article 2 of the Juvenile Code which defines the age of childhood under 18 for both girls and boys⁵.

Marriage in the context of Bangladesh

In Bangladesh there are 88 percent Muslims and the remaining are Hindus, Christians, and Buddhists respectively. There are two systems of laws and one system of courts. There is a general law for the whole citizens of Bangladesh. And there is personal law for different communities, in other word for the different religious groups. Therefore, for the Muslims we have the Muslim law.

The Muslim marriages are guided by the traditional Hanafi School of Law and it is very similar to the rules that we have in the Afghanistan Constitution. But there are certain differences which are: We have three steps regulating marriage. They are: 1) The Child Marriage Restraint Act; 2) The Muslim Marriage and Divorce Registration Act; and 3) The Muslim Family Laws Ordinance Act of 1961.

The Child Marriage Act is applicable to the whole citizens of Bangladesh. But the Muslim Marriage and Divorce Registration Act and the Muslim Family Laws Ordinance Act 1961 are applicable to Muslims only.

The age of the groom is supposed to be 21 and the age of the bride 18. But a marriage below this age is valid and is not void in order to keep the consistency of the family and ensure that the legitimacy of the child is not hampered. But the parents and/or any adult party (groom or bride) will be punished according to the law, if any of them is under the age restriction.

Based on the registration Act, the registration of the marriage is compulsory. This is as well true for the registration of divorce. The consent of a guardian is not playing out in practice but it exists in theory. There is a symbolic guardian consent in the marriage contract.

Some forced marriages do take place in Bangladesh. And this is also the case with Bangladeshis living abroad whereby the parents of a Bangladeshi girl would want to marry their daughters to rich Bangladeshi men living abroad. But so far this is not happening very often.

In Bangladesh the girl has to buy a boy through paying heavy dowry to the boy's family. The girl's parents have to struggle to manage the dowry for their daughters. In Bangladesh too dowry is common similar to Pakistan and India and is considered one of the main causes of violence at family level.

In Bangladesh there exists a Dowry Prohibition Act 1980 and it is not only in Bangladesh but also in India the Dowry Prohibition act 1961 and in Pakistan of 1976. There are laws made by government

⁵ At the time of finalizing this report article 2 of the Juvenile code defining the age of a child is being reviewed by the Afghan parliament and changes on definition of the age up to 18 years for boys and for girls have been suggested. The condition put on this amendment is that all persons under 18 will be considered as child unless the signs of maturity occur earlier. It though here is not clearly defined what the signs of maturity will be. The revision is under the review of the president at time of writing this report and has not yet been finalized.

and approved by parliament to abolish dowry but it was not possible to implement them. In Bangladesh people simply say that according to Islam dowry is compulsory.

Speaking of the age of marriage problem, means to admit that the age of many is not known in Bangladesh. Therefore the government has launched a program to issue birth certificates to newborns. For those children who do not have a birth certificate social workers go from house-to-house and try to issue them birth certificates. But, on the other hand, the Marriage Contract registrars do not care much about the age. Even if they know the age is less, they would still just put 18 or 21 to settle a marriage and still save their reputation. This is a big problem in Bangladesh.

In Bangladesh there are no child marriages and girl marriages at the age of nine. Child-based family violence in Bangladesh does not exist to the degree that it exists in Afghanistan.

From the legal point of view, since we have the Child Marriage Act of 1929, it is applicable for all our citizens of India, Pakistan and Bangladesh and at that time the age of marriage was 14 and 16 and later it became 16 and 18 and now it is 18 and 21 for girls and boys. So now people have learnt to raise the age of marriage.

So people learnt that the age has gone up and there is awareness raising on the issue on going. The government is working a lot. The media is working. The ministry is always giving advertisements in the media, telling the people to register their marriages and if they do not register that the consequences would be very bad and unfavourable. Especially, when a marriage is set up between two families, the girl's family is supposed to bring the Qazi (Judge), when the Judge comes, the Judge always brings the Marriage Contract registrar with him. If the marriage is not registered, there is something wrong.

Regarding the age of marriage, it has been mentioned that prophet Mohammad (PBUH) married Ayesha at age of nine. But the holy prophet also married many women, while in the Holy Quran it is written that men can only marry up to four wives, and the prophet married more than four wives. It is not for all men to follow what the prophet did, instead of following the Holy Quran.

So the argument is: Allah has given the right to the prophet to marry more than four wives, in the same manner it is not allowed for men to marry more than four wives. Thus, it is also not allowed for men to go and marry a nine year old girl. This is the perception from the religious point of view.

The concept of violence has come up in the previous discussion. In India if there is violence in a marriage and it results in death of the wife, a law has been enacted that the husband has to answer how his wife died in his house while she was in the custody of her husband or her husband's family. The presumption runs against the husband. In Bangladesh, such a law has not been passed but from precedent, from the given laws it has come up to this that even if a woman commits suicide, the husband has to answer what made her commit suicide while she was in his or his family's custody.

Recommendations:

- The legal age for marriage should be upgraded;
- Media should be made more active;
- Women Judges and Lawyers should be trained on Gender issues.

Marriage in the context of Egypt

The provisions in the Egyptian law about marriage are quite similar to other Islamic countries because the reference is the same i.e. Sharia, Holy Quran, *Sunna* and theories of Imams. The theory of Hanafi is the one that regulates marriages in Egypt. Islam is not the only religion in Egypt, but there are also others like Christians who have their own laws. Sharia is being applied on personal status, if the parties do not come from the same religion.

Talking about marriage means that we are talking about a contract and this contract holds its own terms and conditions in order for it to be valid.

Following are the terms and conditions for a marriage:

- Consent offer and consent
- The age of bride must not be less than 16 years old
- The age of groom must not be less than 18 year old
- The bride and groom should not be immediate relatives either in ascending or descending way or uncles or aunts.

If a man gets married with a woman and then discovers that she has major defect or she has problem with her virginity or so, does he have the right to dismiss this contract? In Egypt we apply Imam Abu Hanifa according to which man has the right to divorce, while he does not have the right to invalidate the marriage contract.

Most women of lower class of society in Egypt are not aware of their rights and obligations. Some of them still believe that men have the right to abuse them and they even believe that alimony is the obligation of the women. It of course is the task of the ministry of education and the media to raise awareness and change these beliefs. It is mentioned in the Quran that a man has the right to educate his wife, but certainly not the right to abuse her.

Marriage contract:

It is also important to speak about the form of marriage contract which should not be informal. In Egyptian law it is mentioned that if a marriage contract is informal, there will be no right for the woman if the husband denies the marital relation with his wife, except the paternity. If she can prove the marriage relation between the two parties, she has the right to claim for paternity for their children but nothing else. All the rights in an informal marriage case are deniable. Family is the first cell of community and society as mentioned by Egyptian constitution.

If in interpretation of legal aspects you follow only one religion (*Madhab*) or one Imam, one school of Sharia, then you will be left with some questions without answer. Therefore in practice, one should also take some provisions from other Muslim schools. For instance, divorce because of abuse is mentioned in article 6 section, number 25 in our 1999 laws which are still in force. This means it is not coming from Hanafi School which actually is the main source of our laws. There a woman has nothing to do against abuse, like raping, beating, disputes etc. Therefore, in order to support such women's rights issues, there is a need to look at other schools of Islamic laws.

In 1946, *Ulemah* and specialists from the Al-Azhar discussed and found solutions that one is not obliged to believe on any provision, but you are obliged to apply and then one can be convinced not necessarily with all but what is good for justice and welfare and fairness and so these texts are considered most favourable.

The role of Civil Society:

The role of civil society, NGOs, media and also the ministry of cultural affairs, the ministry of education and those volunteers who care for the family in societies to make the public aware about rights and duties. As we stand now in the 21st century, still many women think that husbands have the right to beat them, and many people do not know that registration of the marriage contract is essential and unless we change this, we will suffer a lot and there should arise many problems for children. This is the role or the task of – to not only run these roundtables for professional and educated people, but also to rise awareness on a lower level, with tribes, with common people. For instance, in Egypt, there are tribes that are not aware of registration of the marriage contract.

Sharia should meet the needs of people. In order to avoid the misuse of Sharia Law and damage the new generations, one should apply these laws which make marriage registration obligatory. Unfortunately some Imams refuse this and say it is not needed to register a marriage. They believe that informal marriage is allowed in Islam while the children have critical problems because of the no registration. Also there is mis-education and bad customs and traditions not only regarding the marriage but also regarding culture in the Islamic world. Apart from these issues there also is the girl's circumcision (FGM) which presents a huge and critical problem in many of the third world countries.

All this should be addressed through awareness and education programs for people.

Marriage in the context of Malaysia

Marriage Age:

In the current law in Malaysia similar to Afghan civil law, the minimum age of marriage for female is 16 and for male is 18 years. If the marrying persons are under the age of 16, a "Sharia" judge must give consent in writing, meaning that there will be a court procedure where they must go to the court and apply for consent to marry.

There are no cases of under age marriage in Malaysia's current context, unless they are unregistered. The Malaysian law about underage marriage says that in case there is an underage marriage, the parents will be brought to court, and will be punished in jail and/or will be fined.

Regarding our laws, there are two amendments that we are suggesting: 1) Minimum age for marriage between men and women and under our current context which states minimum 16 years for girls and 18 for boys. 2) Marriage between 16 years and 18 years is only permitted if there is lawful benefit, the parties consented, the minors have reached to sufficient maturity to understand the nature, the rights and responsibilities of marriage. The minor must consent and the marriage will not conflict with the best interest of both parties involved. And the Sharia court must be consulted. In deciding this, the judge must call the minors and he must call child experts to verify about evidences which have been forwarded to courts.

Strategies used in the Malaysian context:

In 2001, there have been some amendments in the Malaysian Constitution and any discrimination based on gender was prohibited. So we are saying that if this is a constitution which is like the mother of all laws in Malaysia, then why does it have a discriminative age of marriage? The age of marriage in the civil law is 18 years and in Sharia Law it is 16 years.

Another strategy is looking at Malaysia's Child Act 2001, similar to Afghan experience, persons under the age of 18 are considered as a child. And so the argument is that children do not have the capacity to contract the marriage.

It was also helpful to look at the international laws and conventions like the International Declaration of Human Rights and the International Convention on the Rights of the Child, where in both conventions persons below the age of 18 are considered children.

At another level, we look at the social context of Malaysia as evidence to raise the importance of marriage age. We give the people evidence about the consequences of early/child marriages which can give children physical, sexual, emotional and psychological injuries and we give them all the statistics and data. We also use international information explaining to women about the motherhood and early age and its complexities and can be a threat to the mother's life.

