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The Right of the Child to be Raised in the Family:  
Reflections on Decision-Making Processes in Child Placement in  
Kazakhstan in the Light of English Experience

Aigerim Mussabalinova

A thesis submitted to the Department of Law of the School of Law, Politics  
and Sociology for the Degree of Doctor of Philosophy

February 2020

## Dedication

This thesis is dedicated to:

My grandparents Mashen and Nagima Seripvaevy

My parents Aspandiar and Aigul Mussabalinovy  
and all children deprived of parental care in Kazakhstan

### Declaration

I, Aigerim Mussabalinova, confirm that the thesis I have presented for the PhD degree of the University of Sussex is solely my own work. Where information has been obtained from other sources, I verify that it has been indicated in the thesis. I hereby declare that this thesis has not been and will not be, submitted in whole or in part to another University for the award of any other degree. The copyright of this thesis rests with the author. Any quotation from it should not be published without prior written consent and information derived from the thesis should be acknowledged.

Signature:.....

## Preface

I became a lawyer in 2003 with the ambition to protect vulnerable from powerful people and organisations, but until 2013 I defended the interests of powerful organisations instead in order to make a living. In 2011 in my private trip to the United Arab Emirates (UAE) I was told by a local guide that there were no orphanages and children deprived of parental care in the UAE. This information struck me immediately since I knew there are children in institutions in Kazakhstan and as a young journalist I used to live with some of them at summer camp and also met with them in charitable organisations and events. In 2010, my colleagues and I donated to one of the family in Family-Type village and I had a long conversation with the children. Since 2011, I was thinking to do research in Kazakhstan with a topic related to children in institutions, but I was interested in the implications of criminal punishments for parents who abandoned their children, as I heard was the practice in the UAE. However my research interests were not well understood by academics in Kazakhstan and in 2013 I joined the social movement The Child Must Live in the Family (CMLF) that came into existence after the civil republic forum with the same title. As a volunteer lawyer I provided them with consultancy in my spare time. However, after a while my engagement became more active and I was involved in the work of the Kazakhstani Parliament and Government on amendments in legislation. The latter inspired me with the idea of returning to University to do research, since I found that I did not know enough in this area and I suspected that I was not alone in this, since there were many gaps in current practice and nobody knew exactly how to deal with them. This research would enable me first to devote all my time to what I wanted to do, without sharing it with my corporate legal practice. Secondly, this research would allow me to identify what exactly these gaps were and what international treaties and the practice of other countries such as England suggested should be done to improve matters. I planned to continue my consultancy with my colleagues from the CMLF and that would enable me to be informed on what was going on and also to work for projects related to my research that were funded by UNICEF in Kazakhstan and by the Kazakhstani government. Therefore, this research is intended to engage with very live issues in my country in relation to which some data is so 'new' that it has only recently begun to be discussed in the media. The most interesting part of research for me is the cultural and historical discussion on the roots and reasons of the research problem that demonstrates the contrasts in social behaviour in Kazakhstan. This discussion is underpinned with

original data from the interviews I conducted in different regions of Kazakhstan in order to show the contrasts existing within one country.

This thesis is written for a wide range of English speaking readers interested in child care and child protection of Kazakhstan. I plan to use this research for another text in Russian for a Russian-speaking audience.<sup>1</sup> Although there are similarities in the roots of the research problem in all post-Soviet states, the solutions are different, so that this thesis could be of interest to any researcher interested in a post-Soviet state's approach to child care. However, since the resources of this research are very diverse; from books, grey literature, media to interview data in both: English and Russian, there are a different set of resources, including a list of Russian-language texts. At the same time, where necessary, the data from interviews in Kazakhstan and all my resources in footnotes I translated from Russian and Kazakh into English. Overall, I would say that this thesis not only allowed me to expand my knowledge and contribute to the general understanding of the Kazakhstani child care system, but also it opened the door and raised themes for other research. This thesis would not have been possible without the help and support of many people and organisations.<sup>2</sup>

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<sup>1</sup> For example, post-Soviet states.

<sup>2</sup> See acknowledgements.

## Thesis abstract

Following the collapse of the Soviet Union, reforms were introduced in many spheres in Kazakhstan. As part of the reforms, Kazakhstan's social child care system has undergone some changes, including an overhaul of the relevant laws. However, not all the changes have been fully realised and accomplished. Most institutions, the attitudes of professionals, the approach to child placement and the child care system as a whole, remain almost the same as during the soviet period. It is the main contention of this thesis that the challenges faced by Kazakhstan in overhauling and updating its child care system could have been much more successfully managed, especially in the light of how such problems are addressed in other countries, such as England.

The thesis investigates the historical and cultural background to the practice of institutionalising children in Kazakhstan, a procedure which was unknown to the nomadic Kazakh society before it became part of the Russian Empire and then the USSR. The thesis uses doctrinal and comparative analysis of relevant legislation and original qualitative research data from interviews with practitioners in Kazakhstan and England. It applies a Children's Rights and a Children's Developmental analysis to the research data to evaluate the Kazakhstani child care system. The study concludes by identifying particular areas of this system that require revision based on the principles of the UNCRC. In order to be able to make practical recommendations for Kazakhstan, relevant English law and practice were scrutinised in the context of meeting the best interests of the child with regard to family upbringing. Drawing upon a literature review of the development of the existing treatment of children in England and interview data from local social workers who work with families and children in need, the thesis emphasises the importance of self-reflection, self-critiques and self-learning in English practice. Bringing together discourses from above theories, Kazakhstani legislation and practice, the historical and cultural background of child care, and the possible lessons from English experience, the thesis argues for the deinstitutionalisation of children in Kazakhstan. It suggests that the state should review its child care system, including its legislation and practice. There is also a need for adequate human and financial resources, the recruitment of new foster families and engagement with society, in order to change attitudes towards children deprived of parental care. These improvements in Kazakhstan might contribute to the development of a sustainable child care system that truly operates in the best interests of the child.

## Acknowledgements

First of all I would like to express my sincere gratitude to my supervisors, Dr Lara Walker, Professor Richard Vogler, and Craig Lind. I am grateful to Lara who was there at the beginning of my PhD journey, who accepted my proposal and helped me in setting out my research design and research outline. Lara was always detailed in her comments, clear in her recommendations while her critiques of my writing always showed her belief in me as well as giving me guidance which is exactly what I needed as beginner in research. I call Richard my 'academic God' for his great experience in doing research, in writing academic papers and supervision of an immense number of PhD students. Richard's advice was not limited to my writing only, but it was also academic therapy when on occasion conversations with him on my health became the main and unplanned topic of a supervision. In spite of playing a role only in the final stage of my research, Craig had a special place in the progress of my writing due to his experience in the subject and critical and detailed comments. Craig did more than I could have expected, revising the entire thesis twice and I am immensely grateful to him for this. Without their support, their clear guidance and the sincere interest in my research on the part of my supervisors, this thesis would not have been possible.

I also wish to thank all the practitioners who work with children in need in Kazakhstan and in England, who participated in my research, for their time, the experiences they shared during my interviews with them and the warm welcome they gave me.

I am grateful to all my family. Their belief in me is stronger than my own, and their support and prayers for me over the years have meant so much to me. My grandparents, Mashen (80) and Nagima (80) who taught me to be kind, honest and a hard worker, promised me to wait and they did. My parents, Aspandiar (60) and Aigul (58), by their unconditional love, confidence in me and constant encouragement helped me to surmount numerous stresses and to complete this thesis. This thesis is an important achievement for all my extended family since it united them in helping me, waiting for me and supporting me, and at the same time, the younger generation has been inspired to learn, to achieve more and to travel. But, on 12 of June 2019, we all lost my uncle Serik (45) who was unable to overcome his illness. He used to say that it is possibly due to him that I am clever enough to write this thesis. That is because when I was a child and he was an adolescent, he hurt my head with a fish hook. I appreciate all my family members because



due to this research I am even more aware than previously of what a precious thing it is to have a family.

Thanks also to my old and new friends and fellow PhD colleagues, some of whom became my family in England supporting me over the years. There are far too many to name, but I would like to express my special gratitude to some of them: Andrew and Mary Sherwood - my English parents in whose house I felt so at home; Sibbo, David, Gulzhanat, Marias, and MaryFrances - my fellow PhD colleagues who also guided me in the PhD process; Tanya - my friend from primary school who is currently living in Moscow and helped me to access historical literature in library in Moscow; Oleg – my new friend in London who helped with putting data on Kazakhstani maps and making my thesis a bit colourful, and Alexandre Popov's family and Leonardo Marti's family who became more than my friends, and provided me throughout with alternative family homes in England and in Europe (Latvia and Switzerland).

Last, but not least, I would like to thank Anne-Marie for her extraordinary help in improving the text of this thesis and making it much more comprehensible.

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## Glossary of Abbreviations

CA – Children Act

CMMF - The Code on Marriage (Matrimony) and Family 2011

LRCRK - The Rights of a Child in the Republic of Kazakhstan 2002

LSSS - The Law of Kazakhstan on Special Social Services 2008

MAE RAS (MAE PAH) - Museum of Anthropology and Ethnography. Peter the Great (Kunstkamera) of the Russian Academy of Sciences (Музей антропологии и этнографии им. Петра Великого (Кунсткамера) Российской академии наук)

NGO - non-governmental organization

OHCHR - the Office of the United Nations High Commissioner for Human Rights

UNICEF – the United Nations Children's Fund

UN - the United Nations

UNCRC - the United Nations Convention on the Rights of the Child

UK – the United Kingdom

USSR – the Union of Soviet Socialist Republics

## Chapter 1

### Introduction

#### 1.1 The decision –making process in the child care system in Kazakhstan as the research problem

Kazakhstan ratified the United Nations Convention on the Rights of the Child (UNCRC), 1989 in 1994, three years after obtaining independence following the collapse of the Union of Soviet Socialist Republics (USSR). Since the Convention became part of domestic law, Kazakhstan has developed its domestic legislation and state programmes in order to implement the UNCRC and promote children's right.<sup>1</sup>

However, despite numerous efforts by the Kazakhstan government, over the last two decades, to change the domestic law in the direction of family-based care,<sup>2</sup> the current decision-making process in the child care system in Kazakhstan mostly relies on the practices and resources inherited from the time of the USSR. I will present later in this thesis the evidence of what exactly remains of the Soviet Union practices and I will discuss why such practices are still in place and how they might be changed.

