

# Afghanistan: Vormundschaft

## Auskunft der SFH-Länderanalyse

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## Einleitung

Der Anfrage an die SFH-Länderanalyse haben wir die folgende Frage entnommen:

1. Wie ist die Frage der Obhut/Vormundschaft im afghanischen Recht geregelt?

Die Schweizerische Flüchtlingshilfe SFH beobachtet die Entwicklungen in Afghanistan seit mehreren Jahren.<sup>1</sup> Aufgrund von Expertenauskünften und eigenen Recherchen nehmen wir zur Frage wie folgt Stellung:

### 1 Afghanistan und die Kinderrechtskonvention

Afghanistan ratifizierte die *United Nations Convention on the Rights of the Child* im Jahr 1994. Gemäss Artikel 44 Paragraph 1 (a) der Konvention hätte Afghanistan zwei Jahre später, 1996, beim Komitee den ersten Bericht einreichen sollen. Aufgrund mehrerer Jahrzehnte Krieg, Unsicherheit, politischer Instabilität, Armut, fehlender technischer Möglichkeiten und mangelnder Erfahrungen konnte der Prozess für den ersten Bericht erst im Mai 2008 begonnen werden.<sup>2</sup> Verschiedene afghanische Ministerien wie das *Ministry of Labor and Social Affairs, Martyrs and the Disabled* (MoLSAMD), das *Ministry of Justice* (MoJ) oder das *Ministry of Public Health* (MoPH), die *Afghanistan Independent Human Rights Commission* (AIHRC), die norwegische und die türkische Botschaft, UNICEF Afghanistan, die *United Nations Assistance Mission to Afghanistan* (UNAMA) und verschiedene zivilgesellschaftliche Organisationen waren in die Vorbereitungen des Berichts involviert.<sup>3</sup> Der Bericht wurde im August 2009 fertiggestellt.<sup>4</sup>

Gemäss Artikel 54 der afghanischen Verfassung ist die Familie die Säule der Gesellschaft. In der Verfassung ist auch die Verantwortung der Eltern gegenüber den Kindern definiert. Doch hinsichtlich der Prüfung des Wohlergehens des Kindes gibt es keine festgelegte gesetzliche Grundlage. Die Interessen der Familie werden geschützt, wobei das Kind als Teil der Familie gesehen wird; die individuellen Rechte des Kindes werden dabei nicht berücksichtigt.<sup>5</sup>

Trotz der neusten Errungenschaften zum Schutz des Kindes schliesst der UNO-Bericht mit der Bemerkung, dass noch viele Herausforderungen zu bewältigen sind.<sup>6</sup> Auch wenn Afghanistan verschiedenste Gesetze und Vorschriften zum Schutz des Kindes erlassen hat, ist die Umsetzung aus verschiedenen Gründen schwierig: Unwissenheit über die Gesetze, Korruption, Unsicherheit, mangelhafte Infrastruktur.<sup>7</sup>

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<sup>1</sup> [www.fluechtlingshilfe.ch/herkunftslaender](http://www.fluechtlingshilfe.ch/herkunftslaender).

<sup>2</sup> UN Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention, Initial report of States parties due in 1996, Afghanistan, [28. August 2009], 13. Juni 2010, § 4, S. 5: [www2.ohchr.org/english/bodies/crc/docs/CRC.C.AFG.1.doc](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.AFG.1.doc).

<sup>3</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 3, S. 5.

<sup>4</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010.

<sup>5</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 145, S. 32.

<sup>6</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 359, S. 76.

<sup>7</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 50, S. 15.

Zudem ist darauf hinzuweisen, dass das Justizsystem vielerorts nicht funktioniert, viele Richter kennen die Gesetze nicht, und Kinder und Frauen erhalten meistens keinen Schutz.<sup>8</sup> Kinder gehören mit den Frauen zu den verletzlichsten Bevölkerungsteilen Afghanistans.<sup>9</sup> Wie bereits von der SFH beschrieben, sind in Afghanistan Kinder besonders gefährdet, Opfer von Gewalt, Missbrauch oder Zwangsarbeit zu werden.<sup>10</sup>