In Malaysia the age for completion of school is 18 and we say let the girl finish her education and then marry, as the informally educated mother will bring up an informally educated child.

Comparison and sharing experience and best practices from other Muslim countries is also a good strategy, of which we can give examples in our arguments. For instance we looked at Algeria where the age of marriage for girls is 18 and 21 for men.

About capacity to marry, in Malaysia according to current law the marriage must be in consent of both parties. And the Guardian must consent or Sharia Judge can grant his consent, if there is no Guardian, or the Guardian can not be found or refuse to give consent due to any whatsoever reason. So the primary rule is that both parties must consent. So our proposal is: marriage can only be registered if both parties consented. For those of 21 years and above, no permission is required unless it is a polygamous marriage. If it is a polygamous marriage we would need consent from the current wife and also we would need the consent of the Sharia court. For those between 18 and 21 years, again looking at the social context, the consent of Guardian is required and the permission of Sharia court judge is also required.

In early marriage cases, only the father gets punishment. It is not more than 200 US Dollars and the sentence to imprison is only one year. The punishment is not very strong but it is far more to 'shame the parents' for what they have done.

About written pre-conditions, there are some pre-conditions set which say if the husband leaves the wife for more than four months or if he does not pay her maintenance for more than four months (unlike four years in Afghanistan!) or if he abuses the wife, and then she has the right to get divorced. In addition to this, both parties can add any further conditions as they wish to the contract.

Recommendations:

First we look at the religious perspective, for instance, about allowance of children's marriage by their parents, we say that this can not be found in Quran, it can not be found in sayings of the holy prophet, so where is it coming from? So we say that historically, it is rooted in the social custom of Arab societies, then it has been adapted by the juries and such practices are not adoptable in Malaysia. Also we say that in 2005, the top Saudi Arabia Clerics banned the practice of forcing women to marry against their will. So if they have banned this custom, then why are we in Malaysia still adopting this custom?

Also when we look at the social context, we tell our juries that listen to our women's groups who come to Sisters in Islam. We say that if you force a woman into a marriage, most of them will lead to unhappy marriage and then they will either go to divorce or the family will not live happily. Is this what you want in a Muslim family? Again all these arguments are structured with a lot of data and statistics which can enforce our arguments.

Looking at the best practices of other Muslim countries, when it comes to the issue of Guardian we inform our clerics that for e.g. in Algeria there is no need for Guardian. In Algeria also you can not have marriage without the lady's consent. In Morocco, couples can not be coerced to marriage under any circumstances. In Malaysia a woman can contract the marriage herself or delegate this power to her father. When we present this to judicial representatives in Malaysia they say we must respect the parents. Our response is that legally it is not disrespect, rather we say it is not my duty or my ability to delegate this duty to my father but due to respect it must be on my side.

On the marriage certificate: It has been very difficult for us too at the beginning as no system was in place to register the marriages. We have come to know that there was a need and we had to establish a system. Again we managed to convince them that if we do not register the marriages, what would be the consequences, e.g. if we do not register the marriages, we would not have the issue of Nationality, we can not proceed divorce, we can not proceed the maintenance. These were the arguments that we have used to convince all for having a system of registry.

I think in Afghanistan, you register only after the marriage, in Malaysia what happens is that one has to obtain permission for marriage, then only if you are given permission, the whole structure is there to precede the marriage and registration of marriage is the next step to go for. When registering a marriage, then you would need an ID card. And again you would need an ID card when you want to register a child birth. Also when it comes to income tax, you need to prove that you are married, thus you can get induction of income tax and then this is when an ID card is needed. That is how we show the importance of the requirement of the marriage's registration to people.

Marriage in the context of Pakistan

Any issues in the area of marriage, divorce, custody and so on are actually socio-legal issues. There also are a number of linkages with requisites (?) and infrastructure within the country that determine whether any of our laws is going to be effective or not. The questions that we have to respond here, in the light of our experiences in our respective countries, also really point to that.

For instance, when we talk of the age of consent, the prerequisite is that there must be some documentation that will tell you a) that the child was ever born and to whom the child was born; and b) what age the person is? But you can not do that without actually having an infrastructure that registers every child at birth that keeps tabs on the age of children. This has initially been a major problem in Pakistan because the government has not been able to gather census systematically. The census that has come about has very much been politicized. Particularly the far-flung areas of Pakistan do not have any access to any record.

The second point related to this, is the fact that in countries like Pakistan, the laws do not extend equally to all parts of the country.

Marriage Age:

In the area of marriage and age of consent and certification of marriage we face major problems. For example the Muslim Family Law Ordinance does not extend to the tribal areas of Pakistan. So there is no certification, there is no written marriage contract and even if there was the documents are kept with the federal government which is somewhere far away in Islamabad. So, it is a kind of political problem but it is also the fact that we believe we have got an old oral legal tradition, much in the sense that Afghanistan has. Other than in the major cities, the infrastructure of the countries, particularly parts of Pakistan and Afghanistan are in the same situation. Therefore, it is very important that we must try to first put the infrastructures in place so that we have at least a base.

An effort was made to reform and we are strategizing to try and seek legitimacy from within our traditions for any thing that we want to introduce into law. For example the age of marriage in Pakistan, much like in the Bangladeshi law, the Muslim Family Law Ordinance 1961 and the Child Marriage Restrain Act says it is an offense if parents marry their children below the legal age (girls 16 and boys 18). However, the problem is that in the far-flung areas people do not understand the laws in Pakistan. People there say, where is Pakistan? The strategy that we have adopted recently is to talk about the welfare of the family and the welfare of the community and society. This did bring up very drastically the minimum age. As a result, today the minimum age of marriage in Pakistan at the national level is 21 years. However, it does not mean that the whole country gets married at 21 but that's the average. Earlier the average age of marriage in Pakistan used to be 15.

How could this matter be changed is more along the strategy mentioned for the case of Malaysia: Saying to people that your child is not yet healthy enough to produce all your glorious male prodigy to set off the thrones of your homes! And by saying "if you need a healthy male, so you need a healthy mother to produce that male." Also we said that education was important. If the girls are educated and they complete at least their high school or upper high school grade then they will be well prepared to get married. This trick of hiding the age factor and pushing for the completion of high school, (obviously one can not finish high school until the age of 16 or 17) has so far been very

significant. So, by using this double approach or strategy, now we have seen that statistically the age of marriage has gone up drastically. I have to say that we tried not to use any western legal argument or a formal legal argument. We felt that doing it confrontationally will not change it and so we tried to use the health and welfare argument, because this is to the best interest of the child and mother and all human beings.

Marriage Contract:

Under the Muslim Family Law Ordinance there is a marriage certificate for the purpose of providing protection for the marriage gift (*Mahr*), providing a record that this woman is the wife of this man, and to provide the marrying woman with any special clauses and conditions that she wants to place on the marriage and divorce. But unfortunately the people try not to highlight the positive aspects and allowances that Islamic law does give to women. For example Islamic law says that "*Talaq e Tafweez*" meaning consigning divorce, the delegated right of divorce to end a marriage is the right of the woman at the time of the marriage. In Islam marriage is a contract and not a sacrament, so you can fill whatever you want in the contract.

On the family Law Ordinance, a movement was started in Pakistan through which legal literacy courses for women were initiated. Through those courses, women were getting awareness about "*Talaq e Tafweez*" (Consigning Divorce) learning when and how they can terminate the marriage contract. So, if the man refuses to maintain a woman or if the man marries again, there are a whole range of conditions to deal with such a situation. Under the Hanafi School of Thought which Afghanistan as well as Pakistan and Bangladesh belongs to, it is an unqualified right, and it is non-controversial. So our religious people should not have a problem with saying that under the contract of marriage the woman can secure herself. Because if you look at the marriage contract of the grand daughter of the prophet Mohammad (PBUH) that has been provided in the manuscripts, you will be shocked. As it looks like the most marvelous marriage contract that the world has ever seen. And this is 1400 years ago. She said that I am not going to cover my face, I am not going to allow you to be polygamous, I will decide daily life, I will decide the spacing and number of children and there is a range of things on her property and so on.

In Pakistan, Malaysia, Bangladesh, Egypt the courts have played a very important role, sometimes positive and some times negative. As there is no mention of the age of marriage in Quran or Hadith, the judges in Pakistan have constructed three categories of age with reference to Quran, Hadith and the juries. 1) The first category is the age of puberty; so a woman starts menstruating (in our countries, it can be as low as 9). 2) The second stage is the age of discretion or maturity. 3) The third stage is the age of majority; when she is an adult and an independent person and can engage in a contract. Thus, the age of majority could be the age of marriage⁶. Now, the courts in Pakistan have adopted this as the guidelines for determining a girl's age for marriage. The argument is that we are not challenging the fact that puberty is the starting age of responsibilities on a woman, but there is a

⁶ At the writing of this report Nora Binti Ab Murat makes the following comment on this issue: Puberty normally is reached with the start of menstruation. Maturity is when women or girls are 'matured' which may be due to occasions or circumstances, e.g. a girl who has not had it's menstruation and also has not reached the legal age, but had taken care of family business etc. and like this showed sense of maturity. The majority age is normally legal age set by government. E.g. in the Malaysian context women groups are saying that just because a girl had reached puberty does not mean she is mature. and that the maturity age should be the majority age. Judges however maintain the three age groups currently meaning that there currently exist three categories for marriage.

difference between the age of puberty and the age of maturity. And the age of maturity could then be the age of marriage, because that can be the age of consent.

Strategies used in the context of Pakistan:

The other point is the fact of exploring the Islamic juristic tradition and trying to develop strategies within the Islamic traditions. In Hanafi School of Thought, the concept of Guardian is not presented at all. An adult Muslim woman, the moment she attains the age of maturity, she can enter marriage without Guardian. It has to be remembered that Guardian's role is not legal, it is supportive. Nowhere in the Quran one would find that the marriage can be contracted without the consent of the parties. So to try and create this strategy, my suggestion would be combination of some of the laws that have been developed in the Muslim countries, they come from different schools, they come from *Maliki*, *Shafee* and etc.

The strategy that has been used in Pakistan as an example is that women have to take the power of knowledge in their own hand and say to the Mullahs and religious people: Let us sit down and talk in the name of Islam and legitimacy of laws. What then often happens is that they run away. I remember that it took me two to three years to convince them to sit with me. I told them that I have done my research and so you are the one using Islam against me and thus let us talk about it. I think that authority will come with knowledge; there is no authority without knowledge. You hold the Quran in your hand and you keep the Hadith on your fingertips and see the difference in approach and how people will get engage with you. In Islam there is no clergy unlike the other religions, anybody can become a point of authority and it is all a matter of knowledge and the level of knowledge that a person has.

