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Human Rights in Afghanistan¹

Thank you for this great opportunity to meet and share with Dr. Sima Samar who knows and practices human rights from various perspectives: as a woman's and human rights advocate and activist, as the former Minister of Women's Affairs of Afghanistan and the chairperson of the Afghan Independent Human Rights Commission (AIHRC) and, since 2005, as United Nations Special Rapporteur on the situation of human rights in Sudan.

In 2012, Dr. Samar was laureate of the Right Livelihood award for her outstanding and courageous work for women's rights and human rights. In the rationale for granting the award, the committee highlights Sima Samar as a

"Doctor for the poor, an educator of the marginalized and defender of human rights of all in Afghanistan. She has established and nurtured the Shuhada Organization that, in 2012, operated more than one hundred schools and 15 clinics and hospitals dedicated to providing education and healthcare, particularly focusing on women and girls. She served in the Interim Administration of Afghanistan and established the first-ever Ministry of Women's Affairs. Since 2004, she has chaired the Afghanistan Independent Human Rights Commission that holds human rights violators accountable, a commitment that has put her own life at great risk".²

With my introduction, I would like to focus on just a few topics in the fields of human rights and education in a globalized world that are strongly linked to Dr. Samar's work. To begin with, I would like to describe the value of human rights and education in the words of our honorary guest:

"Human rights have a value now in Afghanistan; they are discussed within families and throughout the different regions of the country, even in the most remote areas. Speaking about human rights means breaking taboos in Afghan society. That we can do this now is, for me, one of the greatest achievements of our time." Sima Samar, 2014³

Human Rights have meaning at multiple levels. What particularly strikes me about this quote is that human rights have reached the family as this is the place where a human rights culture will emerge. But human rights are also an area of conflict when breaking taboos. And they are a product of an ongoing development through communication, education and discourse. In the following, after a short general introduction to human rights, the presentation takes into account some of the current issues

¹ The article is based on an introductory lecture held at the University of Kassel on 22 May, 2014; references and links have been added.

² For more information on Sima Samar (including a short biography, videos and Dr. Samar's acceptance speech) see: <http://www.rightlivelihood.org/samar.html>

³ See: Dr. Sima Samar: Human Rights have a value now in Afghanistan (Posted: 01/30/2014): <http://www.huffingtonpost.com/unveiling-afghanistan/dr-sima-samar-human->

Dr. Samar, in her work, is focusing on, especially the human right to education with a focus on girl's educational rights and gender based discrimination with a focus on forced / arranged marriages.

1 Human Rights: an Ongoing Development

Human Rights are the rights we possess solely on the basis of being human. They should not be bound to a certain status or certain roles that we play in society. They should also not be bound to restricted concepts of sex and gender roles. To the contrary, human rights promote the freedom of each and every individual to live and learn and love in a way that respects the dignity of one's self as well as the equality in dignity with everybody else. In this way, human rights are the basis for the expression of the uniqueness of every human being, which shall be respected in guaranteeing equal rights. Consequently, human rights encompass a pluralistic vision of society, which allows the freedom and self-determination of every individual - as long as it does not interfere or violate someone else's right.

Human rights express the universal call for freedom and equality of all people, to which they are entitled regardless of their different backgrounds, cultures and characteristics etc. They are justified by the unconditional respect and recognition of human dignity. Their protection is guaranteed by national and international institutions that continuously deal with analyzing and monitoring human rights implementation at national, regional and international levels - together with a multitude of governmental and non-governmental players; individuals as well as groups, associations and organizations of every kind.

Since the United Nations passed the *Universal Declaration of Human Rights*⁴ on December 10th, 1948, it has been a global foundation and central source of reference for emancipation and liberation movements. But it was clear from the start, that reference to human rights and the development of a "human rights culture" (UNESCO) would not entail automatic development towards freedom and equality. To this day, enforcement of human rights remains an incomplete learning history (see Bielefeldt 2007), fueled by the determined dedication of courageous people like Dr. Sima Samar and many others who keep the struggle for human rights alive. Learning processes are at the heart of an ongoing process of human rights development.