## 2 Wie ist in Afghanistan die Frage der Obhut/Vormundschaft geregelt?

**Unterhalt des Kindes** (*Maintenance of the Child*). Gemäss den Artikeln 257 bis 260 des Zivilgesetzes ist der Vater für den Unterhalt der Kinder verantwortlich. Zum Unterhalt gehören unter anderem Unterkunft, Nahrung, Kleidung, medizinische Versorgung, Bildung und Sicherheit.<sup>11</sup> Ein Sohn muss unterstützt werden, bis er selbst arbeiten kann, eine Tochter, bis sie verheiratet ist. Die Rolle der Mutter ist nicht klar definiert, doch haben die Eltern gemäss Scharia-Gesetz und traditionellem Recht verschiedene festgelegte Pflichten.<sup>12</sup>

Die primäre Versorgung des Kinder ist in der Verantwortung der Familie, und die Regierung hat keine direkten Interventionsmöglichkeiten. Mit verschiedenen Aufklärungsprogrammen hat die Regierung in den vergangenen Jahren versucht, die Bevölkerung bezüglich des Wohls der Kinder zu sensibilisieren.<sup>13</sup>

Im Fall einer Trennung der Eltern ist gemäss Artikel 236 des Zivilgesetzes definiert, dass ein Kind während einer gewissen Zeit den Schutz und die Erziehung einer Frau braucht. Gemäss Artikel 238 muss eine Frau, welche die Obhut (*Custody*) für ein Kind erhält, gesund, zuverlässig und volljährig sein, und sie muss die Möglichkeit haben, für das Kind sorgen zu können. Gemäss Artikel 249 bleiben Knaben bis zum Alter von sieben Jahren in der Obhut (*Custody*) der Frau und Mädchen bis im Alter von neuen Jahren. Im Artikel 259 ist festgelegt, dass, wenn der Vater nicht für den Unterhalt seiner Kinder aufkommen kann, die Unterhaltspflicht an den Vormund (*Custodian*) übergeht, der am engsten mit dem Vater verwandt ist.<sup>14</sup>

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<sup>8</sup> SFH, Afghanistan: Situation geschiedener Frauen, 1. November 2011: [www.fluechtlingshilfe.ch/herkunftslaender/arabia/afghanistan/afghanistan-situation-geschiedener-frauen](http://www.fluechtlingshilfe.ch/herkunftslaender/arabia/afghanistan/afghanistan-situation-geschiedener-frauen); SFH, Afghanistan: Schutzfähigkeit der Afghan National Police und Sicherheitssituation in Kabul, 20. Oktober 2011: [www.fluechtlingshilfe.ch/herkunftslaender/arabia/afghanistan/afghanistan-schutzfaehigkeit-der-afghan-national-police-und-sicherheitssituation-in-kabul](http://www.fluechtlingshilfe.ch/herkunftslaender/arabia/afghanistan/afghanistan-schutzfaehigkeit-der-afghan-national-police-und-sicherheitssituation-in-kabul).

<sup>9</sup> Afghanistan Independent Human Rights Commission (AIHRC), Annual Report January 1 – December 31, 2009, 2009, S. 5: [www.aihrc.org.af/2010\\_eng/Eng\\_pages/Reports/Annual/Annual2009.pdf](http://www.aihrc.org.af/2010_eng/Eng_pages/Reports/Annual/Annual2009.pdf); Vgl. SFH, Afghanistan: Situation von Waisenmädchen, 24. November 2011: [www.fluechtlingshilfe.ch/herkunftslaender/arabia/afghanistan/afghanistan-situation-von-waisenmaedchen](http://www.fluechtlingshilfe.ch/herkunftslaender/arabia/afghanistan/afghanistan-situation-von-waisenmaedchen).

<sup>10</sup> Vgl. SFH, Afghanistan: Situation von Waisenmädchen, 24. November 2011; SFH, Afghanistan: Die aktuelle Sicherheitslage, 23. August 2011: [www.fluechtlingshilfe.ch/herkunftslaender/arabia/afghanistan/afghanistan-die-aktuelle-sicherheitslage-2011](http://www.fluechtlingshilfe.ch/herkunftslaender/arabia/afghanistan/afghanistan-die-aktuelle-sicherheitslage-2011).

<sup>11</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 168, S. 37.

<sup>12</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 148, S. 33.

<sup>13</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 168, S. 37.

<sup>14</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 95, S. 24.