One of the most difficult laws that we have still not managed to displace in Pakistan is the *Hoodoo* law. This is one of the worst interpretations that you can see in the name of religion. And all political governments would never touch it in public, because they say the minute you used Islam, you would be accused of *Kafer* (non-Muslim) and talking against Islam. And nobody has read the Quran and the Quranic verses on *Hoodoo* and compared it with the law that is in English and married the two to find if this is actually Islamic. We have carried out this debate not in the name of secularism but in the name of Islam. We must also make sure in our heart that custom is not something static. It keeps changing from one time to another. For instance, there are many customs existing for centuries, but hundred years ago nobody could challenge them. Today we can challenge them because we can hold them as being against Islam and we can de-legitimate them in the name of Islam and humanity.

There is such thing called '*Siasa Sharia*' which means the political manifestation or formulation of Islamic law. So Islam does recognize that forever there could not be just a small state of Medina or Mecca. It will be expanded on the basis of '*Siasa Sharia*'. It means the right of the legitimate government in power to make laws, which opens up the space for discussion and dialogue. Now, within Islamic law, unlike the way we think, there is no compartmentalization, between, Hanafi, *Shafee*, *Hanbali*, *Malaki* and *Feqeh Jafari*. Because, all these five *Imamas* were teacher and pupils of each other and they would all sit around together, discussing issues. Later each one developed their own school of thought. So, they would always learn from each other. If already 1400 years ago they could engage in a democratic consultation and work together, what we suggest now is a very old fashion and not anything modern.

The Dissolution of Muslim Marriage Act 1939, passed in India, at the time when, India, Pakistan and Bangladesh were all one country. Under that law Muslim women were given the right to go to the court and ask for divorce. The grounds of divorce were taken from various faiths. And this is a law that still no one has challenged. This is an example of how the Ulema of this region was sitting together and working for three years.

Similarly, the Muslim Family Law Ordinance 1961, operating in Pakistan and Bangladesh, in its section four talks about the grandchild whose parents died before the grandfather. Under the traditional inheritance law in Islam, this child is an orphan as he is not one out of ten *Worasa* (inheritors) in the Quranic table of inheritance. But, during the time of the third *Khalefa* and onwards, there was discussion among the different schools of law, and they decided that in public interest and in interest of this human being who is left, they made this law that grandparents will be set in the position of their parents.

Also statements on Violence against Women we can find in *Maliki* and *Shafee* school to a larger extent. There it is more developed than what we find in the Hanafi school of thought.

In classical Islamic law, there is a technique of "*Talfeeq*" which means "patch work", or, do the best for the people, see what is in the best interest of the people. Then combine them all by making a beautiful tapestry which is in the best interest of the people. Islamic juries have practiced that for centuries.

The other doctrine that Islam always allows is the concept of "*Maslaha*"; meaning public interest or doing what is in the best interest of the people.

Thus, in situations where we reach a deadlock, we can combine "Hanafi", "*Maliki*" and "*Shafiee*" together and try to find a solution for it.

Major findings and lessons learned on marriage:

The age of marriage in Afghanistan is far less than in other countries. There is a need to increase the age of marriage, especially of woman, in order to ensure the family's well-being. The positive examples are the Marriage Law Act in Pakistan and Bangladesh.

The law should define punishments for those (parents or either party of the marriage) who commit or are responsible for underage marriages and violate the marriage law.

Marriage Registration is necessary – it can be a good tool for the prevention of child marriages. Although there are already some efforts in place, listening to other country's experience has the potential to learn from their experiences such as adding certain conditions in the marriage contract.

The property ownership rights of women should be clarified through the legal context which should clearly line out whether it is a direct or indirect right

Based on the experiences of Bangladesh where Nekah can be done by Judge who also brings with him the registrar office, it is recommended that the duty of Nekah should be given to a judge or at least making sure that the marriage registrar is present during the Nekah.

On the marriage contract, the conditions are being set in a private gathering with presence of the bride and grooms relatives. It is recommended to settle the marriage contract conditions including bride and groom to ensure they can have a voice on it.

It is better not to advocate against child marriages from women's right perspective but to use other arguments like the health of the child, the health of mother and ultimately the well-being of the family.

For avoiding child marriages one of the important tools other countries are using is the ID card. Conducting campaigns for women's national identity card is also important as once women have their ID card, they can be considered an individual with legal status. Moreover it is recommended to ensure the registration of the marital status within the ID card.

As other countries examples show, the integration of legal awareness about family law and civil rights within the educational curriculum of the national education system is an important tool to mainstream the knowledge about women rights issues.

It is recommended to develop strategies against negative customs and traditions in relation to marriage.

Putting higher Mahr in the marriage contract will ensure a better life for women after the end of the marriage and there is less possibility for the husband to take the Mahr back from the wife.

There is need for a unified marriage certificate. It should be designed in way that it maintains equity and equality amongst both parties in marriage.

II. Polygamy in the Islamic context

Background paper on polygamy in the context of Afghanistan

There are four articles in the Afghan Civil Law ⁷that refer to polygamy:

A) Article 86 states about the conditions in which Polygamy can take place:

1. When there is no fear of injustice between the wives
2. The person has financial sufficiency to sustain the wives. That is when he can provide food, clothes, suitable houses and medical care.
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.

All above three conditions have directly been copied from the Islamic Sharia Law into the Civil Law without any explanations.

In some cases the Afghan Civil Law states that in case of violation of article 86 by men, women can have the right to get separated or ask for divorce. This is the case where the wife can prove that due to the second marriage of her husband she has been disadvantaged. The other condition that a woman can benefit from is that in the time of *Nekah*, she puts a condition that if her husband married the second wife, she can use her right to get divorce.

However, in recent research conducted by the Women and Children Legal Research Foundation/ WCLRF, 86.5 percent of people believed that maintaining equality among wives is impossible. This clearly denies the first condition set forth for polygamy in the law. ⁸

Particularly in the district and village level the research also shows disregard and lack of respect towards the law and a lack of access to judiciary systems. Women are especially deprived of access to the mentioned facilities and thus these are major challenges.

Causes of polygamy:

Regarding the main causes, it has to be mentioned that while men are highly involved in causing polygamy, in some cases women themselves also are considered a cause to polygamy. However based on the WCLRF research, a small percentage actually confirmed to the actual law for polygamy:

- Only 11 percent of interviewed persons said that infertility (inability to produce children) was a reason for polygamy.
- 13 percent suggested women's illness or health problem as the reason for polygamy;
- Negative competition and rivalry form 26 percent of the reasons for polygamy marriages;

⁷ Afghan Civil Law Articles 86 to 89

⁸ Women and Children Legal Research Foundation: Research Report on Polygamy, Kabul, 2006

- Women's inability to produce sons (male children) form 6 percent of the reasons for polygamy. Due to the domination of a war culture in Afghanistan, usually parents feel secure if they have more sons. In some cases, daughters are perceived as a direct security threat to the parents and the family;
- Wealth or having a lot of money is another reason for polygamy. 7 percent men argue that they have enough money to supply them with maintenance such as food, clothes and house and marry four or some times more than four women.
- Power and social status is another important factor (around 7 percent) which causes polygamy. For instance, war-lords, commanders, some judges and wealthy men (even some directors of NGOs) are certainly among those who have used their social status as well as power to marry more than one wife.
- Men's frequent travel is also considered as a reason, although it is only a small percentage of 1.11% it still needs to be taken in to account. Often men travel to other countries or cities for a job. Such men argue that as they are not residing in one particular place, in each place they stay, they should marry one wife.
- Finally the research finds that only 1 percent of ill women obtained a medical test to confirm whether she is infertile or her husband. 99 percent never tried to take medical treatment before their husband took another wife.

The causes for polygamy related to the consent of women include:

- Weak financial status forces women to agree with their husband marrying a second wife;
- Orphan hood (i.e. not having parents) and homelessness: Often homeless women who do not have any place to stay or family to protect her have married with men who already had one or more wives;
- Unawareness and ignorance about the man's first marriage.

It is difficult to categorize the percentage of men who have married more than one wife. However, the research shows that 36 percent men who married a second wife were illiterate and that 26 percent of men were half-illiterate. 66 percent of such men were very wealthy.

Another question that comes to mind here is why women remain silent when their husband is marrying a second wife? Why do they not resist? The reasons for this include that: 72 percent of women were not aware at the beginning about their husband's marriage. However once learnt about it only 1 percent went to court. The reason why others have not approach courts is that they do not trust the court system and thus their voices can not be heard in the courts. Therefore the causes also can be seen as a lack of awareness on having the right to get separated, dissatisfaction with the judiciary system, low culture in approaching the courts for women and their families. It is still considered a shame for a woman to go to a court. Another situation has been evaluated as fear of the wife from the husband and physical violence by the husband.

The most important reason for women not to raise their voice however is the issue of child custody, which will be discussed later in this report. But in brief, based on the law, in case of divorce children come automatically under the custody of their father. Mothers will not have access to them. Therefore women refuse to get divorced in order to ensure accessibility to their children.

Can men ensure justice in polygamy?

There are two definitions by professional researchers based on interviews that have been made: They state that at the beginning justice was far more an individual matter related to men which means that if a man can not ensure justice, he is not allowed to marry more than one wife. But the new definition that we propose now is the one of "social justice", whereas justice should be enforced by institutions that are in place to ensure social justice in a country. The question that yet has not been solved is that what justice means? How can we define it? Is justice substantial or spiritual?

Response received from court judges is that justice means substantial justice and that spiritual justice is impossible. However contemporary definitions of justice also include non-material or spiritual justice.

So, if there are three pre-conditions for the possibility of more than one marriage for one man, is it necessary to fulfill all three conditions or is fulfilling only one condition enough?

What has been learnt from the research is that the three conditions on allowing polygamy should be applicable together and that the presence of only one condition is not enough.

Strategies to combat the problems:

The law must regulate the limitations of practicing polygamy and it is necessary that there is a mechanism to proceed polygamy by the court's authorization and permission. This means that a second or third marriage should only be allowed under certain conditions that can be set and judged by the court's permission.

Women should have other ways of compensation besides asking for divorce or separation. In the context of Afghanistan separation from the husband is not in the benefit of the wife as the man secures his 'new life' while it is the woman who will suffer. It therefore becomes necessary to seek further ways of compensation that give better protection for women.