Kazakhstan is a Central Asian country and it is the ninth largest country in the world (2.7 million square kilometres), comprising 14 regions and 86 major cities.<sup>3</sup> According to official statistics, at the beginning of 2016 the population of Kazakhstan was 17,753,200, of whom 5,460,449 (30.7%) were children aged from 0-17. The number of children in care at the time was 29,666, of whom 21,600 (72.8%) were placed in different alternative care, and whilst a further 8,066 lived in institutions such as orphanages, baby homes and others. Over the last decade, Kazakhstan, in common with other post-Soviet states, has reduced the number of such institutions for children deprived of parental care. For

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<sup>1</sup> Tastemir Abishev and Sagynbek Tursynov (eds), *National Human Rights Action Plan of the Republic of Kazakhstan 2009-2012* (Master-Print - IC LLC 2007) 73-83; Ministry of Education and Science of the Republic of Kazakhstan Committee for the Protection of Rights Children, SANGE Research Center, Zh C Dzhandosova, A E Sharipbaeva, T V Kudasheva, N Yu Baitugelova, Sh K Smagulova, F S Dzhandosova, Z E Baitugelova, E A Kolmogorova, K M Sharipbaeva, A T Zhappar, S Sh Serikbaeva, and A A Isagalieva, *Report on the situation of children in the Republic of Kazakhstan in 2016* (Ministry of Education and Science of Republic of Kazakhstan 2016) 189-199.

<sup>2</sup> Ibid.

<sup>3</sup> Nazgul Assylbekova and Anuarbek Kakabayev, 'Kazakhstan' in Penelope Welbourne and John Dixon (eds), *Child Protection and Child Welfare: A Global Appraisal of Cultures, Policy and Practice* (Jessica Kingsley Publishers 2013).

example, from 2011 to 2018 the number of children in institutions more than halved (from 12,925 to 5,087), while the number of institutions decreased almost twice (from 209 to 119).<sup>4</sup> However, although it is attempting to lower the number of children in institutions and the number of institutions themselves, Kazakhstan does not have a plan for the deinstitutionalisation of children, for allocating resources for the development of new social services as a preventative measure to combat the separation of children from their families or for the recruitment of alternative families to place children taken into care. Moreover, there is no approved state policy on children, although the Committee for the Protection of Children's Rights of the Republic of Kazakhstan developed drafts of the state policy and strategy of the Republic of Kazakhstan for children in discussion with relevant NGOs, but this remained at the discussion stage.<sup>5</sup> This and other half-steps of the state point to a formal approach that has not put in place essential structural changes, but just enough for a report at national as well as at the international level. I will continue discussions on this issue in Chapters 3, 4, 6 and 7 of this thesis.

Kazakhstan, like other post-Soviet states that are in the process of transition from socialism to a market economy,<sup>6</sup> has announced changes in the child care sphere, as in many other spheres, but there is no clear understanding on how they will be achieved. While many of these changes will be discussed in this thesis, not all of them have fully been accomplished in practice; institutions, staff, their approach to child placement and the decision-making process in the child care system remain almost the same as during the Soviet period.<sup>7</sup> There are many reasons for these discrepancies, including inadequate support from the government, which failed to invest in new infrastructure required by

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<sup>4</sup> The Committee for the Protection of Children's Rights, *Main results in the field of children's rights protection for 2018 and priorities for activities for 2019* (Ministry of Education and Science of the Republic of Kazakhstan 2018) 5; Ministry of Education and Science of the Republic of Kazakhstan, *Report on the situation of children in the Republic of Kazakhstan* (Ministry of Education and Science of Republic of Kazakhstan 2011) 43.

<sup>5</sup> The Committee for the Protection of Children's Rights of the Ministry of Education and Science of the Republic of Kazakhstan, 'The Concept of the State Policy of the Republic of Kazakhstan for Children until 2030' (for discussion), <<http://bala.edu.gov.kz/main/law/projects/>> accessed 02 August 2019; email from Sholpan Baibolova to author with the draft of The Concept of the State Policy of the Republic of Kazakhstan for Children until 2030 for the discussion (18 February 2019); email from Sholpan Baibolova to author with the draft of National Strategy Action for Children in the Republic of Kazakhstan for 2016 – 2020 (9 February 2019).

<sup>6</sup> Leyla Ismayilova, Fred Ssewamala and Aytakin Huseynli, 'Reforming child institutional care in the Post-Soviet bloc: The potential role of family-based empowerment strategies' (2014) 47 *Children and Youth Services Review* 136.

<sup>7</sup> Ibid; Carolyn Hamilton and Jonathan Watkins, *Modelling for Integrated Child Protection System in Kazakhstan* (UNICEF 2011)13; Jean-Claude Legrand, 'Child care system reforms in Eastern and Central Europe and Central Asia: Why there is a need to focus on children below three years' (2015) 15 *Irish Journal of Applied Social Studies* 2; See Chapter 4 for further discussion and evidence.



law, flaws in the relevant law, lack of staff training, insufficient awareness raising media, and the lack of family recruitment.<sup>8</sup> At the same time, the stigma and stereotypes developed in Soviet times that marginalise children deprived of parental care as well as the practice of the institutionalisation of children, do not correspond with the pre-Soviet culture of Kazakh people or with the basic principles of the UN Convention on the Rights of the Child. This research argues that for the development of a child-centred care system, including the decision-making process, Kazakhstan should review its child care system, as well as its legislation and practice, in the context of the UN principle of the best interests of the child and the child's right to grow up in a family environment that is enshrined in Kazakhstani legislation.<sup>9</sup> The practice and legislation of England is used to reflect on the position in Kazakhstan since the research was mostly conducted and written in England. There are several reasons why the experience of England with regard to its child care system is attractive to study by a Kazakhstani scholar. To start with, the English child care system is considered well –developed to the extent that 'more than fifteen different countries in different continents', including Australia, Sweden, Canada, Israel, Denmark learned from it as a good example,<sup>10</sup> and also because the English child care system has significantly reduced residential care in favour of foster care.<sup>11</sup> The next reason is that the UNCRC represents unified international standards for children's rights so that the fundamental approach should be similar for both states: Kazakhstan and the UK, including England. The last explanation for the focus here on the English child care system is that children in care, children suffering child abuse and neglect and vulnerable families that need support are still a social issue for both Kazakhstan and England.<sup>12</sup> At

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<sup>8</sup> See Chapters 4 and 6 for detailed discussion on the issues raised.

<sup>9</sup> The Law of the Republic of Kazakhstan The Rights of a Child in the Republic of Kazakhstan 2002 (LRCRK), art 21.

<sup>10</sup> Bodil Rasmusson, Ulf Hyvönen, Lennart Nygren, Evelyn G Khoo, 'Child-centered social work practice - three unique meanings in the context of looking after children and the assessment framework in Australia, Canada and Sweden' (2010) 32 Children and Youth Services Review 452.

<sup>11</sup> Pat Petrie, Janet Boddy, Claire Cameron, Valerie Wigfall and Antonia Simon, *Working with Children in Care: European Perspectives: European Perspectives* (McGraw-Hill Education (UK) 2006) 12.

<sup>12</sup> Department for Children, Schools and Families, *The Protection of Children in England: action plan The Government's response to Lord Laming* (Cm 7589, 2009); Munro Eileen, *The Munro review of child protection: final report - a child-centred system* (Department for Education, Cm 8062, 2011); The Chief Secretary to the Treasury, *Every child matters* (Cm 5860, 2003); The Secretary of State, *The Victoria Climbié Inquiry: report of an inquiry by Lord Laming* (Cm 5730, 2003); Dzhandosova Zh C, Sharipbaeva A E, Kudasheva T V, Nikolaeva O V, Baitugelova N Yu, Dzhandosova F S, Smagulova Sh K and others, *Report on the situation of children in the Republic of Kazakhstan in 2018* (Committee for the Protection of Children's Rights of Ministry of Education and Science of Republic of Kazakhstan, 2019); The Concept of family and gender policy of the Republic of Kazakhstan until 2030, approved by the Decree of the President of the Republic of Kazakhstan 2016 – background; Manas K Akmatov, 'Child abuse in 28 developing and transitional countries—results from the Multiple Indicator Cluster Surveys' (2011) 40 International Journal

the same time, the contextual study of the culture and history of Kazakhstan and partially of England unveiled the tacit reasons why international standards developed in the West are not implemented, especially in practice, in developing countries such as Kazakhstan and brought to light the concept of the social construction of childhood and the need to deal with the spectrum of grounds that made the current research interdisciplinary.

## 1.2 Research aim, focus and questions

In the light of the above issues and the potential for further developments in the child care system in Kazakhstan, my thesis will critically analyse the legislation, policy and practice of child care and child protection system in Kazakhstan, and the reasons (historical, cultural, and social) behind the decisions made to place children in residential or other type of care in Kazakhstan. As an activist for the social movement of Kazakhstan noted, ‘(t)he child must live in a family’, and my initial focus was on the practical implementation of the right of the child to be raised in the family in Kazakhstan. While this right is clearly expressed in Kazakhstani legislation, there are also several provisions of the UNCRC, that mention a similar right of the child, such as ‘the right to know and be cared for by his or her parents’ and ‘a child shall not be separated from his or her parents against their will’, but not exactly the right to grow up in a family.<sup>13</sup> By family, I imply any family since the family environment is the best environment for child development.<sup>14</sup> Therefore, keeping this initial focus could lead me to a theoretical discussion to argue that such rights should appear in the UNCRC since the existing half-way promotion of the family environment in the preamble of the UNCRC is not enough as there are more than two million children worldwide who are in institutions and have less potential to fully develop and flourish in adulthood.<sup>15</sup> In fact, I made a choice in favour of critical engagement with Kazakhstani legislation and practice and to make a contribution to the relatively undeveloped research about Kazakhstan. With regards to

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of Epidemiology 219; Lisa Harker, Sonja Jütte, Tom Murphy, Holly Bentley, Pam Miller and Kate Fitch, *How Safe Are Our Children?* (London: NSPCC 2013); See also Chapters 4 and 5 for further discussion and evidences.

<sup>13</sup> United Nation Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) arts 7 and 9; LRCRK, art 21.

<sup>14</sup> Ibid, the Preamble.

<sup>15</sup> Patricia Moccia and Catherine Langevin-Falcon (eds), *Progress for children: A report card on child protection* (UNICEF 2009) 19.

Kazakhstan, in spite of declaring the right of the child to grow up in a family,<sup>16</sup> the investigation of the decision-making process in the child care system demonstrates the inconsistency between various domestic legal provisions as well as between law and practice. This study identifies particular areas that require revision and suggests that the principles of the UNCRC should drive policy and law making in such a revision. Furthermore, this thesis will explore the experience of relevant English law and practice and identify the lessons to be learned for policy and by law makers in Kazakhstan. However, the focus of this research remains very firmly on Kazakhstani legislation and practice, relevant to the decision-making process in the child care system and the potential of improvement according to the principles of the UNCRC. The hypothesis of the research, therefore, is that whilst Kazakhstan's social child care system has changed to some extent, particularly in law, as required by the international standards and contemporary state development, it has not changed enough in practice where the procedures and processes are still far from meeting the best interest of the child regarding family environment and the right to grow up in a family.

The research aims and focus are addressed through the two core research questions:

1. To what extent does Kazakhstani law and practice represent the child's best interest in the context of the family environment?
2. What lessons might be taken by Kazakhstan from the experience of England?