**Staatliche Unterstützung.** Das *Ministry of Labor and Social Affairs, Martyrs and the Disabled* (MoLSAMD) hat im 2006 eine nationale Strategie für *Children in Risk* entwickelt. Dabei sollen gute Bedingungen für Kinder geschaffen werden wie angemessene Unterkunft, Zugang zum Gesundheitssystem und zu Bildung, Verhinderung von Kinder- und Zwangsheiraten etc.<sup>15</sup> Aufgrund der Jahrzehnte dauernden Kriege ist jedoch die gesamte Infrastruktur zerstört. Auch die wirtschaftlichen und sozialen Strukturen sind zerstört. Alles muss von Grund aufgebaut werden. Der Aufbau sollte systematischer angegangen werden. Gemäss Schätzungen des MoLSAMD benötigt die Hälfte der afghanischen Bevölkerung (12,25 Millionen)<sup>16</sup> soziale Unterstützung. Im 2006 hatten nur 2,5 Millionen AfghanInnen Zugang zu sozialer Unterstützung.<sup>17</sup>

**Vormundschaft.** Gemäss Artikel 57 des *Law of the Juvenile Code* (2005) sind die Eltern eines Kindes, das unter 18 Jahre alt ist, die gesetzlichen Vertreter (*Legal Guardian*). Wenn das Kind keine Eltern hat, bestimmt das Gericht einen Vormund (*Legal Guardian*).<sup>18</sup>

Das MoLSAMD hat bei Waisenkindern ohne elterliche Vormundschaft (*Parental Care*) bestimmte Vorgehensweisen festgelegt, damit sich die Kinder positiv entwickeln können. Das Interesse des Kindes wird zentral behandelt, und es wird davon ausgegangen, dass die Erziehung und das Aufwachsen am besten in einem familiären Umfeld gewährleistet ist. Die Abwesenheit oder der Tod des Vaters ist der häufigste Grund, dass ein Kind in einem Waisenhaus untergebracht ist. Sobald ein Kind aus einem Waisenhaus wieder in die Familie reintegriert wird, ist das Einverständnis des Kindes zentral für die Integration. Wenn das Kind einwilligt, versuchen zuerst Sozialarbeiter, die Mutter des Kindes zu finden. Wenn die Mutter nicht auffindbar ist, wird der Kontakt zu den nächsten Verwandten hergestellt (Grossvater, Onkel väterlicherseits, Onkel mütterlicherseits, Tante väterlicherseits etc.). Sozialarbeiter untersuchen die Möglichkeiten zur Integration des Kindes in der erweiterten Familie, und erst wenn die Unterbringung sicher ist, wird das Kind platziert.<sup>19</sup>

Armut ist einer der häufigsten Gründe, dass ein Kind in einem Waisenhaus bleibt. Viele dieser Kinder haben eine erweiterte Familie, und es sollten alle Bemühungen unternommen werden, solchen Kindern die Rückkehr in die Familie zu ermöglichen.<sup>20</sup>

**Pflegeeltern** (*Foster Parents*). Gemäss Artikel 57 des *Juvenile Code* (2005) soll einem Kind, das keinen gesetzlichen Vertreter (*Guardian*) hat, vom Gericht einen Vormund (*Custodian*) zugesprochen werden. Gemäss Artikel 58 kann sich eine Person, die am Wohlergehen des Kindes interessiert ist, ans Gericht wenden und die Vormundschaft (*Custodianship*) beantragen, und sie erhält Informationen vom Gericht. Die antragsstellende Person muss ihre Beziehung zum Kind vor Gericht darlegen und die Gründe, weshalb sie für die Vormundschaft geeignet ist, beschreiben. Das Gericht soll darauf den Antrag an die Sozialdienste weiterleiten, damit die Angaben verifiziert werden können. Gemäss Artikel 59 wird danach der gesetzliche

<sup>15</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 164, S. 36.

<sup>16</sup> Afghanistan Central Statistics Department, 2008, estimates the population to be around 24.5 million, in: UN Committee on the Rights of the Child, Afghanistan, § 166, S. 36.

<sup>17</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 166, S. 36.

<sup>18</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 149, S. 33.

<sup>19</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 150, S. 33.

<sup>20</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 151, S. 33.