Polygamy in the context of Bangladesh

Although the Family Law ordinance 1961 is the same in Pakistan and Bangladesh, the practical scenario in Bangladesh is very different than in Pakistan. In other words, in Bangladesh polygamy is less widespread than in Pakistan. In some cases there exists polygamy in Bangladesh amongst low income families. This however is more like a serial polygamy: Men keep on marrying and getting divorce, but they would not keep two wives at the same time. Only at a certain basis and at certain time, there are two wives.

Existing laws on polygamy in Bangladesh:

As far as the law in Bangladesh is concerned, polygamy is allowed. One man can have four wives, but one woman can not have more than one husband. This again is restricted by the Muslims Family Law Ordinance 1961 saying that if a man wants to marry for the second time then he has to take permission from the arbitration council and the arbitration council will give permission only if the first wife gives her consent to it. The consent and permission will also depend on whether the existing wife has any problem physically.

These problems include:

- Sterility
- Physical infirmity
- Physical unfitness for the conjugal relation
- Insanity on the part of the existing wife

Challenging the above law and due to medical improvements today, these grounds do not stand anymore. Nowadays we have test tube-babies, we have artificial insemination and I know in Bangladesh there are many couples who go for this because they can not have babies normally. That's why these problems can not qualify for any grounds for second marriage anymore.

If a man marries for the second time, without the permission of the arbitrators, the first wife can ask for divorce, for her dower or she can send her husband to jail or fine him. But whatever the law is, it can not help the woman if she has children and a role in the family which due to the second marriage, is ruined.

Therefore, this is not a solution, if a woman asks for a divorce, what will be the result? The consequences of divorce are not often good for women. The good thing in Bangladesh is that most people know that marrying the second wife is not right. They do understand that if a woman does not want to re-marry, due to her actual husband's sterility, then why this husband should try to marry another wife?

The concept of Harm or *Zarar* has been mentioned in dissemination of the Muslim Marriage Act 1939, it has been said there that civil marriage will allow women to ask for divorce. Harm likewise is already put in the law and a woman does not have to prove it like in the case of Afghanistan.

Since men are trying to interpret the law the way it suits them best, it is suggested that the chairperson of the Arbitration Council should be a mature person. As these cases pass through the Family Court it is recommendable that the Family Court judge should be an aware woman, too.

Lastly, a provision should be made in the Family Court Ordinance to empower the court to take action on its own against men who go against the law.

Polygamy in the context of Egypt

The general perception among scholars is that polygamy is an untouchable issue because it has been mentioned in the Quran and no one can touch or invalidate what is written in the Quran. Thus, they believe that in the event that the first wife is infertile or has a defect, the man is authorized to go for the second marriage. They also suggest that second marriage is a better alternative for the first wife instead of separation or divorce. We know that some Muslim countries have forbidden polygamy such as Tunisia and Turkey. They consider that Islam must face the problems of this century or these times regarding the circumstances around us. All Muslim countries strictly prohibit slavery. This issue has been mentioned in the Quran more often than polygamy and it was very common during the eras of Islam and till one century ago it was very common. But now slavery is strongly prohibited and prevented according to a convention made by the United States together with international community. All Muslim countries signed and ratify this convention. All Muslims argue that it is against Islam and against the Quran.

Polygamy in the legislative system of Egypt:

In Egypt there is only one article about polygamy. It gives rights to the wife to ask for divorce only if she can prove that the husband did not do justice to her. If the wife fails to prove that damage has happened to her, she still has the right to make *deposal* or *Khula*. *Khula* is certainly harmful to her because she leaves all her rights and even she has to pay back the *Mahr* to her husband. On the other hand, she can get it back from her husband when she asks for divorce in *Khula* system.

There was no mention about polygamy in Egypt's Family Law until 1979, when a new article (Article 11) was added to that law. This article does not put restrictions on polygamy but allows the wife to claim for divorce if there is a moral or material damage occurred to her due to the second marriage of her husband. Here jealousy alone will not count as sufficient reason to get divorce.

In Egypt now we have *Khul'* or *deposal*, for instance there is a wife who dislikes her husband, and he does not do anything against her, neither abuse her and not getting married with another woman, she can claim for *Khul'* to get divorce. She gives up all her rights and she also gives her husband the *Mahr* that her husband has given to her during marriage and she gets her divorce. This judgment of divorce can not be given to higher court but will be the final decision.

The scholars of *Al-Azhar*, the highest Islamic institution, consider that a man can marry up to four wives and that is his right given to him by Allah in the Quran. But this was happening very long ago and now the number of polygamy had drastically decreased compared with thirty years ago.

Amendments in the legislation of Egypt regarding polygamy:

Any amendments of legislation goes through the two councils in Egypt: 1) The Shura Council, and 2) the People's Assembly. The Shura Council is like the House of Lords which only gives advisory services. The members are highly educated and they are previous ministers and professional people, they act as advisory councilors to the People's Assembly. This again is the only council having the right to enforce the legislation and to amend any provision in the laws. In order to implement laws, we have the Constitutional High Court and The Supreme Court which have the right to invalidate any article or provision if it is not emanated according to the principles of the constitution.

Polygamy in the context of Malaysia

In Malaysia there are two things when a man wants to be polygamist: 1) The man should apply to the court and give reasons. He must provide reasons that the second marriage is just and necessary and that he has a good income, a house and he should give the number of dependents and prove that he has enough income to support them. 2) He also has to provide the consent of his existing wife. Afterwards, he sends the applications to the court and the court shall decide whether he can become a polygamist. The court again will be looking at four things before the permission is granted: 1) The court will verify the reasons given by the man. 2) The court will see whether the man can support all his current and future dependants. 3) The court will see whether the man can afford equal treatment. 4) The court will see if the second marriage is posing any harm to the first wife. The court will call for both wives, the current wife and the proposed wife and they will have a hearing and the final decision about the approval is taken by the court.

Talking about the current condition of Polygamy in Malaysia, statistically the numbers of registered polygamies are quiet low. However, there are lots of unregistered illegal polygamies, where the first marriage is registered and the second marriage is not registered because of the above mentioned complexity of polygamous marriages.

Strategies used to tackle the problems of polygamy in Malaysia:

As a first step we inform the wife, we advocate and empower the women and tell them that if you do not register, you can not get divorce, you can not ask for maintenance and thus how would you be able to prove your marriage? And in case the husband passes away, how would you prove that you are his wife in order to get the inheritance?

Some of the initiatives taken so far to tackle this problem are as follows:

- A booklet published to make the general public aware about polygamy. It covers issues like what is polygamy? What are my rights? Can I register? Most women think that only men can register but this booklet explains that also women can register their marriage.
- Engaging with the judiciary and trying to conduct gender trainings for the judges because it is very important for judges to understand issues of women in order to be able to make a better decision in the best interest of a woman. Knowing that there is a difficult relationship with the Sharia judiciary, we engage academicians who are allowed to go to the judges training centre and train them. In other words we (women activists) do not go to train the judges, but rather we provide academics with material on gender training and thus they provide judges with training.
- Campaigning for monogamy that is meant to inform the people about the good side of monogamy and the bad sides of polygamy. One of the means that is used is car stickers: A sticker is fixed to a bus or taxi or any vehicle allowing it voluntarily and the car or taxi goes everywhere and our message reaches to a wider range of people.
- Apart from the four conditions that have been stated for the context of Malaysia, some further conditions have been added. One of them is that during the hearing of a polygamy case in the court, in addition to the current wife and proposed wife, the court must call for the guardian of the proposed wife so that the guardian also will have a record in the court and also any further person who can give information about polygamy. The husband should give out all true information about his

income, salary, debts etc. It has been suggested that he should bring his income-tax paper in order to make sure all information is true. If it is not true, the man can not be permitted to be polygamous.

- If the court grants polygamy, the maintenance for the wife should be given to the current wife and children automatically.

- When consent to polygamy is given, the court will declare a portion of marital assets belonging to the current wife. This is very important, because if there is ten years of marriage for the first wife, all properties will be divided equally. But when court gives the consent, it will have to declare the assets of the first, second and third wives and after that, everything will be shared. And if the husband fails to give maintenance, then the marital assets will be divided. This is all in the case when the first wives wants to stay in marriage. In case the first wife wants divorce, she will have the right to divorce.

- It is not possible to abolish such rules at once rather what is done in Malaysia was to put some laws and conditions for polygamy.

- When it comes to the complex issue of justice what matters is that the wives should be asked for their own wishes and not only the husband should be deciding about it.

- In order to make any change, one organization alone can not make a change. A strong coalition is really needed, whereas many organizations come together and demand a change. After making a coalition of NGOs then you can go to the parliamentarians. Going to them, you must provide them with information, material and references. This will help your parliamentarians to be prepared when they go for the parliamentary discussion.

Polygamy in the context of Pakistan

Since the issue of polygamy is deeply linked with the Quran, the main question is whether and how much awareness is there regarding the context of Polygamy in the Quran? This is where the strongest point lies, because in the Quran chapter four 'Al-Nesa' and the beginning four or five verses and then also there is verse 129 and these two combined form the Quranic verses on Polygamy.

The context here is 'The Battle of *Ohud*' when most of the Muslim adult men were martyred and as a result too many women were left as widows and lots of children were left as orphans in a male dominated society. They had to look after their farms; their cattle and houses which became impossible after some time for them. So the women and the orphans went to the Prophet and asked who was going to look after their business? And then this verse of Quran came which says: "You must look after the interest of widows and orphans and those after whom you are meant to look after. But if you feel that you are unable to do it without a relationship, then out of these orphans and widows you can marry two, three or four only if you can deal justly between them in every respect. If not, then one is the best for you"⁹. These are the opening verses of (*Sora Al-Nesa*). Then in verse 129 it says: "It is impossible to do justice between women; therefore, one is the best for you"¹⁰. These are the only verses that you find in the Quran that actually regulate the institution of polygamy.

We, in Islamic countries, are actually assuming that the regulation of polygamy has been taken from the Quran. The problem is when one wants to translate and transform the verses of Quran into a law, we lose the spirit on the way. So now none of the laws in our countries are a faithful representation of the Quranic verses. Most of our countries have not got into the 'battle of *Ohad*'. The second wife in most of the Islamic countries is not a widow or an orphan who are on the street and one would want to look after her.

Therefore, in a true Islamic law the first condition for the constitution on polygamy would be an orphan or a widow who has no means of protection from her family and from the state. Secondly, the person who is to be affected (which is the woman) is the party who will stand up and decide whether there is justice or not. The third factor is the economy, whether the husband will be able to provide equally in terms of food, clothing, house etc. These conditions are based in Islam and not self-made. Meanwhile these three conditions and factors are interdependent and they must form the part of the law.