The following sub-questions help to answer the key questions:

- a) Why has institutionalisation become and why does it remain the main solution in Kazakhstan for the accommodation of children deprived of parental care?
- b) How does the existing child care system in Kazakhstan reflect social family values and traditions?
- c) How does the historical background of Kazakhstan and England with regard to children's rights influence contemporary legislation and practice in the realm of child care?

I explore how Kazakhstan plans to replace or mix residential care with other alternative forms of placement and ensure the right of the child to grow up in a family. I go on to scrutinise the legislation and practice surrounding the child care system in England and identify the lessons that might be taken for Kazakhstani policy by law makers. The

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<sup>16</sup> LRCRK, art 21.

relevant history, culture and politics of both Kazakhstan and England are studied as elements in the social construction of the research issue. Such contextualised study serves to explain the selection of specific lessons from England which can be of relevance to the Kazakhstani context, and to what extent Kazakhstan should consider those. In this research I acknowledge that Kazakhstan cannot simply imitate Western practice because of differences in history, culture, economic, politics, and society; it is, however, worth exploring such practice and learning from it wherever possible. The reasons for this were provided above in Section 1.2 of this Chapter and are also explained below in Section 1.4.1.

### 1.3 Relevance, originality and contribution

There has been no study undertaken in Kazakhstan that analyses the decision-making process in relation to child placement from theoretical, cultural, historical and legal perspectives. In addition, this study was conducted alongside the ongoing reform in the child care system in Kazakhstan,<sup>17</sup> that has been partially covered in the media and grey literature such as UNICEF reports, but has not been discussed critically in the academic literature. This study also is original since it draws upon original empirical data from Kazakhstan and England<sup>18</sup>

While English legislation and practice are very well researched, the Kazakhstani legislation, policy and practice related to the child care system is poorly discussed in the literature, especially in English and from a critical point of view. Therefore, this research might fill in such gaps in the knowledge about the decision –making process in relation to child placement in Kazakhstan.

## 1.4 Methodology

### 1.4.1 Research strategy: the mixture of approaches

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<sup>17</sup> The Concept of family and gender policy of the Republic of Kazakhstan until 2030, approved by the Decree of the President of the Republic of Kazakhstan 2016; The Action Plan for the implementation of the Family and Gender Policy Concept in the Republic of Kazakhstan until 2030 (first phase 2017 - 2019), approved by Resolution of the Government of the Republic of Kazakhstan, 2017.

<sup>18</sup> See Section 1.4 of this chapter for methodology and Chapter 2 for the theoretical framework of the research.

Having experience in the field as a volunteer lawyer and being aware that information on paper (for example, the state's reports) and the legal requirements are not always the same as the practice, I wanted to provide a comprehensive picture of the situation that covers the cultural and social background of the research problem. Moreover, the institutionalisation of children in Kazakhstan and the non-developed family-based care problem is a socially constructed social phenomenon and as such worthy of study in a sociological, historical, cultural and other context. This approach is known as 'law in context' or the socio-legal approach.<sup>19</sup> Therefore, the socio-legal approach was taken as a central methodology although doctrinal and comparative approaches were also utilized. I employed a qualitative approach to collect and analyse data that corresponded with the research aim and research questions.

A doctrinal approach is not the key approach, but it is fundamental to this research. This is because it enables us to 'verify the authority and status of the legal doctrine being examined' and provides the basis for subsequent analysis of the law in operation and hence decisions on what is an issue, the doctrine itself or rather, how the doctrine is implemented and operated in practice.<sup>20</sup> The potential of this part of the research is to analyse, to link legal acts, and to discuss future developments.<sup>21</sup> Additionally, the knowledge obtained from doctrinal analysis was fundamental for the empirical (socio-legal) research and the comparative analysis of how law in books operates in practice. It was also helpful in the penultimate chapter of this thesis (which combines doctrinal analysis with the theoretical framework of the research and the empirical findings of this study).

Socio-legal research looks outside the law to its social context and explores the reality and consequences, as well as the gaps between the law and practice and the reasons for such gaps, that can be found only through looking at the law in context (in action).<sup>22</sup> The socio-legal approach was used as a tool that contributed to obtaining and analysing the data regarding the practical use of family law in the context of a child's right to live in a family and family-based care in Kazakhstan and England. In particular, I investigate the

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<sup>19</sup> Fiona Cownie, *Legal Academics: cultures and identities* (Hart Publishing 2004) 51-54.

<sup>20</sup> Terry Hutchinson, 'Doctrinal research: researching the jury' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Taylor & Francis Group 2013) 10.

<sup>21</sup> Hutchinson (n20) 15.

<sup>22</sup> Fiona Cownie and Anthony Bradney, 'Socio-legal studies: a challenge to the doctrinal approach' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Taylor & Francis Group 2013) 41-42; Michael Salter, *Writing law dissertations: an introduction and guide to the conduct of legal research* (Harlow: Longman 2007) 119-138.

impact of existing law on children in care, inter-agency cooperation of institutions working with families and children, and the parent/state relationship. The social nature of the research problem and my own personal experience of practising law made it apparent that the legislation should be investigated in the context of culture and social norms, as well as practice and children's rights theory. The social construction of social problems is reflected in family law, including the care and protection of children, and indicates the success of the application socio-legal approach in family law.<sup>23</sup> However, socio-legal research is criticised for being 'atheoretical and descriptive in nature'.<sup>24</sup> Therefore, prior to the empirical part of this research I set out the theory and methodology of the research. I then critically investigated the relevant background of the problem, including the history and culture of Kazakhstan. Consequently, conducting interviews with practitioners in the sphere of child care and child protection in Kazakhstan and England, was underpinned with the theory and relevant background of the problem. Overall, the socio-legal research led to insights into the society of Kazakhstan where both domestic and international law fail to achieve their aims, in the realms of this research (which is to ensure the best interests of children deprived of parental care in regards to the family environment). Thus, a socio-legal approach is useful in addressing the first core research question of this thesis which is asking to what extent Kazakhstani law and practice represent the child's best interest in the context of the family environment. Consequently, it also addresses almost all sub-questions listed in Section 1.2 (except sub-question 'c' that is partially addressed via a sociolegal approach) revealing the roots of the institutionalisation in Kazakhstan;<sup>25</sup> family values and traditions (culture and social norms);<sup>26</sup> and the existing practice of contemporary Kazakhstan in decision-making processes in child placement (law and practice).<sup>27</sup>

A comparative approach was also utilised in this study to identify the gaps in the national legislation of Kazakhstan and to seek better practice. This is justified as a comparative methodology, which is common for socio-legal studies.<sup>28</sup> It enables the identification of inconsistencies in the legislation between the written law of Kazakhstan and how it operates in practice. A comparative approach enables lessons to be learnt from other

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<sup>23</sup> Simon Jolly, 'Family Law' in Thomas A Philip (ed), *Socio-legal studies* (Dartmouth Publication Company 1997) 342-358.

<sup>24</sup> Cownie and Bradney (n22).

<sup>25</sup> See Chapter 3 Section 3.2 Subsection 3.3.2.

<sup>26</sup> See Chapter 3 Section 3.4 Subsection 3.4.2 and Chapter 5 Section 5.2.

<sup>27</sup> See Chapter 4.

<sup>28</sup> Salter (n22) 184-187; Jiri Priban, 'The legacy of Political Dissent' (2002) 37 Socio-Legal Newsletter 7.

jurisdictions;<sup>29</sup> specifically the thesis seeks for ideas on how the national law of Kazakhstan might be improved through investigation of English law and practice. A systematic approach to comparative law was first discussed in 1900 in the Congress in Paris that re-established the concept of a universal jurisprudence, rooted in and informed by European culture as the compass for the rest.<sup>30</sup> In contrast, Frankenberg in his critique of comparatists places emphasis on diversity and context,<sup>31</sup> arguing that comparison in law should engage at least with sociology.<sup>32</sup> Drawing on these debates, one of the original aspects of this thesis is the discussion based on the approach of Frankenberg in the context of the Kazakhstani child care system. In particular, this research provides evidence that demonstrates the failure of the implementation of universal law such as the UNCRC in Kazakhstan due to contextual differences. Freeman calls such practice ‘a corrective to the globalization of a particular concept of childhood, imposed by the ‘North’ on the ‘Third World’,<sup>33</sup> while in this research it might be considered as an example of contextualisation versus globalization. Therefore, the process of possible developments in the child care system in Kazakhstan must take into account differences in cultural background and terms. It also is not easy as a result of differences in the socio-political factors that impact on the evolution of the legislation and jurisdiction.<sup>34</sup> To address this complexity, the following views on comparative approaches to legal reforms were analysed. According to Legrand<sup>35</sup> legal transplantation is not possible because of the direct dependence of the legal system on the national environment and the interpretation of law by local people that draws upon their cultural and historical background. On the other hand, Watson is a proponent of legal transplants as the primary tool of law development in the world, including states in transition such as Post-Soviet states.<sup>36</sup> According to Watson, the law is autonomous, and independent from its environment so that it is possible to transplant legislation from one jurisdiction to another.<sup>37</sup> Drawing on the latter, if the transplanted

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<sup>29</sup> Samuel Geoffrey, ‘Comparative law and its methodology’ in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Taylor & Francis Group 2013).

<sup>30</sup> Günter Frankenberg, *Comparative law as critique* (Edward Elgar Publishing 2016) 42-43.

<sup>31</sup> *Ibid* 44.

<sup>32</sup> Roger Cotterrell, ‘Comparatists and sociology’ in Pierre Legrand and Roderick Munday (eds), *Comparative Legal studies: Traditions and Transitions* (Cambridge University Press 2003) 153.

<sup>33</sup> Michael Freeman, ‘Introduction’ in Michael Freeman (ed) *Law and childhood studies* (Oxford University Press 2012) 5.

<sup>34</sup> Salter (n22)186.

<sup>35</sup> Pierre Legrand, ‘What ‘Legal Transplants’?’ (2001) 55 *Adapting legal cultures* 67.

<sup>36</sup> Alan Watson, *Legal transplants: An approach to comparative law* (University of Georgia Press 1974) 95-102.

<sup>37</sup> *Ibid*.

law corresponds with the culture and the local conditions of the state to which it is transplanted, according to existing evidence, legal transplantation is possible.<sup>38</sup> In addition, there is a third approach, whereby foreign legal systems inspire national lawmakers to implement legal reform.<sup>39</sup> According to Scot Newton, this approach is present in Kazakhstan:

the metaphors of borrowing, importing, or transplanting have been widely used for this process, in Kazakhstan (as elsewhere), they are inapposite. Rather, Kazakhstani legal scholars have studied foreign legal materials and drafted statutes drawing on them without reproducing them.<sup>40</sup>

Learning from developed states enables Kazakhstan to save time and the cost of the national process of law making.<sup>41</sup> Based on such practice of law making in Kazakhstan, in this thesis, English legislation and practice are considered as better overall in the context of compliance with the UNCRC. Hence, I do not undertake a full comparison of the two jurisdictions: Kazakhstani and England. My comparison is limited to the area where there are inconsistencies in Kazakhstani legislation and practice, and based on the experience of England, the thesis seeks for the answer to how such discrepancies might be avoided and what resources are needed. Thus, the investigation of English legislation and practice is dealt with separately and provided in Chapter 6 in order to underpin the following critical discussion on the Kazakhstani child care system in Chapter 7.