Vormund ernannt, der die Verantwortung für das Wohlergehen des Kindes übernimmt. Zurzeit gibt es keine Ausbildung/Anleitung für Personen, die Vormund eines Kindes werden wollen.<sup>21</sup> Gemäss Artikel 57 des *Juvenile Code* (2005) muss der Antrag als Vormund (*Legal Guardian*) an dem Ort eingereicht werden, wo das Kind seinen Wohnsitz hat oder wo es sich zur Zeit des Verfahrens aufhält.<sup>22</sup>

**Fazit.** Auch wenn in Afghanistan in den letzten Jahren Gesetze und Vorgehensweisen zum Schutz des Kindes verabschiedet wurden, ist die Umsetzung noch äusserst mangelhaft. Die Interessen der Familie sind den individuellen Rechten der Kinder übergeordnet. Das Gericht kann zwar einen Vormund bestimmen, doch gibt es keine Mechanismen zur Aufsicht über die Ausübung der Vormundschaft. Eine Vormundschaft kann vor Ort beantragt werden, und es ist gesetzlich festgelegt, dass das Kind sich dazu äussern kann und die Vormundschaft akzeptieren muss.

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<sup>21</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 169, S. 37.

<sup>22</sup> Juvenile Justice Panel, Juvenile Code of Afghanistan, was published by the Afghanistan Government in 2005. This document, (Arabic) has an unofficial translation in English dated 11. April 2005: [www.juvenilejusticepanel.org/resource/items/A/f/AfghJuvenileCodeUnoffTrans11Apr05.pdf](http://www.juvenilejusticepanel.org/resource/items/A/f/AfghJuvenileCodeUnoffTrans11Apr05.pdf).

## 3 Grundlagentexte

### 3.1 Juvenile Code (2005)<sup>23</sup>

#### Chapter 7

#### Guardianship

#### Legal guardian

##### Article 57

1. Parents are considered as legal guardians of a child who has not completed 18 years of age.
2. In case a child has no legal representative, the court shall appoint a guardian for the child
3. The territorial jurisdiction for appointing a legal guardian is the place where the child resides or the place where the child is present at the time the proceeding is commenced.

#### Application for guardianship

##### Article 58

1. A person interested in the welfare of a child may submit a guardianship petition to the relevant court along with the following information:

- 1- Surname and full address
- 2- Name, age, child's residing place and address
- 3- Type of relationship to the child
- 4- Surname and address of ancestors, descendants and kin relatives of the child
- 5- Justifications for competence to be the child's guardian
- 6- Type and scope of guardianship

2. The juvenile court shall send the petition for guardianship mentioned under paragraph (1) of this article to the social services institutions for necessary investigations and provision of information. The social services institutions are obliged to report their finding to the court.

3. The Juvenile court shall make decision about the appointment of a child's guardian in presence of the child, his/her parents, the applicant and representative of social services institutions.

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<sup>23</sup> Juvenile Justice Panel, Juvenile Code of Afghanistan, was published by the Afghanistan Government in 2005. This document, (Arabic) has an unofficial translation in English dated 11. April 2005.

## **Authority of the guardian**

### Article 59

1. A person, who has been appointed as the child's guardian, has the authority to take care of child until the renewed decision of the court.
2. A child's guardian has all the authorities and responsibilities of the child's parents, with the exception of the child's maintenance and liabilities to a third party.

### Responsibility of the guardian

### Article 60

A guardian has all of the following authorities and responsibilities in addition to those specified in the civil law:

- 1- Taking care of the child's moveable and non-moveable private property as much as possible, and adopting required protective measures in this regard.
- 2- Shall not sell the moveable and non-moveable property of the child, unless decided by the court.
- 3- May receive money payable for the child's support to the parents, guardian, or legal representative of the child, provided that the legal guardian spends the money and/or assistance in kind only to fulfil the current needs of the child such as food, education or his/her protection, and saves the remaining amount for the future of the child.
- 4- Shall not use the child's money or property for personal purposes unless it is approved by the court in return for his/her services.
- 5- Taking legal actions against those who are obliged to fulfil legal and social welfare commitments concerning the child.
- 6- Take legal actions for provision of educational, social and any other activities of the child
- 7- Inform the court of changes in the address within 14 days.
- 8- Report to the juvenile court on the child's behaviours, conduct and rehabilitation progress with full details every three months. The report should contain psychological and medical development of the child.

## **Assessment of guardianship**

### Article 61

1. The court shall review the issue of legal guardianship for children under 12 years of age once in a month, and for those above 12 years of age once every three months.
2. The court shall consider the following while reviewing the legal guardianship of children mentioned under paragraph (1) of this article:
  - a. Provision of facilities for social welfare of the child
  - b. Need for continuation of guardianship
  - c. Willingness and competence of the legal guardian for keeping up provision of facilities for social welfare of the child



- d. Impacts of continuation of guardianship on social welfare of the child by the guardian
- e. Other factors considered by the court regarding guardianship

3. The social services institutions are obliged to conduct assessments regarding the provisions of paragraph (2) of this article as per the instructions of the court and submit their reports to the relevant court.