Unfortunately in real life in our society, the second wife is the one who is more glamorous, younger or said to be possessing better social behavior. This is completely against the Quran.

In the Quran one can not determine all of this without intervention of the judge. Because who would ensure whether both parties agree? This is the Islamic traditional law that is being explained.

Existing laws on polygamy in Pakistan:

In Pakistan, there is the Muslim Family Law Ordinance which has been passed in 1961. Under this law, polygamy was allowed but restrained or limited. This is the position of most Muslim countries, except Tunisia. In Turkey 98 percent of the population are Muslim. Although Turkey is a secular

⁹ Al-Quran, Sora Al Nesa (4:3).

¹⁰ Al-Quran. Sorat Al Nesa (4:129).

country and the family law is not based on Islamic Sharia, Polygamy is not mentioned in the law. In Morocco there is controlled polygamy.

In Pakistan if a man wants to remarry, under the law, he has to go to the arbitration council. The arbitration council consists of a chairperson and the representatives of both the woman and the man. In this council, there has to be an acceptance on the part of the existing wife for the second marriage of her husband. But there have to be reasons strong enough to be given from the husband and the wife has to confirm whether it is right or not. However the reality is very different. There are very few husbands who go to the arbitration council. There is a social pressure on behalf of the wife because she has to retain her children and she has to retain her position in the society as she understands that a divorced woman has very little social respect.

The law also implies that even if the existing wife does not give her consent for her husband's second marriage, the second marriage is not void. What will happen at maximum is that the wife can only ask for her *Mahr*, the husband will give a fine or the husband may be imprisoned for two years.

There are very few cases since 1961 where women went to the court and used their right for their husband's second marriage.

In relation to what has been discussed above on marriage registration, based on the Family Law Ordinance, the husband must register his polygamy and the woman can go and seek a divorce. But if she then does not register this divorce, the husband can come back and accuse her for adultery (*Zenah*) in case she remarries. In such cases the law can be and has often been used against women.

Strategies used in Pakistan:

- A law should be made that whenever there is an issue of productivity and fertility, the men should also undergo a medical test as much as a woman has to.
- Proper campaign should be initiated to create awareness among the population that medically it is the male who determines whether the child would be a girl or a boy and not the female. A woman can produce a boy and she can produce a girl. It is the sort of chromosomes a male passes to her body that will determine whether it will be a boy or a girl. So, if a woman does not produce a boy this should not be the ground for allowing the man for another wife. And this should be made part of the law.
- There is a concept in Islam called harm or *Zarar*. Under this concept, a Muslim is not allowed to cause harm to anyone. Polygamy also comes under this concept as it is Harm to the first wife. Therefore any harm that is coming to the wife should be calculated and billed to the husband. If the husband was able to settle the bill, the court will allow for the second marriage otherwise not. This is the practice in Morocco and Iran currently. Harm means psychological harm – the harm to your personality and status in the society as a woman who has been rejected. This is a very grave harm and Islam is not the religion of harm but it is the religion of peace and harmony. So the judge must calculate the amount of harm to come to a woman due to polygamy.

In conclusion, including such strong Islamic and Quranic positions would assist our strategies materialize to a great deal.

Major findings and lessons learned on polygamy

Family Courts can play a vital role in defining fairness and controlling polygamy in society. Family courts and legal counseling institutions have played also an important role in preventing polygamy as well as to ensure if a second marriage is really possible for a man. It is recommended that permission for second or more marriages of one man should be granted by the family court.

It is necessary to ensure that a mechanism that can clarify that properties and goods accumulate after the first marriage belong to the ownership of the first wife and the husband and that the second wife can not ask for any share from this period in case the husband dies after the second marriage.

In most Islamic countries, the number of polygamy cases has significantly dropped as a result of positive reforms in laws and regulations. Tough conditions that are difficult to meet have been included. There is need to define and lobby for adding such conditions into Afghan civil law. For example taking permission from the court and from the existing wife for the second marriage should become mandatory as it restricts and controls polygamy. To precede permission for the second marriage, the court should also set certain conditions such as the wealth, the income of the husband and number of his siblings etc. to make sure that all conditions are based on Islamic law i.e. ensuring justice.

It is very important to define Harm or *Zarar* as presently it is conceived in very limited terms in Afghanistan. In other countries a very detailed definition also includes psychological harm.

The larger the "*Mahr*" or marriage gift money, the secure the marriage becomes.

It is recommended that this matter is promoted within society. The judicial system should facilitate and ensure the receipt of *Mahr* by women.

There is a need for conducting research collecting data and providing case studies on the impact of polygamy on the family.

Utilizing Moroccan family law as a base for our future work is recommended since it is based on very strong and practical arguments and religious (Islamic) references.

Training and awareness on Gender issues for courts and judges is a necessary basis for implementing family law reforms.

III. Divorce in the Islamic context

Background paper on divorce in the context of Afghanistan

Divorce has remained a continuous threat to the well-being of families in Afghanistan. Especially to women and children divorce has been a threat and a major source of insecurity. Thus divorce affects not only the welfare of the family as a social structure but moreover damages the members of the family particularly women and children. Divorce has also been used by men to create pressure on the whole family in order to ensure their absolute domination. Generally the overall authority for divorce is seen as lying with men. The consequences that women encounter are countless: suicide, self-immolation, and domestic violence that leaves a high number of women traumatized.

The transfer of the right to divorce from husband to wife at the time of marriage has been included in the Family Law in many Islamic countries. However and unfortunately it has not yet been practiced. This means that suitable mechanisms for an application of the right to divorce for women have still to be devised.

Categories of Divorce in Afghan Civil Law:

The Afghan Civil Law envisages the issue of marriage dissolution in four different categories: 1) Marriage deposit 2) Separation due to defect, 3) Separation due to harm and 4) Separation due to alimony.¹¹

According to the Family Law of Afghanistan, the right to divorce lies with the man. A woman can apply for separation only if sufficient reasons are available. The conditions under which a woman can ask for separation will be discussed as below. Still the final decision remains with the court. Therefore, it would be interesting to discuss and examine the consequences of giving the absolute authority of divorce to the men from different aspects such as cultural, social, economical etc.

It has to be mentioned here that the Afghan Civil Law, is far more progressive in giving right and authority for divorce to women under the above mentioned certain conditions. But unfortunately, this law has not been taken into consideration in practice.

The **Deposit of marriage** or *Khula* is the right of a woman. However, as the woman has to pay money for it, actually a woman has to buy this right. Then still the husband's consent is mandatory. The difference of Deposit and Divorce is that in Deposit a woman has the right and she has to pay for this right which means that when a woman asks for divorce, she will have to pay the money of Mahr back to her husband, if the husband wants it. Meanwhile man's agreement to deposit is also required. While in divorce it is only man who has the full right to divorce his wife even by calling three times 'Talaq' (divorce).

Defect of marriage or Tafreeq is when the wife feels that there is no other way but separation from her husband. She then can apply to the court and demand separation. Tafreeq is based on the

¹¹ The Afghan Civil law, 1977.

helplessness and hardship principle in Islam where a wife can not find any other solution but separation. The biggest challenge here is to prove that a woman faces hardship and that she is helpless to keep the marriage contract in the Afghan legal mechanisms. This means that a woman asking for Tafreeq should prove for the dissolution of the marriage contract. For instance, conditions mentioned in the Civil Law include a husband's diseases or illnesses that either requires a long-term treatment or is not treatable at all. The wife then has to prove that carrying on the relationship will be harmful for her.

Separation due to harm or *Zarar* ensures the right of women to ask for divorce. However "harm" itself has not been defined in Civil Law and thus it is that the definition of "harm" for different groups of women e.g. rural, urban, literate, illiterate, with higher or lower economical status is different as well. It may be that for an urban wife, it is harm when her husband does not let her do a job outside the house. For a rural woman it however may not be the same problem.

In Afghan Civil Law the definition of what is and is not "harm" is under the authority of the judge. Only a judge is authorized to state whether a woman faces any harm or not. Certainly not all judges (predominantly male) will have the same feeling and commitment to understand the position and situation of a woman who comes and ask for separation due to harm. Therefore the knowledge, commitment and awareness of judges for supporting a woman's situation is very crucial

A husband's absence is another reason for separation and therefore another condition to be proven by women. The controversial part here is that if a husband is sent to jail for ten or more years, the wife should wait for five years until she can apply for separation.

The issue of non-registration of divorce cases is, similar to non registration of marriage cases, another challenge for divorce. The problem here is that the Afghan Civil Law allows men to divorce their wife by giving signs only or by using the word 'Talaq' for three times. This causes the problem of proving if divorce has actually happened or if not.

Another challenge in Civil Law is that a man can divorce his wife without a reason. This is indeed a very controversial issue as on one hand family in an Islamic society has such an important status while a man can dissolve a family through divorce without any reason. To avoid such controversy with Islamic principles in some Islamic countries only the court is authorized to decide about divorce. From the social well-being perspective as well as to protect family values the model of only authorizing courts to decide about a divorce case is very useful.

Divorce in the context of Bangladesh

In Bangladesh, compared to the unequal right of divorce that a man has, there are many instances on which men can divorce. Under the applied Hanafi Law, women did not have many rights, or some times different procedures were used. As some problems arise such as divorcing while someone is asleep or has not heard it, the Dissolution of Marriage Act was passed in 1939.

At the present there are two forms of Divorce in Bangladesh:

- I. Quasi Judicial Divorce
- II. Judicial Form of Divorce.

Quasi judicial divorce is regulated under the Muslim Families Law Ordinance 1961 while judicial divorce is regulated by the Dissolution of Muslim Marriages Act 1939.

Categories of Divorce:

The Muslim Family Laws ordinance 1961 also introduced the form of divorce as "*Talaaq-e-Ahsan*" or fair divorce in which any spouse demanding separation must give a notice to the chairman of the Arbitration Council. Without such notice divorce can not happen. This form of divorce is then finalized through court within 90 days.

The same procedure can be followed by a woman in *Khula* or deposal, only with the difference that in divorce the husband has to pay the *Mahr*, while in Deposal *Khula* the wife has to return her *Mahr* and the wife or the husband can also use divorce by consent.