I have applied a comparative approach in two ways. The first identifies the problems within the national legal system of Kazakhstan where subordinate legislation does not reflect and does not correspond to the key legislation.<sup>42</sup> The second way helps in answering the second core research question on what lessons might be taken by Kazakhstan from the experience of England, and partially on sub-question c) which is related to the contextual comparison of Kazakhstani and English legislation and practice in the realm of child care.<sup>43</sup> The former was applied in Chapter 4 Section 4.2 where I explore the key legislation of Kazakhstan related to children deprived of parental care.

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<sup>38</sup> Nichols M Philip, 'Viability of Transplanted Law: Kazakhstani Reception of a Transplanted Foreign Investment Code' (1997) 18 *University of Pennsylvania Journal of International Law* 1235.

<sup>39</sup> Peter Grajzl and Valentina Dimitrova-Grajzl, 'The choice in the lawmaking process: legal transplants vs. indigenous law' (2009) 5 *Review of Law & Economics* 615.

<sup>40</sup> Scott Newton, 'Transplantation and Transition: Legality and Legitimacy in the Kazakhstani Legislative Process' in Denis J Galligan and Marina Kurkchian (eds), *Law and Informal Practices: the Post-Communist Experience* (Oxford University Press 2003).

<sup>41</sup> Grajzl and Dimitrova-Grajzl (n39).

<sup>42</sup> See Chapter 4 Section 4.2.

<sup>43</sup> See Chapter 7 Section 7.4.



Looking at subordinate legislation or diving deeper into legislation that govern the practice enables to identify discrepancies between key and subordinate legislation, and to explain why some key legislation is inefficient in regard to the child right to be raised in the family. The latter use of comparative approach was partially applied throughout the entire chapter 6. Taking this approach in chapter 6 related to English decision-making process of child protection allowed me to concentrate only on those legislation, practice and social aspects that can help to further development of child care system in Kazakhstan. A comparative approach is also applied in Chapter 7 that provides the overarching discussion based on all findings of this research. Namely, it is in Section 7.4 where I discuss what lessons might be taken by Kazakhstan from England. Therefore, the comparative approach that I used for this research is justifiable since it helps to address both core research questions.

#### 1.4.2 Data collection: methods and the process

There is no separate literature review chapter in this thesis. Some chapters are entirely based on an examination of secondary literature while some chapters draw on a combination of both secondary literature and original empirical data. However, as I argue in subsection 1.4.4 of this chapter, I applied a thematic analysis throughout my thesis. As such, Chapter 3 focuses on the cultural and historical aspects of the research problem based on a thematic analysis of the existing literature. In contrast, the next four chapters (4 -7) contain a thematic analysis of the combined data from the secondary literature and original data. However, the proportion of data from literature on English matters is clearly more than on Kazakhstani matters where more original data were used. That is because, western literature is very rich in regard to the theoretical and practical disputes concerning the issues of children's rights.<sup>44</sup> By contrast, the literature in Kazakhstan that discusses similar topics from a theoretical perspective is very poor. In addition, the existing limited literature is quite descriptive and written based on 'a positive law' of Kazakhstan,<sup>45</sup> annual reports of UNICEF and the Ministry of Education and Science of the Republic of

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<sup>44</sup> See Jane Fortin, *Children's rights and the developing law* (Cambridge University Press 2003); Michael Freeman (ed) *Law and childhood studies* (Oxford University Press 2012); John Eekelaar, *Family law and personal life* (Oxford University Press 2017).

<sup>45</sup> Brian Leiter, 'Marx, law, ideology, legal positivism' (2015) 101 *Virginia Law Review* 1179. In this thesis, positive law is considered as 'the "rule of recognition" consists of the criteria that *officials actually apply in deciding what the law is* and which *officials treat as obligatory* (rightly or wrongly).'.<sup>45</sup>

Kazakhstan so that there is very little critical information about child care and protection systems in Kazakhstan.<sup>46</sup> Consequently, the literature of other relevant sciences was also scrutinised in order to have more evidence and a better picture of children in care or orphans in Kazakhstan.<sup>47</sup> In addition, official statistics about children in care, child abuse and protection, children with disabilities, families in difficult circumstances, and the statistics of institutions for children deprived of parental care are explored as empirical data. This data was taken from the official web-resources of UNICEF, the Ministry of Education and Science of the Republic of Kazakhstan and the Committee on Statistics of the Ministry of the National Economy of the Republic of Kazakhstan. However, after the 1<sup>st</sup> March 2019 (and until 1 September 2019) the website of the Ministry of Education and Science of the Republic of Kazakhstan ([www.edu.gov.kz](http://www.edu.gov.kz)) was not available and it caused extra limitations to data access. To address the issue with data from the most significant official sources regarding children's rights in Kazakhstan I contacted my colleagues from the above-mentioned social movement in Kazakhstan, who had access to Kazakhstani internet and the relevant websites and asked them to send me the updated reports of the Committee for the Protection of Children's Rights, that I needed for my discussion and conclusion chapters.<sup>48</sup> In regard to this limitation on data access, it might be inferred that the unwillingness of officials to publish their data in open access sources or make it more available shows their unwillingness to be criticised. It also shows their resistance to make any significant structural changes.

The empirical study of law in practice was planned as a mix of participant observation and informal interviews.<sup>49</sup> In other words, my aim was to see how the law operates in practice and what people who apply it think about its effectiveness and gather their reflections on how the law operates in reality. In particular, the plan was to immerse myself amongst the officials within local authorities, responsible for child care and child

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<sup>46</sup> As the examples of critical information see: Carolyn Hamilton and Jonathan Watkins, *Modelling for Integrated Child Protection System in Kazakhstan* (UNICEF 2011); Ademi Bidaishiyeva, Kalamkas K Nadirova, Saltanat Kuldinova, Nurlan Apakhayev, Zhanna A Khamzina, and Yermek A Buribayev, 'Improving quality of legal regulation for social rights of family and child within new social course in the Republic of Kazakhstan' (2018) 21 *Journal of Legal, Ethical and Regulatory Issues* 1; Mary O Hearst, John H Himes, Spoon Foundation, Dana E Johnson, Maria Kroupina, Aigul Syzdykova, Musa Aidjanov, and T Sharmonov, 'Growth, nutritional, and developmental status of young children living in orphanages in Kazakhstan' (2014) 35 *Infant mental health journal* 94.

<sup>47</sup> N Yelissinova, 'Scientific substantiation of measures to prevent social orphanhood and its consequences, taking into account age-specific features and quality of life of children' (DPhil thesis, Semey State Medical University (Kazakhstan) 2013).

<sup>48</sup> See Chapters 7 and 8 below.

<sup>49</sup> Alan Bryman, *Social research methods* (4th edn, Oxford University Press 2016) 432; Kathleen Musante and Billie R DeWalt, *Participant observation: A guide for fieldworkers* (Rowman Altamira 2010) 120-141.

protection, both in Kazakhstan and England, for at least two months in each state where I could observe what is the process of decision-making and how the child in care is allocated to her/his new family, and have access to case files studies and informal discussions with social workers to clarify the underpinning of the legal framework and institutions involved.

... the methodology of participant observation aims to generate practical and theoretical truths about human life grounded in the realities of daily existence.<sup>50</sup>

In fact, because children's personal data are involved and as a result of limitations in time and ethical considerations, especially in England,<sup>51</sup> I decided against the use of observation as a research method.<sup>52</sup> Therefore, the data was collected by conducting interviews with practitioners in the sphere of child care and child protection. The main difference in interviewing in qualitative research is that the researcher is primarily interested in the opinions of the respondents while in quantitative research 'the interview reflects the researcher's concerns'.<sup>53</sup> Maccoby and Maccoby define an interview as 'a face-to-face verbal exchange, in which one person, the interviewer, attempts to elicit information or expressions of opinion or belief from another person or persons'.<sup>54</sup> Although I could not observe the process of decision-making and the application of law in practice, conducting interviews enabled me to access the views of practitioners in regards to law, child care systems and working with society in the realm of child care and child protection in Kazakhstan and England. Research interviews, like any other interviews, reveal some knowledge based on the insights of the interviewees, albeit the research interviewer is constrained by his or her doctoral thesis's aim and the structure of the interview.<sup>55</sup> Between the two options for interviews in qualitative research, unstructured and semi-structured, the second was applied because of the nature and focus of the present research and the range of themes that needed to be covered.<sup>56</sup> Additionally, the semi-structural form of interview is commonly used within social sciences and in

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<sup>50</sup> Danny L Jorgensen, *Participant observation a methodology for human studies* (Sage Publications 1989) 4.

<sup>51</sup> The data protection arrangements are more regulated and complicated in England than in Kazakhstan.

<sup>52</sup> Bryman (n49) 135-140.

<sup>53</sup> Ibid 470.

<sup>54</sup> Eleanor E Maccoby and Nathan Maccoby, 'The interview: A tool of social science' (1954) 1 *Handbook of social psychology* 449.

<sup>55</sup> Steinar Kvale, *InterViews: An Introduction to Qualitative Research Interviewing* (Thousand Oaks, Calif.; London:Sage 1996) 6.

<sup>56</sup> Bryman (n49) 471.

qualitative research.<sup>57</sup> I had a list of prepared-in-advance questions, but the order was not strict allowing me to follow the narratives of respondents and to ask follow-up questions depending on their previous responses (with some guide as to preferences if there was a time limitation for the interviewee). The interviews were conducted at the end of the second year of research, prior to which, over the course of my studies, I had developed the aim of the interviews, their focus, the list of questions, and the criteria of quality. Regarding the quality of the interviews, it was essential to have rigorous interview questions to ensure better outcomes.

A good interview question should contribute thematically to knowledge production and dynamically to promoting a good interview interaction.<sup>58</sup>

Having this in mind, my questions were contextualised within the research topic and theoretical framework so that the data obtained was useful for the thematic analysis. At the same time, I made sure that my questions were easy to understand, short in length and not academic in terms of language. In spite of differences in the context of Kazakhstan and England, I had one leading theory of children's rights based on the UNCRC that is legally accepted in both states so that there were some common questions for social workers in both Kazakhstan and England, and some specific questions for conducting interviews in Kazakhstan and England that were justified by the same reason.