⁴ For all cited human rights declarations and documents of the United Nations, see:

2 The Human Right to Education

"Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms." The Right to Education, UDHR, Art. 26,2 1948⁵

The right to education is an empowerment right (see Lohrenscheit 2010). It is a *right*, protected by international covenants, and at the same time it is also a *tool* for claiming one's own rights as well as - in solidarity - the rights of others.⁶ For more than a decade, human rights are becoming more and more powerful in the international educational discourse. To conceptually link education with human rights poses questions to the existing forms and structures of education systems, teacher training and the review of learning methods and materials worldwide. In this regard, there are three *core dimensions* which must be taken into account when re-thinking education within the context of human rights, and through the lens of a human rights based approach:

1. the right *to* education,
2. rights *in* education and in processes of curriculum planning and development, and
3. human rights *through* education - as a guiding principles for all learning processes.

All three dimensions are at the core of Dr. Samar's work for educational rights - especially for girls. They also share important concepts which constitute our modern understanding of human rights. At the core lies the understanding of individuals - learners as well as teachers - as human beings free and equal in dignity and rights. Freedom rights involved in education are for example the right to freedom of expression and participation, religious freedom or the freedom of parents to choose for the education of their child according to their own beliefs and cultural values. Equality rights call for an inclusive approach in education. They try to embrace all learners, respecting the principal equality of each individual as well as everyone's right to be different. In pragmatic terms this means that all forms and stages of education (curriculum development, text books and learning materials, teaching and learning styles, languages of instruction, etc.) must be adapted to the core principle of non-discrimination - which in turn means inclusion.

⁵ <http://www.un.org/en/documents/udhr/>

⁶ For more information on the right to education see: the UN Special Rapporteur on the Right to education:

<http://www.ohchr.org/EN/Issues/Education/SREducation/Pages/SREducationIndex.aspx>;

the CRC - Children's Rights Committee; see:

<http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>; the CEDAW -

Committee on the Elimination of all forms of Discrimination against Women; see:

Furthermore, the right to education encompasses both, a quantitative as well as a qualitative perspective. The *quantitative* notion of the right to education is simply that everyone is entitled to have access to this right. Most importantly this is directed to children – especially girls who are excluded from basic education in numerous countries. But also adults who, in their earlier life, didn't have the chance to receive education have the right to a basic education to be enabled to participate in society. The state must ensure that every child - no matter if girl or boy, poor or rich, black or white, enabled or disabled - is included in education. The *qualitative* notion of the right to education concerns the learning contents as well as the didactics of teaching and learning. To further explain the essential features of the right to education and to create a common language, basic criteria are established to lead the way to accountability and commitment in a global context. The first UN-Special Rapporteur on the right to education, Katarina Tomaševski, developed a "4-A-Scheme" which defines the core obligations to fully realize qualitative as well as quantitative dimensions of this right, namely *availability, accessibility, acceptability and adaptability* (see Tomaševski 2003). She explains that "education operates as a multiplier, enhancing the enjoyment of all individual rights and freedoms where the right to education is effectively guaranteed, while depriving people of the enjoyment of many rights and freedoms where the right to education is denied or violated" (Tomaševski 2001).

2.1 Structural Elements of the Right to Education

Availability: For education to be inclusive and equally available for everybody, functioning structures and institutions must be in place. Format and shape of these institutions are of course bound to the context but some basic requirements have to be met like for example buildings, where education can take place, with sanitary facilities and hygienic drinking water. Especially for girls, the hygienic facilities are of major importance. Often girl's access to schooling is precluded while they are getting their period and schools don't provide the necessary sanitary facilities.

Also teachers should be able to receive high quality training before they start teaching in schools or other learning institutions. The teaching profession should be valued and wages shall be granted accordingly. This also means that the status of professional educators must correspond to their international recognized rights, including their right to form trade unions. Finally, availability must recognize the parental choice of education for their children but also their responsibility to ensure that they go to school.