Reasons for divorce:

The judicial form of divorce that we have according to the Muslim Marriages Act has to ensure that one of the following reasons is given:

- The whereabouts of a husband are unknown for four years,
- The husband has failed to provide maintenance to the wife for two years,
- The husband has taken an additional wife, in contravention of the Muslim Family Law Ordinance 1961, meaning that he has not taken the permission of court for the second marriage,
- The husband is imprisoned for at least seven years,
- Where the husband has failed to meet marital obligations for three years for no reasons,
- Where the husband is impotent at the time of marriage and continues to be so,
- If the husband is insane for two years,
- If the husband is suffering from leprosy or virulent venereal diseases.

A woman can also apply for divorce if she is under the age of 18. If her husband is treating her cruelly, she can apply for divorce due to cruelty.

Defining cruelty:

Cruelty is defined as habitual assault by husband, e.g. if he associates her with ill repute, presses the woman to live an immoral life, disposes of her property and obstructs her religious observation or when she is not being treated equitably in a polygamy set up.

If a wife simply says that she wants to dissolve her marriage without any reason and come out of the contract, she also can do it.

Divorce situation in Bangladesh:

The Muslim Family Law Ordinance 1961 has made it compulsory that notice must be given prior to divorce. However in our villages men do give divorce for no reason, this is recognized socially but is not recognized officially.

In Bangladesh, there is a judicial reform group and all judges and lawyers there are trained on gender issues. In addition to that there is a well working defense lawyers' cell at the Justice Ministry. NGOs moreover are very active in divorce issues. A woman with problems can go to an NGO and they will provide her shelter and mediation of her divorce case. In case this does not work, they go to the court and are provided with legal aid.

Unlike Egypt, in Pakistan and Bangladesh the issue of *Khula* or Deposal is different. In Egypt, they say that women have to leave all their rights in *Khula*, including the *Mahr*. However in Pakistan and Bangladesh a woman only pays back the *Mahr* while the other rights remain in place, e.g. the rights of child custody. *Khula* or Deposal in Pakistan and Bangladesh is equal to divorce or *Talaaq* by a man.

Divorce in the context of Egypt

The difference between Marriage and Divorce is that Marriage is a contract under Islamic law while divorce is not. Divorce is a one-sided legal action, usually taken by men. Sometimes as per the conditions of the marriage contract, the wife is entitled to initiate divorce herself. What we are focusing on now is the one-sided legal action to get divorce and not the kind of divorce that the court decides about.

Types of divorce:

There are two types of divorce in Egypt family law, namely Return Divorce, in which the husband can return to his wife within three months and Non-return Divorce in which the husband cannot return to his wife as she is married to another man and would require to be divorced again.

The second type is the *Khula* divorce that is criticized by some religious scholars as it is harmful for women. It is mentioned in the Holy Quran that if a wife dislikes her husband, she repays what she has taken from him, but does not have to leave every right she has. Some thinkers however also state that this fact is something added by the legislators based on Quran and *Sunnah* and not written in the Holy Quran.

The role of judges:

Judges apply law in all societies. Though what differs from one judge to another is how capable a judge is in evaluating the witness and testimony from different clients. The way of evaluation is a very individual matter for each judge. While one judge may believe in a women's testimony another one might rather believe men.

In Egypt man's sterility or infertility is not counted as a reason for divorce or separation, while any dangerous disease can be. In Hanafi school of thought, it is stated that if a husband is impotent, the wife can wait for winter, autumn, spring and summer, i.e. four seasons and if there is still no improvement, she can ask for divorce.

Divorce in the context of Malaysia

Under section 47 of the Islamic Family Law 1984, divorce or *Talaaq* is available for both, wife and husband. However normally the wife would not apply for divorce due to the lengthy court procedures involved.

Categories of Divorce:

Generally there are three options if a woman wants to split with her husband:

The first option is suspension or *Taleeq*, which is the breach of conditions to marry under Islamic Sharia Law.

Statutory conditions in Malaysia again are three:

- If the husband fails to provide financial maintenance for three months.
- If there is no conjugal relationship for four months.
- If there is abuse.
- Or any other conditions set forth by the wife in the marriage contract.

The problem with *Taleeq* is how to prove it? It has so far been made somewhat easy for women in Malaysia, as she can use her friends, her parents or in certain case her neighbours to prove that the husband has not come back for four months.

With Deposal or *Khula* there are different conditions in Malaysia as with the dowry. Dowry in this context is only 20 US\$ and a gift which can be based on the standard of the family. Thus once the wife goes to the court for Deposal the court does not want her to pay back the dowry but would want her to pay back the gift which could be valued at 1000 US\$ or so.

Dissolution or *Faskh* under section 52 of Islamic Family Law 2006 is still under discussion. There is a wide ground for women to use this argument:

- If the whereabouts of a husband is unknown for four months.
- When there is no maintenance for three months.
- When the conjugal relationship is absent for four months.
- When the husband is impotent at the time of marriage but the wife was not aware of it.
- If the husband is sent to prison for six months.
- If the husband has treated her cruelly.

The **definition of cruelty** can be as follows:

1. If a man is abusing his wife physically,
2. If a man is associating his wife with evil repute,
3. If he is forcing her to live an immoral life,
4. If the husband is disposing of his wife's property without her permission,
5. If the husband is obstructing his wife from observing religious obligations,
6. If a husband is polygamous and he is not treating her equitably.

Under the 2006 act, "*Faskh*" or dissolution, divorce has been extended to women. So nowadays both husband and wife can apply for "*Faskh*" (dissolution) divorce under the following three grounds:

- I. Incurable mental illness or incurable insanity
- II. Venereal diseases
- III. Diseases that would endanger the health of the spouse e.g. HIV/AIDS and other sexually transmitted diseases.

The challenges:

The statement of divorce by the husband outside of court is one of the main problems with the issue of divorce in Malaysia. In case of verbal divorce the husband must appear in court and confirm his words in front of the judge and he will do so by taking an oath which ensures the accuracy of the decision.

One recent phenomenon is the usage of SMS (Short Messaging Service) to divorce the wives then both husband and wife go to court. The husband shows the SMS to the court and the wife confirms that she received it and thus the divorce takes place. There is an argument currently ongoing about why there should be this low status for divorce, while for marriage the payment of loads of money is necessary together with a big event. Why instead divorce should be as easy as sending an SMS. The registration of divorce cases in court at this point has to be mentioned as very important issue as well. This rule is being put in place as a must, although it is not yet being practiced.

Lengthy court procedures are a problem particularly affecting women. For a man it is as easy as a verbal statement to proceed divorce. A woman instead needs to wait for the court's decision. Also women should pay money for the application and for the lawyer etc. A husband who does not want to consent to divorce and does not appear in court results in another long procedure. What we at Sisters of Islam do is that we are asking judges to implement one section of the Family Law stating that if the husband does not appear in court although he is informed, he can be sent to jail. Then often when such cases have happened, the media has been used to inform all about the incident.

Another question is the acceptance of evidence from the women's family members or friends. It is mostly young judges who accept women's family members' evidence due to the fact that they received awareness trainings whereas the older judges do still hesitate to accept.

Divorce in the context of Pakistan

The first law introduced about divorce in Pakistan still applies now. It is the Dissolution of Muslim Marriages Act 1939 under which, a woman could go to court and seek divorce. The second law is the Muslim Family Laws Ordinance 1961, which regulates the laws of divorce in Pakistan.

The purpose of these two laws was to assist those women in broken marriages who were not being allowed to get their divorce.

Social aspects of divorce:

During the times when the Indian Sub-continent was under the rule of Great Britain in 1939, Muslim women were not allowed to end their marriages out of their own choice. As a result, lots of Muslim women were changing their religion to become entitled to the right of divorce and get out of their miserable marriages. This was the time when Muslim men woke up and started looking for a solution. They discovered that in Islam there is a right of divorce for women! A commission was formed and they, using the Hanafi, *Shafiee* and *Maliki* schools finally stated that in Islam a woman is also allowed to end a marriage. This means that we have to make a selective use of Islam in the best interest and advantage of the people in a community. The 1939 law is the big example for this.

While discussing Divorce, there also is a need to look at cultural dimensions especially within traditional society structures as in Pakistan or Afghanistan. There are many laws that say that a woman can go to court and get divorce and subsequently it might even be on paper easy for a woman to get divorce. Still it is difficult for her to live and survive after divorce as she is usually left without social protection. Also she will not be looked upon with the same respect as a married woman. Yet, it is equally important to understand that for Afghan and Muslim men generally who divorce their wife, the worst thing would be to be called '*Zan Talaq*' (The man who divorced his wife). He would not have a good social status either. It is therefore up to us Muslim women to seek ways securing the right to divorce for ourselves.

Conditions for divorce:

In Islam where the man can give divorce, a woman can seek for deposal or *Khula*. Laws and jurists then created some kind of hierarchy giving higher position to divorce as the right of men and a lower position to women for deposal or *Khula*.

The Dissolution of Muslim Marriage Act 1939 states a number of grounds on which a woman can go to court to dissolve her marriage and get her dower. In fact there are at least ten grounds based on which a woman can go to the court and ask for her divorce without having to give up her dower. However the social reality is different. In this social reality in order to speed up the process, women some times prefer to ask for Deposal and not for divorce.

It is also very important for us to conceptualize divorce in our minds and find out what it means in our society for women and for men. For men it some times becomes as easy as giving divorce to a woman based on a simple story while for a woman it is always a very complicated issue that seriously threatens the whole family structure.

Strategies to ensure women's protection in divorce:

In the Quran chapter "*Baqara*", "*Nessa*" and in the chapter on divorce Allah says: "Either retain your wives with kindness or let them go with kindness". "Do not take away what you have given to them even if it is piles of gold". "Do not leave destitute your wives who you think you cannot live with peacefully anymore"¹².

All the above mentioned verses of Quran add up to post-divorce maintenance that should be provided to the woman. But unfortunately there is no law on post-divorce maintenance anywhere. Therefore while using the Islamic argument, there is also a need to work for a law to ensure post-divorce maintenance for women.

There are two more things that can be done: First is to develop a resource manual in all the necessary languages about all the positive cases that have been decided. Then share it with all lawyers, judges and activists working for women's rights. This is a simple and effective strategy.

The second issue relates to the lack of justice to women and lack of legal aid to women. There are very few associations that can go and defend women. You can have a legal cell at the Justice Ministry and staff there are trained as excellent lawyers to defend the rights of women.

¹² Al Quran

Findings and Recommendations on divorce:

In Afghanistan, the unconditional right to divorce lies with the man while a woman can apply for divorce only if sufficient reasons are available. However the final decision remains with the court. Hence there is need for raising awareness to prevent gender discrimination issues amongst Judges.

It is necessary to lobby for reform in the family law to address the following concerns.