Undeniably, I experienced a language barrier and cultural differences in conducting interviews in England, but since I had consent for audio-recording I was able to stay relaxed during the interviews knowing that I could listen to them again. I had two different approaches with regards to my behaviour that was appropriate for each country: one formal and the other less formal. I was less formal in England since such an approach facilitated a friendly and relaxed relationship during the interviews. In Kazakhstan, I maintained formal behaviour in order to establish attention and respect that facilitated a better balance in the relationship. This approach was relevant in the context of Kazakhstani society because respondents are encouraged to speak to people, they consider respectful. In each meeting, at the beginning, I briefly presented my research to interviewees in order to show them that I am open about my research and to engage their interest. If the respondents had time, there was always an additional conversation with no recording that also contributed

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<sup>57</sup> Bryman (n49) 470; Uwe Flick, *An introduction to qualitative research* (Sage Publications Limited 2018) 216, 231.

<sup>58</sup> Kvale (n55) 129.

to obtaining some extra data that I could use if such data was confirmed by reliable sources.<sup>59</sup> I prepared the proposed questions in advance and when asked I sent them to the interviewee before we met noting that these questions were not fixed, and that they only highlighted the areas of my interests.

Participants were selected according to their professional position and their role in the decision-making process in a child's placement or their experience regarding children in care. This sampling is explained by the purpose of the method. In other words, I utilised the purposive sampling since the data collected thematically alongside existing theory.<sup>60</sup> My target was to address partially the main research questions through obtaining opinions from practitioners on how the law operates in practice, how decision-making processes work in reality and what kind of pitfalls, including those depending of society, historical background and culture, influence on the researching issue. Since the research topic is social, representatives of both: the official authorities and the non-governmental sector that engage with children in care and enact the relevant legislation were considered. In particular, I met with 5 officials, including 1 head of an authority of guardianship, 1 head of a Centre for Minors and 3 workers in the system of social protection; the rest of the participants were practitioners from civil society (including 1 international NGO employee, and 2 ex-officials from the child protection related sphere – currently working in the civil society sector). Twice the planned number of respondents in Kazakhstan (20) were interviewed, covering a wide range of practitioners including social workers, case managers, staff of local departments of guardianship and representatives of relevant non-governmental organisations from four regions in Kazakhstan. These included the capital of Kazakhstan – Astana (currently Nur-Sultan),<sup>61</sup> the city of Almaty (the former capital of Kazakhstan), East-Kazakhstan *oblast* (region) and South-Kazakhstan *oblast* (region). This sampling was based upon access potential and different trends in the statistics of children's placements. For example, in the south of Kazakhstan most of the children in

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<sup>59</sup> For example, one of the respondents mentioned the report of Commissioner for Human Rights where was raised the issue with high percentage of cases when children are bringing back to the institutions by the alternative families (foster and adoptive families). This data was found later and used in analysis. Another example is the pressure from the central official to the local authorities in reporting the good statistics in child placements in alternative families, that was mentioned in one interview when audio-recording was stopped. This data was cross-checked and confirmed with other respondents.

<sup>60</sup> Bryman (n49) 416-423.

<sup>61</sup> Decree of the President of the Republic of Kazakhstan dated March 23, 2019 On renaming the city of Astana - the capital of the Republic of Kazakhstan to the city of Nur-Sultan - the capital of the Republic of Kazakhstan. The name of the capital was changed on 23rd March 2019 after to the forename of the first president of Kazakhstan Nursultan Nazarbayev (resigned on 19 of March 2019).

care were placed in their extended family (guardianship) whereas in the east of Kazakhstan the majority of children in care are in institutions.<sup>62</sup> In contrast, due to time limitations and the very heavy demands and time pressures on potential respondents, only three social workers out of the planned ten in England were able to attend an interview. At the same time, I was lucky to interview social workers who had experience of working in different countries, such as Romania, India and China. This enabled me to obtain opinions based on their comparison of law and practice in England (considered to be a high-income country) with the law and practice of other (low income) countries where they had worked in child care or the child protection sphere. Overall, since the English child protection system is an important part of this research since it serves as the example of better practice from which to learn, and was extensively researched,<sup>63</sup> the data provided by the interviewees were enough for further analysis of the implementation of English legislation and to achieve a deeper understanding of how the system operates in practice. Within the fieldwork, gaining trust was crucial to elicit high-quality data.<sup>64</sup> To achieve trust and professional standards, transparency, a strong knowledge base, courtesy, and flexibility were employed as the tools recommended by scholars.<sup>65</sup> In particular, I made sure that before the interviews, the interviewees received and familiarised themselves with an information sheet where I provided the details of my research, including my personal details for possible enquiries, the funder of the research, the time needed for the interview, information about further use of the data, the nature of the research, and how the data would be disseminated.<sup>66</sup> Doing this, I provided clarity regarding the area of knowledge the respondent might contribute to, by allocating time and sharing his or her opinions. Another strategy to obtain trust was the prior preparation since in the case of interviews with professionals it is possible that the knowledge of the researcher on the

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<sup>62</sup> The Committee for the Protection of Children's Rights of Ministry of Education and Science of the Republic of Kazakhstan, 'Information on orphans and children left without parental care for 2017', <<http://www.bala-kkk.kz/ru/node/15756>> accessed 10 February 2018.

<sup>63</sup> for example: The CA 1989; Department for Children, Schools and Families, *The Protection of Children in England: action plan The Government's response to Lord Laming* (Cm 7589, 2009); Munro Eileen, *The Munro review of child protection: final report - a child-centred system* (Department for Education, Cm 8062, 2011); The Chief Secretary to the Treasury, *Every child matters* (Cm 5860, 2003); The Secretary of State, *The Victoria Climbié Inquiry: report of an inquiry by Lord Laming* (Cm 5730, 2003); Hugh Brayne, Helen Carr and David Goosey, *Law for social workers* (13th ed, Oxford University Press 2015); Virginia Dunn and Veronica Lachkovic, *Family Law in Practice* (11th ed, Oxford University Press 2015); David W Archard, *Children, family and the state* (Achgate Publishing Limited 2003).

<sup>64</sup> William S Harvey, 'Strategies for conducting elite interviews' (2011) 11 *Qualitative research* 431.

<sup>65</sup> William S Harvey, 'Methodological approaches for interviewing elites' (2010) 4 *Geography Compass* 193; Robert Mikecz, 'Interviewing elites: Addressing methodological issues' (2012) 18 *Qualitative inquiry* 482.

<sup>66</sup> Harvey (2011) (n64).

subject will be checked.<sup>67</sup> For example, because the English legislation and practice have been studied and discussed in the literature, my aim was to make sure to not ask questions about information available elsewhere but to focus more on the practical operation of legal principles and the opinions of practitioners about the cultural features of working with children and families in England. Furthermore, it was important to be aware of the political and practical situation in the field to ensure appropriate communication with the respondents in both: Kazakhstan and England. In addition, the positive impression of author and actuality of the topic in regard to children deprived of parental care in the society ensured the snowball effects in Kazakhstan when references were made from one interviewee to another.

### 1.4.3 Ethical limitations

I consider my research method is very low risk to people although I had to apply for ethical approval as I was approaching human subjects, specifically practitioners in the field of child care and child protection systems in Kazakhstan and England. According to the ethical criteria of Sussex University involving children increases the risk of the research so I excluded them and their parents or guardians from the interviews. In the context of my research topic, working with children and their parents could potentially cause some psychological harm to them because of reminding them of a difficult time and the process they went through. I excluded conducting participant observation for the reasons discussed earlier in this chapter<sup>68</sup> and also because it is time consuming in terms of getting consent to work with the case files of families. I had only four months for conducting the fieldwork in Kazakhstan and England, which was not enough time for families to provide consent or for social workers to approach families and explain to them the background of my research.

The process of obtaining ethical approval was an essential part of this research since the ethics of research, including anonymity, confidentiality, and informed consent were implicated in the study. Conducting interviews in different contexts allows for the observation of the cultural, developmental and political features of each, such as the way of thinking (critical versus positive), limitations in expression of their opinion (in

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<sup>67</sup> Harriet Zuckerman, 'Interviewing an ultra-elite' (1972) 36 *Public Opinion Quarterly* 159.

<sup>68</sup> See subsection 1.4.2 above.

Kazakhstan), the differences in the preferences (child-centred versus structure (agency)-centred (providing reports and good statistics). For example, in Kazakhstan, people from the system avoided being interviewed or if interviewed were very careful in what they said because of fear of losing their job. For instance, during my fieldwork in Kazakhstan I attended the seminar provided by one of the NGOs for public workers - practitioners in interagency cooperation - where I met the nurse of a local surgery in one of the big cities who in accordance with the responsibilities of her post should provide family support services for vulnerable members of families (retired, disabled or seriously ill people), but in fact she said she does not know what that is and she refused to sign a consent form and be recorded because of fear of losing her job. Another example was provided by the limitation in critiques of national officials by local authorities while the audio recording was on. This behaviour is understandable in the context of the current authoritarian regime in Kazakhstan when the activity of the authority is not criticized and if there is any critique revealed through the media or international reports there is only one reaction to such criticism from the authority which is the identification of the guilty public worker and his or her dismissal. Therefore, the reluctance of officials to speak out reflects the contextual aspect of the Kazakhstani political regime. The latter in general hinders attempts to reform the child care system due to the strong reluctance to self-criticism and self-reflection on the part of the Kazakhstani Government. This issue and how the alternative English approach (openness to self-criticism and self-reflection) might be effective, is alluded to through at various points in the thesis.<sup>69</sup> The study of Marat on authoritarian regimes in Kazakhstan and Tajikistan explains that authoritarian regimes in post-Soviet Central Asia have ensured decades of power for the leaders of these countries in this region.<sup>70</sup> In non-democratic regimes such as in Kazakhstan, in order to control the population, 'deadly violence against regime opponents' is in use.<sup>71</sup> Hence, there is a small number of critical research studies conducted in the field in Kazakhstan by local scholars, unlike England where critical research is initiated and funded by the authority. In contrast, people from outside the system were willing to speak and were glad to share their experiences. In England, there is a different approach that may be related to the neo-

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<sup>69</sup> See Chapter 3 Section 3.4 Subsection 3.4.1; Chapter 6 Section 6.1; Chapter 7 Section 7.4; Conclusion chapter.

<sup>70</sup> Erica Marat, 'Post-violence regime survival and expansion in Kazakhstan and Tajikistan' (2016) 35 Central Asian Survey 531.

<sup>71</sup> Ibid, see also David Lewis, 'Blogging Zhanaozen: hegemonic discourse and authoritarian resilience in Kazakhstan' (2016) 35 Central Asian Survey 421.



liberal political regime and individualistic culture of its society. It appears that research that is not contributing directly to the development of the system in England is not deserving of time.<sup>72</sup> For instance, I was refused access to personnel of the Children and Family Court Advisory and Support Service (CAFCASS) for that reason, although their experience of promoting children's rights in court was one of the areas of my interest. At the same time, some social workers from England agreed to meet with me for the interviews in spite of their busy schedules. These three were exceptional and their enthusiasm was explained because of their experience of working in child care and child protection areas in high- and low-income states so that they knew the differences that are inherent to the systems and family culture of different countries and were happy to contribute to my research.