Access: Access to education is bound to its compulsory nature. All school-aged children must be granted access free from any form of discrimination. This entails at least two dimensions, namely that compulsory education must be affordable and, that exclusion of children from education on the grounds of sexist, racist or homophobic criteria, gender, physical or mental ability, age, social or marital status and family background is prohibited. Here, the right to education pays attention especially to disadvantaged groups of learners who often need the chance to compensate what they might not get from their families or communities. Some children might

must be taken into account. They too, have the right to be treated equally and not in special institutions. Consequently, all obstacles that reject children's access must be eliminated like for example costs for education (school fees, books, transportation, uniforms, school meals) or conditions which keep children out of school because families are too poor, and especially girls have to work to sustain the household of the family instead of going to school.

Adaptability: Education must be adapted to the needs of the learners. Therefore, curriculum development must be a flexible, continuing process because requirements and challenges of societies are constantly changing. Every curriculum must take the diversity of learners as well as their diverse backgrounds and needs into account. This may also include, for example, different cultural or religious backgrounds or the home languages of the learners which may be different from the dominant language or lingua franca of a respective country. For the analysis of the adaptability of education criteria are required which also include out-of-school children. Here, government's reports to the human rights bodies of the UN revealed that more than 30 categories of children are likely to be excluded from, and in education (for example children who need to work, child mothers or pregnant girls, disabled children, HIV-infected children, homeless children, street children or refugee children). Furthermore, curriculum development must be evaluated on the basis of a sound analysis of the impact of education on human rights and human rights values. Curriculums must be designed to assist children (and their teachers) to fully understand their rights and freedoms and to be able to apply them.

Acceptability: Education must be acceptable in terms of its form and content. The acceptability of education includes important standards concerning the contents and methods of learning, which must be *relevant, suitable* and of a *high quality*. The basic notion of article 26 of the UDHR puts the human personality to the forefront: "Education shall be directed to the full development of the human personality and the promotion of respect for human rights and freedoms". Furthermore, educators and facilitators should strive to integrate human rights as content as well as guiding principle for the learning process. Both elements - adaptability as well as acceptability of education - are often blocked in curriculum development if it is concentrating solely on the preparation of children for the next level of education. Instead, the right to education is seen as an enabling right that holds full development and empowerment as its core.

2.2 Focus on Girl's Right to Education

An authoritative reference for statistics and data on the realization of the right to education is the Education for All Global Monitoring Report, published annually by UNESCO (see UNESCO 2015). The report firstly was initiated at the Global Education Forum in Dakar, Senegal, 2000, and aims to inform, influence and sustain global commitment towards Education for All (EFA) -including a strong commitment towards the elimination of gender based discrimination against girls, and to achieving gender equality in education with a focus on ensuring girls' full and equal access

human rights based approach, the EFA report lacks a comprehensive basis and only takes into account the element of accessibility, instead of focusing on education fully in accordance with the 4-A-scheme as described above, it is still a valuable basis for a global monitoring. For 2015 the report informs that at the primary school level, 69% of the countries with data are expected to have reached gender parity. Progress is slower in secondary education, with 48% of the countries reporting to reach gender parity this year. Looking back, and comparing available data of the last 15 years, UNESCO finds that the overall development for girls enrolling into primary schools shows that gender disparities are declining. Concerning the fact, that 57 million children worldwide, including 31 million girls, are out of school,⁷ UNESCO reports that, girls are more likely never to enrol in school (48% compared to 37%) but once they are enrolled, girls are more likely to also reach the upper grades. Taking into account the various obstacles for girls to have access to education, the economic situation of a family remains as one of the main reasons. Here, the report focuses on sub-Saharan Africa, where the poorest girls remain the most likely to never attend primary school (see UNESCO 2015, p. 8).