- The transfer of right to divorce from husband to wife at the time of marriage has been included in the Family Law. But it has not yet been practiced. So there is still need to establish mechanisms for its application.
- The Divorce or *Talaaq* is the right of man and it can happen without the consent of the wife. Even the husband can divorce his wife without informing her.
- The Deposal *Khula* is the right of woman but the woman has to pay money. So actually a woman has to buy this right while still the husband's consent is mandatory.
- The wife has to prove the Harm (Zarar) for defect (Tafreeq). But the Harm itself has not been defined in the law. While in some countries for instance psychological pressure is also defined as one type of harm (Zarar) So it is difficult to prove that prevention of a woman from continuation of her education and other negative practices are also Harm. That's why it is necessary to define "Harm".
- If a husband is sent to jail for ten or more years, the wife should wait for five years until she can apply for separation. However, ten years is an absence where the husband cannot support the family etc.

Ensuring the property rights of women after divorce is of great importance. For instance, whatever property that the husband and wife gained during their life together, should be split into half once they get divorce.

There is a need to ensure for post-divorce guaranties like child custody, property rights etc. for women in our societies. Otherwise women chose to stay in a marriage even if it is a violent relation or harmful for them.

It is suggested that more restricted rules should also be put in place for separation or divorce as there are rules for marriage. The issue of oral divorce and the lack of witnesses for divorce is a major concern within society and legislation of Afghanistan. There should be more focus on lobby efforts to reform law and make sure that divorce is happening within a legal context, e.g. registration of divorce.

Prior notice about divorce is an important strategy and would help to support stability of family structures.

IV Child Custody/ Guardianship in the Islamic context

Background paper on child custody in the context of Afghanistan

The Civil Code of Afghanistan was approved in 1977 with technical support from Egyptian, French and US legal experts. Since then it has been applied. This code has been combined into four books, each focusing on a specific issue of civil cases.

Some sections of the Civil Code, namely articles 236 to 255, cover family issues.

Main concerns about the Civil Code can be summarized as follows:

- The Civil Code lacks a supplementary resource book to describe the civil law.
- The Civil Law is written in a complex language, with many Arabic terms and concepts. There is a need for simplification of words and concepts.
- The Civil Law gives the right of child custody to the mother of the child provided she is wise, mature and honest.
- The mother, and all other people named in the law for child custody are women e.g. grandmother, father's mother etc.
- The age of custody or for the fosterage period is defined as seven years for a girl child and nine years for a boy child.
- The court can extend the custody/fosterage period for two more years.

The gaps in Afghan Civil Law:

Due to the lack of awareness on legal issues, in some cases the issue of child custody is mixed up with the issue of child *Nafaqah* (expenditures)¹³. The word custody in Islam means that in case a mother gets the child's custody, then the father is responsible for material support of the child. This means that in Islam it actually is ensured that even if a child is under the custody of her/his mother, the father has to pay for food and expenses for the child. However in the Afghan system, no one respects this principle and courts never consider this issue.

Article 248 of the Civil Code states: 'Where the wife does not cohabit with her husband and where the age of the child is more than five years, the court may give the child to the care of one of the spouses who is more in the interest of the child.'¹⁴

Using unclear words and concepts in the Civil Code in a country with a very low literacy rate certainly confuses people about the meaning of words and legal terminology. In some cases the legal terms and concepts are also being mistranslated. Thus there is a need to explain the whole conditionality of each legal term.

It is arguable if the Afghan Civil Code, does not have enough articles or description on the issue of child custody. It is suggested that with the help of legal professionals from similar contexts particularly

¹³ Money spent by the husband for the wife's upkeep especially of the wife and children

¹⁴ The Afghan Civil Law, 1977.

those from Islamic countries the law should be reformed. Amendments should be based on principles of international conventions that Afghanistan has agreed to be bound by.

Suggested strategies to fill the gaps:

The period of fosterage should be extended above nine and eleven for girl and boy children respectively as seven and nine are very low and children still need mother's care.

There should be mention of a timeframe or schedule for the child's visit to his father in case the child has been given to the mother's custody.

The section on child custody should come as a particular section under the Civil Code in order to ensure that all issues related to child custody are part of it. It is crucial that the best interest of the child is considered as it is mentioned in the law. Children and their safety and well-being are crucial for the future generations of Afghanistan. So unless the legal procedures are being followed we can not expect a safe and just society.

Support for women's and child rights has reached very far in other countries. In Afghanistan there is only one family court and thus there is not a proper mechanism to provide legal support particularly in cases related to family law.

There is a need for human rights institutions together with support from countries like Egypt, who was the first supporter of the establishment of a constitution and civil law in Afghanistan, alongside other members of the international community to organize a strong pressure group to convince the Afghan government to reform the Civil Code.

Child Custody in the context of Bangladesh

In a normal context guardianship is not a problem as both parents can look after children. Yet, with the dissolution of marriage the issue of child custody comes under discussion. There are two kinds of guardianship: The personal of the minor and the property of the minor. In addition to Hanafi law in Bangladesh, we have also two other laws which deal with guardianship:

- The Guardianship Act 1890
- The Majority and Wards Act 1875

Since there are no Quranic text on guardianship, it has been decided in the event of a conflict between the "Hanafi Law" and the Guardianship Law in Bangladesh, the Statute Law will prevail. So, both laws go parallel to each other and only in the event of a conflict, the Guardianship Law takes over.

Entitlement for guardianship:

The age of maturity is considered to be 18 years in Bangladesh, extendable to up to 21 years. In *Hanafi* law the age of maturity is 15 years, which however can only be used for marriage, divorce and dower and not for property matter.

The persons entitled to be guardian are the same as in Afghanistan. Who are they? But they cannot apply for guardianship just on the basis of the described hierarchy indicated in the *Hanafi* law, until and unless the welfare of the minor is ensured and determined by the court.

Welfare is defined as the age and gender of the child, proposed guardians character and capacity, wishes of the deceased parents (if any), existing relationship of the proposed guardian to the minor and property of the minor. If a minor is old enough to make an opinion, that opinion is given preference in Bangladesh. If the welfare of the minor does not require the appointment of a guardian, one may not apply for it.

If none of the people mentioned in the list of possible guardians are, the court can appoint a guardian based on the welfare of the minor.

The Muslim law in Bangladesh says the mother has the right of custody of a minor till the son is seven years old and the daughter has reached 15 years or puberty. But if the mother re-marries, she loses this right and the custody belongs to the father. When the mother has the right to a child's custody, then it is the father's obligation to supervise this right.

Property of the Minor:

Regarding the property of the minor, the father is always the guardian. But the mother also could become a legal guardian if the father executes this in his will or anyone that it is mentioned in his will. If there is none as guardian to a child, then the court can decide about it based on the welfare of the minor which is the supreme consideration in any case.

As far as the transfer of property of the minor is concerned, the legal guardian can transfer immovable property of the minor provided there is some benefit in it for the minor. As for the movable

property; the legal guardian, the guardian appointed by the court and the de-facto guardian can all deal with it but they have to be extremely cautious and be prudent in their action and they have to get permission from the court.

Child Custody in the context of Egypt

Article 20 of the law number 25 issued in 1999 regarding child custody has been amended in the interest of the minor and the whole family as the cell for society.

In the past, the age of a minor was up to seven years for boys and ten years for girls. But in 1979 this law was amended to be ten years for boys and twelve years for girls. This was recently amended again and now the age of both (boy and girl) has been set to fifteen years.

Among other amendments, it has been added that after the age of fifteen, the minor will have the right to choose who he/she wants to live with. However, this amendment has been criticized by many.

The mother can claim a fee for guardianship she is giving to the minor in the court as long as she is divorced. This can not be called a salary or wage, but it is a monthly fee that a mother can ask to receive for the child.

Article 284 and 292 of the Penal Code mention that it is a crime to take away a child from the person who has the guardianship. There is a punishment and imprisonment on such violations.

The conditions for female guardianship are:

- A woman must be mature.
- A woman should be Muslim. However, a child can be given to a Jew or Christian mother until the time that the child has reached an awareness level to understand religion. When he/she reaches that age, his/her guardianship should be transferred to a Muslim woman, since a mother's religion can affect the child as well.
- A woman must be healthy and capable enough for taking care of the minor.
- A woman must be honest, with good reputation in society and without criminal background.
- If a woman is married with a person who is a stranger for the child (meaning as long as she is not married with the child's uncle, brother etc.) she is only a good guardian as long as the child does not have a step mother. As a rule it is not preferable for a child to stay with a step father. In this case the judge can question whether it is good for the child to live with a mother and step father or not.
- Any party (mother or father) trying to snatch the minor against his/her will or his/her guardian's will, will be punished, imprisoned or fined duly.

The guardianship house as an issue:

Before 1979 there was no guardianship. The female guardian will take the children inside her private house and the house of her family. But this was not the responsibility and obligation of the father at all. Under article 100 which was added in 1979 and amended in 1985, the divorced father is obliged to prepare a separate house for his children and their guardian and this separate house should be suitable for them and should fit them. On this issue of suitable house, there has been a tough discussion in the parliament.

If the father does not prepare a suitable house, the guardian has the right to choose a house or pay amount of money as rent and get this rent money from the father of the child/children.

Child Custody in the context of Malaysia

In Malaysia, similar to Pakistan and Bangladesh priority is given to the interest of the child or minor in child custody cases. After completion of divorce procedures in the court, the court suggests for mediation between the parents, this mediation includes only the husband, the wife and the mediator who is appointed by the court and is free. Mediation is not reconciliation. The mediator facilitates the meeting by helping both parties to dissolve the marriage in the same way that once they got married. Mediation includes issues of child custody, maintenance of children, issue of the wife maintenance and settles them outside court processes and the decision on future of the child/children will be taken by both parents.

Entitlements for guardianship:

During the period of *eddah*¹⁵ which is three months, woman's living standards when she was married can not be changed and during this three months she must have matrimonial house.

Second one is *Muttaa*¹⁶ or compensation. During the mediation process the wife will explain what sacrifices she had to give during the mediation process and she will ask for compensation. This can happen even in *Khula* or deposal, even if the separation request comes from the wife. If she can prove that the divorce is on the request of the husband, she can get the compensation.

The third one is marital assets. This means that although the husband accumulated all the property and has registered the property in his name the woman who often did not contribute financially still is entitled to get compensation. If during the mediation process both parents did not come to a conclusion on the child custody, then they go to the court again.