With regards to ethical dilemmas, I encountered one of them in Kazakhstan since some data was obtained from practitioners, who were also foster parents. Their data were related to particular children, but I was not provided with the names so that the anonymity and confidentiality were not compromised. However, in accordance with the advice provided, in order to minimise the possibility of identifying individual respondents and to maintain the confidentiality of records, all of the names of my respondents have been changed to pseudonyms and no reference is made to names of organisations that they represent or the exact location they are from either in the thesis or in the transcribed material, and or in the audio records.<sup>73</sup> I am the only person to have access to the encrypted list containing the link between the real names of participants and their pseudonyms. My computer is password protected and only I know the password, while the audio recorder and signed consent forms with the names are kept under lock and key.

#### 1.4.4 Data analysis

A wide range of research approaches and theories lead to a wide range of angles and themes of collecting data. An analytic induction and grounded theory<sup>74</sup> were excluded as possible analytical strategies. Instead, I conducted a thematic analysis that followed the

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<sup>72</sup> Madeleine Stevens, Kristin Liabo, Sharon Witherspoon, and Helen Robert, 'What do practitioners want from research, what do funders fund and what needs to be done to know more about what works in the new world of children's services?' (2009) 5 *Evidence & Policy: A Journal of Research, Debate and Practice* 281.

<sup>73</sup> Bryman (n49) 135-137.

<sup>74</sup> Bryman (n49) 566-567.

thematic data collection approach.<sup>75</sup> I found this type of analysis the most appropriate strategy in light of the interdisciplinary contextualisation of the research that required investigation from a variety of perspectives because the problem has not emerged in one day and because of one reason. As Bryman suggests, the themes emerged from the research focus and research questions.<sup>76</sup> With regards to the secondary and primary literature related to both states the research was focused on such categories as: the history and culture relation to families and children, the welfare system and its political and social background, family law and children's rights, social work, the child care and child protection systems, and relevant legislation and practice. My proposed questions and the final data cover how legislation operates in practice, in particular how the right of the child to grow up in a family is implemented and ensured by the state, what political, economic and cultural particularities are in a particular society and recommendations based on the experience of practitioners. The empirical data comprises the opinions of participants from such angles as system, policy, culture and society. I approached representatives of both the state and civil society in Kazakhstan, and my data covered all four themes mentioned above.

The empirical data collected from state officials explained predominantly the problem from a system and policy angle<sup>77</sup> while empirical data collected from civil society revealed more of the cultural and social reasons underlying the research problem.<sup>78</sup> In the English context, because of my more limited empirical research here, the data collected does not engage with the (local) cultural and social aspects of my research problem. Given that my focus was not on an English problem, but on possible lessons from English practice, this is not a significant lacuna in my research.

The thematic approach enabled me to go beyond the coding approach because several codes might coincide in one theme or even across several themes in one social issue that explain the complexity of most of the social phenomenon. For example, in relation to the reason for child abandonment in one of the regions of Kazakhstan, several themes were touched upon, including the cultural specifics of the region, the lack of social services to support single mothers and the lack of understanding of the child's rights and the child's interests in relation to family and mother. In other words, there were three themes which

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<sup>75</sup> Ibid 578-581.

<sup>76</sup> Ibid 580.

<sup>77</sup> See Chapter 4 Sections 4.3-4.5, Chapter 5 Section 5.3, and Chapter 7 Section 7.3.

<sup>78</sup> See Chapter 5 Section 5.2 and Chapter 7 Section 7.3.

arose - culture, state social services and the operation of the law in practice - that all had a bearing on one of the research problems (the lack of family support at community or state level). Overall, the multifaceted character of the empirical data and the thematic analysis enables us to see the research issues from a variety of perspectives. The latter makes this research more detailed, rigorous and original.

#### 1.4.5 Validity and credibility of data

There are various ways to appraise the quality of research data depending on the kind of research conducted (qualitative or quantitative) and where validity and reliability remain standard research criteria in both types.<sup>79</sup> However, the definition of reliability implies replicability of the study and stability of sampling and as such the liability criteria are more applicable for quantitative research as social issues always change over time.<sup>80</sup> Therefore, reliability was replaced by credibility. In order to strengthen the validity and credibility of this research and to cross-check the findings, a triangulation strategy was employed. The collected data, including data from the main informants, and primary and secondary literature was triangulated and collated with the leading research theory which is Children's Rights theory.

The use of triangulation is justified in the light of studying simultaneously in one piece of research such different, contradictory and complex content as Kazakhstani law and practice, and English law and practice. A triangulation strategy enables the researcher to analyse the roots of differences and 'what this diversity may tell you about your research and the issue you study'.<sup>81</sup> According to the definition of triangulation, it implies studying a research matter from different perspectives by applying more than one method and/or theoretical approach.<sup>82</sup> There are four type of triangulation suggested by Denzin: data triangulation; investigator triangulation; theory triangulation; and methodological triangulation.<sup>83</sup> In regard to this research, data and theory triangulation were applied since

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<sup>79</sup> Bryman (n49) 397-398.

<sup>80</sup> Ibid 169, 390.

<sup>81</sup> Uwe Flick, *An introduction to qualitative research* (Sage Publications Limited 2018) 450-451.

<sup>82</sup> Ibid 445.

<sup>83</sup> Norman K Denzin, *The Research Act: A Theoretical Introduction to Sociological Methods* (Englewood Cliffs, NJ: Prentice-Hall 1989); Flick (n79).

there a variety of data were analysed and because the research problem was explored using more than one research approach.<sup>84</sup>

Namely, the collected data, including data from the main informants, and primary and secondary literature was examined in the light of the leading research theory which is Children's Rights theory. I have linked the data from the primary and secondary literature with data from interviews and have considered the results through the lens of the key theory. The quotations I used were rigorously chosen in the context of the particular chapter. For instance, the thematical analysis in Chapters 5 and 6 is essentially based on the quotations from the empirical study so that the reader can hear the voice of the others in addition to analysis based on the data from the primary and secondary literature or the arguments of the author. In general, the logic of data binding was to follow a thematical analysis that aimed to address the research questions. Overall, the triangulation strategy enabled me to improve the quality of this research.

## 1.5 Structure of the thesis

The thesis is organised into eight chapters. This chapter sets up the research problem, research aims, research questions, relevance, originality and contribution of the research. It briefly overviews the transitional period in the child care system of Kazakhstan and the problems that arise from the lack of understanding on how to develop the existing child care system in accordance with the UNCRC and the recommendations of the UN Committee on the Rights of the Child. It also outlines the methodology used to address the research aim and questions which is based on an interdisciplinary perspective using a mixture of different approaches. Having such a perspective in the research enabled the contextualisation of the research problem in both Kazakhstan and England and helps to shed light on the limitations of Kazakhstan in learning from the experience of England. Chapter 2 outlines the theoretical framework of this research that is applicable in both the Kazakhstani and English contexts. The theoretical framework is based primarily on the Children Rights Theory and the UNCRC, including its principles and the rights and best interests of the child as they relate to the family environment. The latter inevitably leads to a discussion of attachment and development theory since the former theories argue for

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<sup>84</sup> Uwe Flick, *An introduction to qualitative research* (Sage Publications Limited 2018) 405.

the family environment for optimal child development while the latter explains the variety of reasons that might cause separation of the child from the family. All of these theories, and primarily children's rights theory, are the tools to measure and critically analyse the decision-making process in the child care system in Kazakhstan and England. This chapter establishes the theoretical framework rooted in the listed theories such as the best interests of the child and the rights of the child to the family upbringing, while in the chapters which follow I will explore the compliance of the existing system (its legislation and practice) with essential attributes taken from the theory.

Chapters 3, 4 and 5 are dedicated to Kazakhstani history, culture, legislation and practice. They demonstrate the historical and cultural roots of the research problem and contemporary law and practice. The data used is a mixture of information from the literature and fieldwork so that these chapters are a core part of the research. Chapter 3 explains how institutionalisation of children became and remains the main solution in Kazakhstan. It also explains what existed prior to residential care's appearance in Kazakhstan. Chapter 4 aims to address the first research question and evaluates the extent to which Kazakhstani law and practice represents the child's best interest in the context of the family environment. Chapter 5 is entirely about Kazakhstan and examines the sub-question of this research which asks how the existing child care system in Kazakhstan reflects social family values and traditions? It investigates the attitude of society towards children deprived of parental care. The findings of this chapter are mostly derived from the analysis of original data gathered for this thesis (in particular, the interviews conducted during my fieldwork).

Chapter 6 replicates, in summary form, chapters 3, 4 and 5, but in relation to England. It summarises the relevant history, culture, legislation and practice of that jurisdiction. This limited overview is justified as the main purpose of this chapter is to identify better practice that is scrutinised to the extent that is needed to address inconsistencies in Kazakhstani legislation and the lack of understanding of Kazakhstani policy makers on how to ensure the child's right to live in the family. Comparative research that highlights the lessons from England in Chapter 6 provides the knowledge that contributes to the discussion on what might be learned by Kazakhstan in Chapter 7.

The first two sections of Chapter 7 provide an analytical discussion of the Kazakhstani context, first introduced in Chapters 3-5, but now reflecting my comparative approach and the wider themes of this thesis. It reveals a varied, and in some cases contradictory, rationale for the implementation level of children's rights and the best interests of the

child in Kazakhstan, and also the existing child care system in Kazakhstan. The current situation in regard to children's rights and the child care system constitutes a social phenomenon that is derived from a number of factors: history, culture, politics, economics of the state, society, law, and practice. The second section of Chapter 7 seeks for solutions to the problem based on the potential of Kazakhstan (its society, law and practice), the main principles of the UNCRC and English law and practice. It concludes with a discussion of possible recommendations for policy and practice.

Finally, in Chapter 8 I discuss the originality and contribution of the thesis to scholarship on this subject. Unlike recommendations directly related to the topic of this research that are considered in the penultimate chapter, this chapter summarises them and highlights the primary problems that emerged in the course of my research that are acting as barriers to the development of alternative family-based care in Kazakhstan.