4. The juvenile court can adopt a decision as to continuation or revocation of guardianship after completion of assessments mentioned under paragraph (2) and (3) of this article.

### **Revocation of guardianship**

#### Article 62

If the parent or parents fully observe the instructions of the court regarding replacement of guardianship, the court has the authority to revoke the guardianship and order return of the child to one or both parents six months before termination of the guardianship.

## **3.2 UN Committee on the Rights of the Child, Afghanistan**

95. The Civil Code, with specific legal provisions, gives primacy to the best interests of the child in case of the parent's separation. According to article 236 of Afghanistan Civil Code, custody is defined as protection and upbringing of the child during the time when the child needs a woman's protection and upbringing. In accordance with article 238 of the said law, a woman who receives custody of a child should be sane, an adult, reliable, and have the ability to protect and care for the child. According to article 249 of the Civil Code the duration of custody for the child for boys is up to seven years of age and for girls is up to nine years of age. According to article 256 of the Civil Code, maintenance in all its forms for young boys is until the time he is able to work and for young girls is until the time she marries. According to article 259 of the said law, if the father does not have the ability to pay for his children's maintenance and is also unable to work, the obligation to maintain the children passes on to the custodian next to the father.<sup>24</sup>

145. According to article 54 of the Constitution of Afghanistan, family is the pillar of society and is supported by the Government. In order to ensure the physical and psychological well being of the family, especially of the mother and child, children's education, and to eradicate customs which are against the provisions of the holy religion of Islam, the Government has taken appropriate measures. In accordance with article 56 of the Civil Code of Afghanistan family is made up of kinship derived from a common forebear. In accordance with the provisions of article 57 of the Civil Code, family is formed from kinship divided into direct kinship (mother and father), and indirect kinship (grandparents, aunts, uncles). The definition of the family in the Constitution is a general one and emphasizes supporting the mother and child within the family environment. The Civil Code also provides, in detail, the responsibilities of

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<sup>24</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 95, S. 24.



parents to their children and family. However, regarding the best interests of the child and the evolving capacities of the child the provisions of the Civil Code and the Constitution is silent since the provisions protect the interest of the family which the child is seen as a part of rather than protecting the individual social rights of the child.<sup>25</sup>

148. The State has the responsibility in preserving the psychological and physical well being of children. In accordance with article 256 of the Civil Code, maintenance of children is the responsibility of the father. The article provides that the maintenance of a young son should be until the son is capable of working and of a daughter until she is married. Article 257 of the Civil Code provides that the maintenance of an adult son who is not able to work also falls on the father. According to article 258 of this law, the expenditures of the working son or daughter shall be borne by themselves from their income, unless the income is insufficient, whereupon the father contributes. The responsibilities of the mother is not clearly mentioned in the laws but Sharia law and local customs regard a number of responsibilities to be shared by both parents including the education and upbringing, preservation of health, sanitation, breastfeeding, food, clothing, and in giving suitable names.<sup>26</sup>

149. In accordance with article 57 of the Law of the Juvenile Code (2005) if a child under the age of 18 years, his parents are considered as his legal guardians. If the child does not have parents the court shall appoint a legal guardian for him/her.<sup>27</sup>

150. The MoLSAMD has specific procedures for orphaned children without parental care which aims to develop children to their full potential. The best interests of the child is considered in this procedure while realizing that the education and upbringing of the child is best achieved in a family environment and attempts to provide for the child such an environment as far as possible. Absence or death of a father is one of the main reasons that children are placed in orphanage. When institutionalized children are being reintegrated into the family the views of the child and his/her agreement is crucial for integration. If the child agrees, social workers first attempt to find the mother. If the mother is not traceable then contact is made with the next closest relative of the child (grandfather, paternal uncle, maternal uncle, parental aunt and so forth). Social workers study the feasibility of integrating the child with the extended family and after thorough review, and being completely assured of the proper care for the child, he/she will be placed with them.<sup>28</sup>

151. Poverty is one of the main factors driving the placement of children into residential care. Many of these children have extended family and all efforts should be made to facilitate their return to their families and communities.<sup>29</sup>

164. The MoLSAMD adopted the National Strategy for Children at Risk in 2006. One of the Strategy's objectives is to build a supportive environment for children at risk by creating conditions for: adequate income and livelihoods for the maintenance of children; suitable and affordable shelters; access to basic healthcare; awareness

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<sup>25</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 145, S. 32.