Next to the statistical data as reported by UNESCO, a rights based approach to ending discrimination against girls in education needs to take into account other perspectives. In this regard, the UN Special Rapporteur on the Right to Education gives a good example. In his 2006 report on girl's right to education, V. Muñoz develops a comprehensive approach from equal access to total equality (see UN Economic and Social Council & Commission on Human Rights 2006). He argues that it is the patriarchal attitudes and inequalities that need to be addressed next to simply measuring the accessibility of the right to education for girls. His point is that girls are not a homogenous group but they are working girls, girls in armed conflicts or girl child soldiers. Girls are forced into marriages at a very early age; they have to deal with early pregnancy and motherhood. Altogether, these conditions and gender specific human rights violations do have a massive impact on the realization of girl's educational rights. Muñoz concludes:

"New responses must be found in twenty-first century education to the patriarchal attitudes that have subordinated girls, women and groups discriminated against, so that human rights can point the way to the fashioning of egalitarian civic communities". (UN Economic and Social Council & Commission on Human Rights 2006, p. 18)

Dr. Sima Samar, with her work, is part of these "new responses". Here, one example is *Shuhada* for educating women and girls, an NGO she found while she was working in Afghanistan. Shuhada today operates numerous schools for girls and boys in Afghanistan and also schools for Afghan refugees in Pakistan. During the Taliban regime Shuhada ran underground home school classes for girls in Kabul, and

⁷ See more at: <http://www.right-to-education.org/issue-page/marginalised-groups/girls->

Shuhada's schools were among the few academic girls' primary schools that existed in the country.⁸

3 Gender Based Discrimination: the Struggle Against Child Marriage

"When marriage starts, education ends" Girls not brides, 2015⁹

The full realization of the right to education is strongly linked to the struggle against gender based discrimination and violence. In this framework, Sima Samar is strongly committed to ending gender based violence, especially focusing on protecting the girl's child from early and forced marriages who is affected disproportionately high. One of the very first visible consequences of child marriage is dropping out of school. Child brides get simply excluded from schooling. In some countries, this exclusion is legitimized by national legislation. For instance, school authorities in Afghanistan and Iran do not allow married girls to continue education in formal schools.

But before taking a closer look at who is taking control over the girl's body and soul some introductory remarks shall set the frame for including a gender perspective to human rights. The global struggles against violence and discrimination based on sex and gender have a long history in human rights development. The early women's rights movements, for example, offer valuable insights for understanding how human rights emerged. For a historical dimension, one may take into account early women's rights documents like the *Declaration of the Rights of Woman and the Female Citizen*, written by Olympe de Gouges in 1791 or, the Suffragette Movement of the late 19th and early 20th century for women's right to vote. Since the declaration of the *Universal Declaration of Human Rights*, the prohibition of discrimination based on sex is part and parcel of almost every human rights document. At the same time, the global struggle for freedom and equality free from gender discrimination continues today and thereby unfolds sex and gender as categories comprising diversity in them.

⁸ The Shuhada Organisation. Working for a better tomorrow; see: <http://shuhada.org.af/?p=62>

⁹ See: <http://www.girlsnotbrides.org/girls-voices/child-within-marriage-starts-education->

3.1 Human Rights, Sex and Gender

Issues of sex and gender are often associated with feminism and the women's rights movements and, indeed these areas were - and still are - important fields of human rights work. Today, a wide range of different issues and interests is embedded in the concepts of sex and gender. While "sex" refers to biological and physiological characteristics of a person, the concept of "gender" highlights the social dimension, including behaviours, attributes or traditions that society considers appropriate for girls and boys, women and men. Next to the economic situation (poverty), it is these traditions that push many families to hold on to the practice of child marriage.

Sex and Gender matter - in society as well as in relationships. Gender infuses almost every aspect of life. It is a fact that society imposes strict sex and gender norms on us which determine the way we are legally and socially included or excluded. When a child is born one of the first questions to be asked is: "boy or girl?" We are asked to qualify as female or male on our birth certificates, school or job applications, identity documents or voter registrations etc. But for many people, especially women and girls, the norms, laws and traditions of sex and gender roles simply do not fit. They are excluded and violated in their human rights - be it legally or socially. The human right to sexual self-determination therefore includes fundamental and integral aspects of our identity, namely of *who we are*, with respect to our gender identity, and *how we live and love*, with respect to our sexual orientation/identity (e.g. homo- or heterosexuality). One always has to keep in mind how sensitive and sometimes difficult it is to address these issues as they encompass intimate aspects of our sense of self, our sexuality and our sense of belonging to the communities and relationships we live in.