## Chapter 2

### Children's Right Theory

#### 2.1 Introduction

The aim of this chapter is to discuss the theoretical framework. In this research, theory plays the role of guide. I have applied a deductive approach in which theory directs the empirical study.<sup>1</sup> My hypothesis is built on theory which underpinned both the data collection and the analysis of the data. In particular, my research applies a rights-based approach taking into account the fact that children are legal rights holders under the United Nations Convention on the Rights of the Child 1989 (UNCRC). In this chapter I establish the primary theoretical dimensions of this research such as the best interests of the child and the relevant rights of the child to grow up in a family environment. The theoretical framework discussed in this chapter, will then be used in the analysis of the issues, problems and data and in the interpretation of the findings in the rest of the chapters of this thesis.<sup>2</sup>

Considering the fact that the UNCRC is 'the most widely-ratified international human rights treaty',<sup>3</sup> it is difficult to argue that children are not rights-holders. In support of this, Michael Freeman has said that:

Rights are important because they recognise the respect their bearers are owed. To accord rights is to respect dignity: to deny rights is to cast doubt on humanity and on integrity. Rights are an affirmation of the Kantian basic principle that we are ends in ourselves, and not means to the end of others.<sup>4</sup>

The analysis of contemporary literature and approaches shows that in both Kazakhstan and England the fact that children have rights is accepted, but at the same time, there are still many disputes surrounding them. In particular, the theoretical framework of the argument of this research draws upon the contributions of Jane Fortin,<sup>5</sup> Onora O'Neill,<sup>6</sup> and Michael Freeman,<sup>7</sup> and the two rival theories, namely the will theory of H.L.A. Hart

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<sup>1</sup> Alan Bryman, *Social research method* (4th edn, Oxford University Press 2012) 19.

<sup>2</sup> Ibid 20.

<sup>3</sup> UNICEF, 'Convention on the Rights of the Child. Frequently asked questions', <[https://www.unicef.org/UNCRC/index\\_30229.html](https://www.unicef.org/UNCRC/index_30229.html)> accessed 10 April 2017. Only two countries, Somalia and the United States, have not ratified The United Nations Convention on the Rights of the Child.

<sup>4</sup> Michael Freeman, 'The human rights of children' (2010) 63 *Current Legal Problems* 1.

<sup>5</sup> Jane Fortin, *Children's rights and the developing law* (Cambridge University Press 2003). Jane Fortin argues that children's rights should be taken more seriously.

<sup>6</sup> Onora O'Neill, 'Children's rights and children's lives' (1988) 98 *Ethics* 445. Onora O'Neill has argued that in order to ensure the fulfilment of children's rights the specific services should be provided.

<sup>7</sup> Michael Freeman, *Children, their families and the law: Working with the Children Act* (Macmillan International Higher Education 1992); Michael Freeman, *The moral status of children: Essays on the rights*

and the interest theory of Neil MacCormick.<sup>8</sup> It also draws on John Eekelaar's theory of 'dynamic self determinism'.<sup>9</sup> However, due to the focus of this research on a child's right to live in a family, not all of the above theories will be presented in detail in this chapter. The chapter starts with a discussion of two general principles of the UNCRC that are important to this thesis, namely the best interests of the child and the right to be heard.<sup>10</sup> This discussion leads to the establishment of a framework within which I will address the first question of my research: to what extent does Kazakhstani law and practice represent the child's best interest in the context of the family environment? Following on from this, Section 2.2. will be devoted to the standard of the best interests of the child and the right to be heard.

Based on the principle of the best interests of the child, in Section 2.3 I argue that the child must have the right to live and be nurtured in a family. The reason for the necessity of such a right and the importance of family-based care is explained in this section (2.3). Further relevant discussion follows continues in Section 2.4. where I revisit the concept of the best interests of the child and the right to be heard in the context of the role of the family and paternalism in a child's life. The penultimate and final sections of this chapter explore what is expected from the state when the parents or guardians cannot or do not provide care for a child. The role of the state in providing alternative care for children deprived of parental care, in protection from abusive parents, and the circumstances when the state should intervene in the family are the main topics explored below. Overall, this chapter establishes the theoretical framework of my research that will be applied in further discussion of the research problem and interpretation of research findings.

## 2.2 The best interests of the child and the right to be heard

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*of the children* (Martinus Nijhoff Publishers 1997); Michael Freeman, 'The sociology of childhood and children's rights' (1998) 6 *The International Journal of Children's Rights* 433.

<sup>8</sup> Herbert Lionel Adolphus Hart, *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Oxford: Clarendon Press 1982); Donald Neil MacCormick, 'Rights in Legislation', in Peter Michael Stephen Hacker, and Joseph Raz (eds.), *Law, Morality, and Society: Essays in Honour of H. L. A. Hart* (Oxford: Clarendon Press 1977); Donald Neil MacCormick, *Legal Right and Social Democracy: Essays in Legal and Political Philosophy* (Oxford: Clarendon Press 1982); Hamish Ross, 'Children's rights and theories of rights' (2013) 21 *The International Journal of Children's Rights* 679.

<sup>9</sup> John Eekelaar, 'The interests of the child and the child's wishes: The role of dynamic self-determinism' (1994) 8 *Int J Law Policy Family* 42. John Eekelaar in his theory of 'dynamic self-determinism' discusses the development process of a child as a growing human being who has the right to make decisions by the age he or she is mature enough to do so.

<sup>10</sup> Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (UNICEF 2007) 35.



Children's rights are unique in several respects and one of those is the way in which they are applied.<sup>11</sup> The age of the child and his or her capacity is a determining factor in the application of rights. In the earlier stages of the developmental process children are very dependent on adults, usually their parents, while in the later stages of childhood they can be mature enough to make their own decisions.<sup>12</sup> Since children's rights are fulfilled by the adults in the majority of cases, Article 3 and Article 12 of the UNCRC ensure that the interests of the child should be a primary consideration and that a child's voice is heard.<sup>13</sup> These two articles also known as general principles of the UNCRC alongside articles 2 (non-discrimination) and 6 (the right to life and maximum survival and development).<sup>14</sup> I emphasise these two principles because they should be paramount in the decision-making process related to children where the child is deprived of parental care or the child's family is in a difficult life situation and in need of support from the state. This approach promotes a child-centred practice where the interests of the child are a primary consideration as enshrined by Article 3 of the UNCRC.

### 2.2.1 The best interests of the child

The best interests of the child is one of the key principles in children's rights theory and plays a primary role in child welfare and rights.<sup>15</sup> An understanding of this principle allows the author to evaluate Kazakhstani law and practice in regard to how this principle is implemented in the context of family environment and the child's right to a family upbringing.

The issue is that the best interests of the child are not defined in the UNCRC so that definitions and interpretations vary between cultures and states.<sup>16</sup> However, the cultural understanding of the best interests of the child should not undermine or contradict the child's rights guaranteed in the UNCRC.<sup>17</sup> It is also suggested that every case should be

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<sup>11</sup> Ross (n8); Eekelaar (n9).

<sup>12</sup> Fortin (n5) 3-30.

<sup>13</sup> The UNCRC, arts 3 and 12; see also Hodgkin and Newell (n10) 35-37.

<sup>14</sup> Hodgkin and Newell (n10) 35; Joan B Kelly, 'The best interests of the child: A concept in search of meaning' 35 (1997) Family Court Review 377; UNICEF, 'How we protect children's rights with the UN Convention on the Rights of the Child', <<https://www.unicef.org.uk/what-we-do/un-convention-child-rights/?gclid=CLTujcKAwNMcFY0Q0wodsa0NZg&sisr=1>> accessed 28 February 2017.

<sup>15</sup> Ibid; The UNCRC, arts 3 and 12; see also Hodgkin and Newell (n10) 35-42; United Nations Guidelines for the Alternative Care of Children (adopted 24 February 2010), A/RES/64/142.

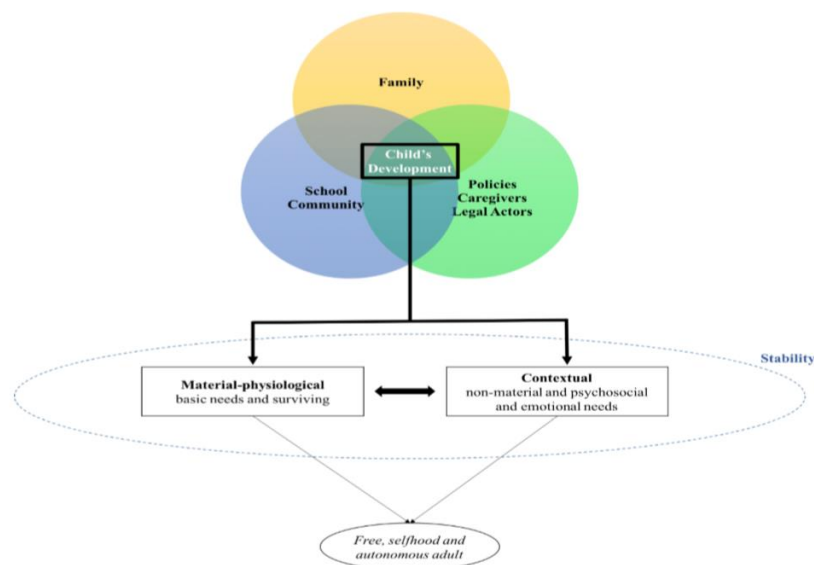
<sup>16</sup> Eekelaar (n9); Kelly (n14).

<sup>17</sup> Hodgkin and Newell (n10) 38.

considered appropriately depending on the particular circumstances allowing the best interests of the child to be determined on an individual basis.<sup>18</sup> The roots of this principle lies in developmental/clinical psychology and as Kelly suggests it is ‘laden with psychological concepts’.<sup>19</sup> According to Kelly, the best interest of the child is served by having access to an environment that will contribute to his or her development.<sup>20</sup> Mendes and Ormerod came to the same conclusion on the principle after revision of existing definitions, characteristics and applications (see figure 2.1).<sup>21</sup>

**Figure 2.1**

**The model of the best interest of the child based on the articles’ definitions, characteristics and applications<sup>22</sup>**



What is notable from the model of Mendes and Ormerod is that family comes first as an aspect of the principle of the best interest of the child alongside other aspects that in total lead to the well-developed adult. Hence, child development is at the core of the principle of the best interests of the child. The latter reflects what is declared in the preamble of the UNCRC, namely that ‘the child should be fully prepared to live an individual life in society’. According to the given definition of Kelly and components of the best interest of the child of Mendes and Ormerod, the child development is in great dependence on the

<sup>18</sup> Hodgkin and Newell (n10) 39.

<sup>19</sup> Kelly (n14); Michael Freeman, ‘The best interests of the child? Is the best interests of the child in the best interests of children?’ (1997) 11 International Journal of Law Policy and the Family 360.

<sup>20</sup> Ibid.

<sup>21</sup> Josimar Antônio de Alcântara Mendes and Thomas Ormerod, ‘The best interests of the child: an integrative review of English and Portuguese literatures’ (2019) 24 Psicologia em Estudo 1.

<sup>22</sup> Ibid.

child environment. Whereas, the environment of the child and criteria of the child development vary in different communities in the context of each community's family practices, education systems and policies. Thus, the concept of the best interests of the child remains vague.