The age of minority in Malaysia is seven years for girls and nine years for boys. There is no 'automatic' transfer of guardianship from the mother to the father unless the father shows willingness and unless the father can prove to the court that the mother is unfit for the guardianship.

Once the child has reached adult age, the court would ask the child if she/he would prefer to stay with the mother or the father. The court can call any body, for instance a child psychiatrist or a child social welfare worker and ask whether or not what the child says is in his/her best interest.

Maintenance of the Minor:

As far as the maintenance of the minor is concerned, the father is the one who pays for all the food maintenance that a child may need. He also pays for education. In Malaysia this payment will continue until he/she graduates and starts working and is able to support him/herself. The mother does not have to provide anything legally for the maintenance of the child but still she has the right of child custody.

In the event that the father disappears or refuses to pay the maintenance, the court goes to the child's uncle or grandfather. This way, it becomes possible to find the father or/and make him pay the maintenance.

¹⁵ "Legally prescribed period of waiting during which a woman may not remarry after being widowed or divorced." (H. W.)

¹⁶ Compensation paid to a divorced woman.

In Malaysia, the non-Muslim parents do have equal guardianship rights, based on the Civil Law Code and Child Guardianship Act, but this law meant that Muslim women do not have equal guardianship as their husbands, thus thanks to the efforts of women activists, they have convinced the government to accept that also Muslim parents can equal guardianship rights.

Strategies to meet the challenges:

Regarding reforming laws, we have organized meetings and prepared suggestions, but the outcome was not effective, because once the law was drafted the law makers just wrote it in their own way. However what we have learnt from this was to already draft a law with the help of legal experts and professionals and then pressurize the government to accept it. So far such an initiative worked successfully in Morocco and hopefully initiative taken in Malaysia and also in Indonesia will work well.

In order to have good impact on the ground, besides good laws and legislation, there is a crucial need for raising awareness and capacity of the judiciary staff, particularly judges.

As a result there is need for two kinds of strategies: a long term and a short term one. In the short term it is needed to reform the laws but for the long term there is need to go to the grassroots level and try changing the mentality of people through education and awareness.

Child Custody in the context of Pakistan

Since Bangladesh and Pakistan were one country until 1971, the laws regarding the custody and guardianship are the same in both countries.

In Islamic tradition there is a difference between custody and guardianship. That difference has always had an impact when it comes to where the child actually lives and regarding the right or the extent of the authority of the person who has custody/guardianship of the child. This should be considered when we are looking at the reforming of this law.

Hezana or custody means the physical custody of the child, meaning who is physically looking after the child. In the Islamic legal tradition as well as in the laws in Pakistan this is the first right of the mother. What does Guardianship mean? For guardianship the traditional laws have always supported the male, i.e. fathers. But when we look at the reality on the ground, the situation in the Pakistani courts is very different. I will refer to a study that was been conducted regarding 50 years of case laws from 1947- 1997 on the custody and guardianship of the child.

The role of courts in Child Custody:

Lots of changes have come about in the way courts have been dealing with child custody cases. In fact, they are considering the best interest of the child (minor) as the main principle in their decisions. In Islam justice and equity and the best interest of the child is the main consideration. You are allowed in Islamic law to even override the Islamic law, if the best interest of the child matters. This needs to be understood and held on to as a strategy.

Another finding indicates that the distinction between custody and guardianship is being mixed up while used by judges. The superior courts will always try to favor the mother. But as for the first courts (family courts), no record is available. However the first courts bear more importance since they can ensure justice at the grassroots level. Only five percent of the people make it to the higher courts due to weak financial resources, distance from cities etc.

The courts in some cases were willing to handover custody to the mother even if she has married again provided that it was in the best interest of the child. The law does not apply by itself that automatically the father will take custody. The father must come to court with an application and he must prove that from now on he is the best guardian. It is important that the court tests the confidence and commitment of the father to the best interest of the child.

The choice of the minor is heard and considered by the court as well. The child is taken to the chamber and asked what he/she wants to do.

Entitlements for guardianship:

When it comes to the mother's responsibility for custody the problem that usually arises is related to finances. Most women earn less than men and this point is very effective in influencing the decision of the court. So there is a need to use the Quranic verses. In the Quran, there is clear indication that if the mother and father of a child are living apart and if the mother decides to breast-feed the child, the father has to pay for the milk the mother feeds to the child. Because the mother's milk directly depends on the health of the mother and the health of the mother depends on the food that she eats,

the husband has to pay for food and health of the mother. However, the Quran does not say that women must breast feed, it rather says it should be a mutual consent and because the milk belongs to the mother's body, it is she who decides to feed the child or not. So, we can make this principle into the law and say that it is compulsory for the father to make sure that he gives the money for the maintenance of the child.

The role of state and courts:

The state also needs to be very pro-active and its role becomes very important to make sure this law is in place and being practiced. Unfortunately, in our situation we do not spend enough money on social welfare in our country. Health, education, and child's welfare gets the lowest priority. It is important to show that in the period of *Hazrat Omar* he said that to every child who is born the government should pay money for food, clothes and shelter. And what happened was that due to poverty, the women would stop breast feeding and would go to Omar, and he said that it has nothing to do with finishing the breast's milk but instead the minute the child is born, the welfare will come. We are tracing this not from any western context, but from the Islamic context. There is a need that the child of today who is the future of tomorrow should be paid some money for.

Although the issue of children is discussed in many laws of our countries, often these laws are not consistent and fall contradictory to each other which means they are prone to misuse and exploitation. There is a need for one consolidated Children's Law in accordance with the letter and spirit of all the international conventions related to children for better consistency and to avoid misuse. Such a law would explain all issues related to children in one consolidated piece.

Traditional ways of guardianship:

What are our customs and traditions? Most of our traditions came about to protect the child or minor. But since we have not been able to evolve and develop them parallel to the changes in actual circumstances, they have become negative. This means that there is need for research on traditions and their usage over the passage of time in order to find out what was the original concept behind customs and traditions related to child custody. Then we can turn them around into a positive manner. The idea is to make them more acceptable as these customs and traditions are deeply rooted in our societies. So, due to the fact that in our countries, the elders' word has a great impact, we should seek ways to use this language to make our words acceptable. And perhaps by creating a little discussion by saying that this is not something very new and it is in the emotional interest of the child, we are doing something which is acceptable within our society.

Findings and recommendation on child custody:

The law is written in a complex language with many Arabic words, there is a need for simplification to avoid misunderstanding and gaps in interpretation.

The age of custody of fosterage period is defined as seven years for a girl child and nine years for a boy child. It should be raised for girl and boy children respectively like in other countries it has been raised up to 18 years.

The Afghan Civil Law should be reformed with consideration of all the international conventions that Afghanistan has signed and the laws of other prominent Islamic countries like Egypt and Malaysia.

Afghan Civil Law lacks supplementary texts or analysis to describe the different provisions
The law gives the right of child custody to the mother of the child provided she is wise, mature and honest.

After the mother, all other people named in the law are women e.g. grandmother, father's mother etc.
The court can extend the custody/fosterage period for two more years.

The law did not clarify how many times a father can visit his child, while the child is under mother's custody. Hence, this needs to be clarified by the law.

There is only one family court in Kabul for all the cases around Afghanistan. There is clearly a lack of family courts in Afghanistan.

V. An overall strategy on family laws in Afghanistan

For an overall strategy on family law reforms in Afghanistan the following major points have to be taken into account:

There is a need for multi dimensional approaches in applying strategies in Afghanistan. For example only raising awareness will cause harm instead of help. All the running away and self-immolation cases can be seen as direct result of unilateral approaches. With awareness raising, we raise expectations as well. But when women go to the courts, there is no answerable mechanism in place to fulfil these women's needs. They are left with no option but either to escape or commit suicide. Therefore balance in action is required. This also includes improvements in possibilities for women and families in all parts of the country to reach better access to legal advice.

Media have a very important role to play on raising awareness and introducing existing facilities to the people nationwide. As well the use of Islamic arguments is a strategy that puts rights activists in a very strong position while working for reforms on family law in a traditional society. This means one strategy must be to enhance the Islamic knowledge of women rights activists.

In turn all judges and lawyers should be trained on gender issues and women's legal professional's participation in the judiciary system needs to be ensured.

It is clear that civil society needs to continue and continuously refocus its organized and unified actions to lobby for the above mentioned recommendations. Moreover there is crucial need for collective action and advocacy for achieving the goals set. Involving other likeminded national and international organizations such as Judicial Reform Institutions, Ministries, the Human Rights Commission and civil society groups in general is therefore very important.

List of Participants:

Name	Organization
Prof. Dr. Begum Asma Sidiqqua	Rajshahi University Bangladesh
Judge Ali Abraham Kamouna	Supreme Court Egypt
Ms. Noraini Binti Ab Murat	Sisters in Islam
Dr. Shahin Sardar Ali	Warwick University UK
Mr. Fahim Hakim	Afghanistan Independent Human Rights Commission
Ms. Hangama Anwari	Afghanistan Independent Human Rights Commission
Mr. Farid Hamidi	Afghanistan Independent Human Rights Commission
Dr. Suraya Subrang	Afghanistan Independent Human Rights Commission
Ms. Parwin Rahimi	Afghanistan Independent Human Rights Commission
Ms. Homa Sultani	Afghanistan Independent Human Rights Commission
Ms. Eamon	Afghanistan Independent Human Rights Commission
Najiba Hashimi	Afghanistan Independent Human Rights Commission
Mr. A. Majeed	Ministry of Justice
Mr. M. Kabir	Ministry of Justice
Mr. M. Jawed	Ministry of Justice
Ms. Marzia Basel	Afghan Women Judges Association
Ms. Huria Musadiq	HRRAC
Ms. Najia Hanifi	Afghan Women's Educational Center
Ms. Shinkai Karokhail	Member of Parliament
Ms. Noor Marjan	Afghan Women's Skill Development Center
Ms. Palwasha Mirbacha	UNAMA
Mr. Aleem Haider	UNAMA
Ms. Khatema Muslhe	Afghan Women's Network
Ms. Sajia Behgam	Medica Mondial
Ms. Maryam Wardag	Medica Mondial
Ms. Adela Muhsini	National Democratic Institute
Ms. Kathryn Khamsi	IDLO
Ms. Anou Borey	UNIFEM
Mr. Zia Mubalegh	UNIFEM
Mr. Baha	Supreme Court
Ms. Anisa Rasuli	Juvenile Court
Ms. Tulika Srivastava	UNDP
Ms. Hafiza Dadfar	Independent
Mr. Aziz Ahmad Sarbaz	Attorney General Office
Mr. M. Najem Samadi	Civil Court