3.2 Who Takes Control Over the Girl's Body and Soul?

Within this framework, Dr. Sima Samar in her work is focusing on the empowerment of girls who are at risk of early and forced marriages. From a human rights perspective, the first legal basis to protect women and girls in all matters relating to marriage and family relations is the women's rights convention CEDAW (UN Convention on the Elimination of all Forms of Discrimination Against Women, 1979). Article 16 (2) explicitly prohibits the betrothal and the marriage of a child, and calls on states to take all necessary action, including legislation, to specify a minimum age for marriage and grant no legal effect to child marriage. Furthermore, art. 16 (1) CEDAW lays the foundations for women to free choice and equal rights especially:

"(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."

Furthermore, CEDAW calls on the duty of the state to make the registration of marriages in an official registry compulsory which is especially important for ending girl child marriage as the state puts itself into a position to gather data about how wide child marriage is spread in the country.

The basis for Dr. Samar's commitment is acknowledging the fact that child marriage is a human rights violation. But promoting the legal framework alone is not enough. Despite international law like CEDAW, the practice remains widespread. The United Nations Population Fund (UNFPA) reports that in developing countries, one in every three girls is married before reaching age 18. One in nine is married under age 15.¹⁰ Concerning the total numbers and the countries and regions that have the highest percentage of girl child marriage UNICEF reports in 2014 (see UNICEF 2014):

- that almost half of all child brides worldwide live in South Asia (including Afghanistan); 1 in 3 are in India;
- in every region, the poor are most at risk of child marriage;
- child marriage is most common in rural areas;
- Child brides end up having many children to care for while still young
- Child brides end up receiving no education which is a major threat to their future development;
- child brides are less likely to receive medical care during pregnancy than women who married as adults;

- the risks of complications in pregnancy or childbirth are a leading cause of death among girls and adolescents in developing countries.

Although globally, the practice of child marriage is declining, especially when it comes to the marriage of girls under age 15, the numbers prove the importance of dedicated action to end human rights violations of girls. Child marriage threatens girls' lives and health, and it limits their future prospects. This is also backed up by Rashida Manjoo, the UN Special Rapporteur on violence against women, its causes and consequences. In her 2011 report to the UN General Assembly Manjoo points out that early girl child marriage is embedded in the context of domestic violence against women and girls:

“Closely tied to domestic violence, practices that are harmful and degrading undermine the rights and status of women and girls and continue without systematic monitoring or punishment, despite the increasing existence of legal prohibitions.”¹¹

3.3 Global Action Against Child, Early and Forced Marriage

As stated before, legal action against child marriage alone is not sufficient to ending this practice at a global scale. The UN Human Rights Council (HRC) in his 2014 report on preventing and eliminating child, early and forced marriage, proposes comprehensive action plans and coordination mechanisms at national level. Next to protection measures and awareness raising campaigns, the HRC also calls on the engagement of religious and traditional leaders and service providers. Furthermore, empowerment action for girls must be taken that includes education for girls and human rights education for girls, boys and their parents or care takers that also focus on marriage counselling e.g. through counsellors in schools and parental education and guidance (see Human Rights Council 2014). Furthermore, one of the most important steps in ending child marriage is tackling poverty as UNICEF argues:

“Ending child marriage will help break the intergenerational cycle of poverty by allowing girls and women to participate more fully in society. Empowered and educated girls are better able to nourish and care for their children, leading to healthier, smaller families. When girls are allowed to be girls, everybody wins.” (see UNICEF 2014)

¹¹ Report submitted by the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, to the General Assembly, pursuant to General Assembly

Everybody is entitled to join this struggle for human rights in general, and especially for women and girls who continue to be under threat despite all progress that has been made. In the words of Dr. Sima Samar:¹²

“It's not going to be easy for anyone to change overnight but where there is political will, there is a possibility for change.”

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¹² See: The Carter Center (ed.): *Human Rights Defenders: Sima Samar (Afghanistan): Tackling the Roots of Afghanistan's Ills*, retrieved Aug. 15, 2015: http://www.cartercenter.org/peace/human_rights/defenders/defenders/afghanistan_sima_sa