<sup>26</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 148, S. 33.

<sup>27</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 149, S. 33.

<sup>28</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 150, S. 33.

<sup>29</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 151, S. 33.

on importance of nutrition; access to quality education; enabling a secure environment; preventing underage and forced marriages; social protection; awareness on respecting the rights of children; and access to safe drinking water. The Strategy also supports children who are at risk due to armed conflict and tries to secure a standard of living that is in line with the Convention's standards.<sup>30</sup>

166. Afghanistan has had three decades of disastrous wars resulting in the destruction of most of its agricultural, industrial, and other infrastructures and facilities. This has compromised not only the availability of many basic services but has affected the economic and social structures as well. Services, infrastructure, and technical experts are literally starting from scratch in many cases. In order to create facilities compatible with international standards there is a need for serious and more systematic measures. According to estimates reached by the MoLSAMD in the sectoral Strategy on Social Security, half the population (12.25 million) of Afghanistan<sup>31</sup> needs social protection from the Government. However, in the year 2006 only 2.5 million people have been able benefit from social protection.<sup>32</sup>

168. In accordance with articles 257 to 260 of the Civil Code the maintenance of the child in all its forms is the responsibility of the father. The maintenance includes accommodation, food, clothing, medicine, sanitation, education, safety, and other basic needs of the child. Primary needs of the child are the responsibilities of the father/ family and the Government does not have a direct intervention. However, in the last few years the Government has implemented a number of public awareness programmes on the health of the child, sanitation, and the rights of the child through the media, seminars, and workshops in most areas of the country. It has attempted to make families aware of their responsibilities.<sup>33</sup>

169. According to article 57 of the Juvenile Code (2005), if a child does not have a guardian the Court shall appoint a custodian for him/her. In accordance with article 58 of this law, a person who is interested in the welfare of the child can apply for custodianship to the court and receive information about the requirements. Persons seeking custodianship should provide information on the application to the Special Court for Children about their relationship with the child and state their reasons for being qualified to exercise custody over the child. The Court shall then forward the information to specialized social services institutions to verify the information provided. According to article 59, the legal custodian of the child is thus appointed and shall have all the powers and responsibilities as the parents of the child, including the responsibility for maintenance and the best interests of the child. At present, no provisions have been made to provide training to persons wanting to become custodians of children.<sup>34</sup>

359. Despite the achievements, many serious challenges still lie ahead on the path of ensuring and institutionalizing child rights such as: forced and early marriages of children, violence against children in the family, school and community; lack of public awareness on the laws on children; imposition of forced and harsh labor on

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<sup>30</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 164, S. 36.

<sup>31</sup> Afghanistan Central Statistics Department, 2008, estimates the population to be around 24.5 million, in: UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 166, S. 36.

<sup>32</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 166, S. 36.

<sup>33</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 168, S. 37.

<sup>34</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 169, S. 37.

children; sexual abuse and exploitation of children; absence or low participation of children in decision making processes that affect them; lack of respect for child views on social issues; shortage of school buildings and classrooms and shortage of professional teachers, particularly female teachers in the schools; shortage of technical equipment, textbooks and teaching materials; low capacity of the staff in rehabilitation centres; lack of defense lawyers for children; absence of the child legal guardian during the court sessions; victimization of children during the armed conflict; child drug abuse; lack of segregation of children on the basis of their age in rehabilitation centres and in some cases placing children in detention centres with adults; contradictions of some of the laws with the provisions of the Convention; lack of appropriate buildings for rehabilitation centres; lack of access of children to standard living condition; presence of street children; high infant and maternal mortality rates; child malnutrition; shortage of skilled birth attendants; lack of regulations on refugees and use of children in armed conflicts; espionage; and transportation of ammunitions by children for armed groups, particularly Taliban which requires appropriate measures by the Government, in direct cooperation with the international community, in the area of adopting new laws and policies and amending existing laws that are inconsistent with the human rights values, as enshrined in the Convention.<sup>35</sup>

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<sup>35</sup> UN Committee on the Rights of the Child, Afghanistan, 13. Juni 2010, § 359, S. 76.