Among all the discussions about the “indeterminacy” of the principle of the best interests of the child, Eekelaar's understanding and explanation is useful in highlighting the cultural differences in the interpretation of the principle.<sup>23</sup> In particular, in order to better understand the principle, Eekelaar suggests reconstructing the concept of ‘principle’, dividing it into two components: ‘objectivism’ and ‘dynamic self-determinism’.<sup>24</sup> The first explains the decision-makers belief of what is better for the child, which relies on social belief and experience and therefore differs from culture to culture and from state to state. The second component proposed by Eekelaar relates to the autonomy of the child and their right to make decisions wherever possible, in order to allow scope for the future consequences of decision as an element in the developmental processes of the child. Although Eekelaar provides an understanding of the principle along these lines it is also important to note that the child's needs change during the time of his or her up-bringing so that it is essential to make decisions on ‘a case-by-case basis’ with no categorising or generalising children as a class or group of people with similar needs and circumstances.<sup>25</sup> Therefore, in order to make decisions in regards to children's welfare the state should invest in the decision-makers and their knowledge of the children's psychology and development processes and needs.

Additionally, the best interests of the child should cover short-term and long-term considerations for the child.<sup>26</sup> This suggestion implies that there are limitations on the child ability to make decisions or his or her autonomy and his or her right to be heard. For instance, there are cases where the child is better separated from his or her parents. Although, according to attachment theory and the UNCRC the role of parents and family are crucial for the child's development, there are cases where the child should be removed from the family because it is in the best interests of the child to do so. However, ensuring the right to be heard also enables the child to raise concerns about his or her family and

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<sup>23</sup> Eekelaar (n9).

<sup>24</sup> Ibid.

<sup>25</sup> Kelly (n14).

<sup>26</sup> Hodgkin and Newell (n10) 38.

to receive the required help.<sup>27</sup> The next section explores the right to be heard and when such a right might be limited.

### 2.2.2 The right to be heard

The child's right to be heard, provided for in Article 12 of the UNCRC, recognises 'the integrity of the child and his or her decision-making capacities but at the same time notes the dangers of complete liberation'.<sup>28</sup> According to Eekelaar, autonomy interests should supersede development and other basic interests.<sup>29</sup> For example, in order to avoid serious harm in relation to long-term family life or educational welfare, a child's autonomy has to be limited. However, this does not mean that children's view should always be ignored. A clash of adult's and child's interests and the tension between them is called a right balance.<sup>30</sup> To achieve a right balance is possible through the prism of Eekelaar's theory of 'dynamic self-determinism'.<sup>31</sup> In other words, children might be empowered in making decisions and taking responsibility for the outcome of such decisions as a learning process as they approach adulthood.<sup>32</sup> This practice should however be exceptional in regards to matters where it is better restricted in favour of development and basic interests.

The argument made is similar to the discussion about welfare and rights – the child's welfare should not be inconsistent with his or her rights.<sup>33</sup> Therefore, the issue of children's capacity to make their own decisions, to exercise autonomy, and the issue of who else might exercise this right on their behalf, is still a much-debated topic, but a balance needs to be found. In this regard Freeman, for example, suggests that the rights holder also has the right to his or her mistakes and risks.<sup>34</sup>

For this research the child's right to be heard is important firstly when he or she can claim that he or she needs help and his or her interest is being violated and secondly, in cases where a child is asked in court to comment on their parents and living with them or in

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<sup>27</sup> See Sections 2.3 and 2.4 of this chapter below.

<sup>28</sup> Michael Freeman, 'Taking children's rights more seriously' (1992) 6 *International Journal of Law, policy and the Family* 52.

<sup>29</sup> Eekelaar (n9).

<sup>30</sup> Lawrence J LeBlanc, *The Convention on the Rights of the Child: United Nations lawmaking on human rights* (University of Nebraska Press 1995) 157.

<sup>31</sup> Eekelaar (n9).

<sup>32</sup> *Ibid.*

<sup>33</sup> Fortin (n5) 26.

<sup>34</sup> Michael DA Freeman, 'The Limits of Children Rights' in Michael DA Freeman and Philip E Veerman (eds) *The ideologies of children's rights*, vol 23 (Martinus Nijhoff Publishers 1992).

cases of adoption to agree (or not) to be adopted by a family. This particular right should force others to think about what is the best for the child from a child's perspective and put the child's interest at the centre of the issue.<sup>35</sup> Such an approach is the basis of the right-based approach.

The discussion above implies that in order to ensure the children's interests and rights they need to be supervised in exercise their rights, which raises the matter of resources, including human and financial, in order to make this a reality. One of my criticisms of the Kazakhstani law and practice is that children's rights cannot be exercised without adequate services and resources.<sup>36</sup> For example, there is no specific organisation in Kazakhstan which advocates for children's rights and interests from the child's perspective. In contrast, the government of the United Kingdom in 2001 supported courts by providing them with the Children and Family Court Advisory and Support Service (CAFCASS) in order to ensure that children's interests are properly considered and protected.<sup>37</sup>

Therefore, in order to improve the lives of children in care, these two principles should be taken into account in the law development process in Kazakhstan, which should be aimed at providing family-based care and family support services.

### 2.3 The right of the child to be brought up in a family

The importance of the family is the first issue among other aspects of the best interests of the child.<sup>38</sup> The best interests of the child as discussed earlier in this chapter implies first of all the environment that enables child development.<sup>39</sup> Hence, for the best interests of the child a family setting and the protection of the relevant rights of the child would be appropriate. This right can be derived from articles 7, 8, and 9 of the UNCRC, but it is not declared separately and cannot be claimed by the child. In particular, a child who is deprived of parental care, according to article 20 of the UNCRC, does not have the right to be placed in an alternative family-based setting. However the desirability of such a setting is implicit and in this thesis. I argue that for the child's best interests family-based

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<sup>35</sup> Lucinda Ferguson, 'Not merely rights for children but children's rights: The theory gap and the assumption of the importance of children's rights' (2013) 21 *The International Journal of Children's Rights* 177.

<sup>36</sup> O'Neill (n6); Freeman (n7).

<sup>37</sup> The Criminal Justice and Court Service Act 2000, s 11.

<sup>38</sup> See Section 2.2 Subsection 2.2.1 of this chapter.

<sup>39</sup> Ibid

care should replace residential care for children deprived of parental care in Kazakhstan as much as possible.

The majority of children deprived of parental care across the world have living parents or a single parent who cannot provide care for their children due to poverty and social exclusion.<sup>40</sup> Legrand argues that in the region of Central and Eastern Europe and the Commonwealth of Independent States most children are separated from the family due to poverty and the lack of social support services for families and children.<sup>41</sup> The same reasons are emphasised in Africa, China and Brazil where the problem with orphans is also notable due to poverty and inequality.<sup>42</sup> However, according to Article 18 of the UNCRC, the state should assist parents in fulfilling their parental responsibilities towards children. In short, in regard to the majority of orphans across the world, parents failed to provide care for their children due to poverty while the states failed to provide appropriate support for such families. Meanwhile, the preamble and Article 9 of UNCRC highlights the importance for the child to grow up within a family. In particular, it states that

the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children...the child, for the full and harmonious development of his or her personality, should grow up in a family environment.<sup>43</sup>

Therefore, by signing the UNCRC, each state member of this convention, acknowledges that for the full and harmonious development of the child, they should provide protection and assistance for families to fulfil their (family) responsibilities for child development. At the same time, the acknowledgement of the importance of the family for the child development and his or her best interests, implies that residential care does not fully contribute into the child development.

Maclean in her review of the impact of institutionalisation on child development has argued that institutionalisation is a risk factor for the child.<sup>44</sup> In particular, this risk was identified in such areas as physical development; intellectual development and academic achievement; behaviour problems; developmental milestones; indiscriminate friendliness and attachment.<sup>45</sup> In support, there is a considerable number of studies that identify delays

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<sup>40</sup> Ibid

<sup>41</sup> Jean-Claude Legrand, 'Child care system reforms in Eastern and Central Europe and Central Asia: Why there is a need to focus on children below three years' (2015) 15 *Irish Journal of Applied Social Studies* 2.

<sup>42</sup> Tatek Abebe, 'Orphanhood, poverty and the care dilemma: Review of global policy trends' (2009) 7 *Social Work & Society* 70.

<sup>43</sup> The UNCRC, the preamble.

<sup>44</sup> Kim MacLean, 'The impact of institutionalization on child development' (2003) 15 *Development and psychopathology* 853.

<sup>45</sup> MacLean (n44).

in the development of children reared in institutions.<sup>46</sup>, these studies show that orphanage children have lower intelligence quotients, attention difficulties, they are shorter and lighter, have problems with behaviour and friendliness, and their attachment is mostly insecure.<sup>47</sup> For example, the studies of Nelson et al. on cognitive development in the Bucharest Early Intervention Project demonstrate that children reared in institutions do not have an appropriate environment for normal development.<sup>48</sup> According to this study, these children's cognitive development is lower due to:

unfavourable caregiver-to-child ratios; highly regimented routines (e.g., all children eat, sleep, and toilet at the same time); impoverished sensory, cognitive and linguistic stimulation; and unresponsive caregiving practices.<sup>49</sup>

Other negative impacts on child development are linked to the prevalence of ill-treatment in the environment. For instance, the problem with overeating that was reported by Flint; Goldfarb; Lowrey, and Tizard,<sup>50</sup> was explained by Fisher et al. by the lack of enough food to learn the feeling of saturation.<sup>51</sup> The worst example that proved the lack of attention to children in residential care is the stereotyped behaviours of children from Romanian orphanages such as body rocking.<sup>52</sup> This behaviour was explained by the researchers as self-stimulation behaviour during the time they learn to sit or to walk.<sup>53</sup>

Therefore, the studies of the last century demonstrated definitively the adverse outcomes of institutionalisation on child development and the likelihood of abuse and neglect in orphanages. The acknowledgement of these negative implications for child development

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<sup>46</sup> See for example: Barbara Tizard and Judith Rees, 'The effect of early institutional rearing on the behaviour problems and affectional relationships of four-year-old children' (1975) 16 *Child Psychology & Psychiatry & Allied Disciplines* 61; Kim Chisholm, 'A three year follow-up of attachment and indiscriminate friendliness in children adopted from Romanian orphanages' (1998) 69 *Child development* 1092; Panayiota Voria, Zaira Papaligoura, Jasmin Sarafidou, Maria Kopakaki, Judy Dunn, Marinus H Van IJzendoorn, and Antigoni Kontopoulou, 'The development of adopted children after institutional care: a follow-up study' (2006) 47 *Journal of Child Psychology and psychiatry* 1246; Charles A Nelson, Charles H Zeanah, Nathan A Fox, Peter J Marshall, Anna T Smyke, and Donald Guthrie, 'Cognitive recovery in socially deprived young children: The Bucharest Early Intervention Project' (2007) 318 *Science* 1937.

<sup>47</sup> *Ibid*; MacLean (n44).

<sup>48</sup> Nelson et al. (n.46).

<sup>49</sup> *Ibid*.

<sup>50</sup> Betty M Flint, *New hope for deprived children* (University of Toronto Press 1973); William Goldfarb, 'Infant rearing and problem behavior' (1943) 13 *American Journal of Orthopsychiatry* 249; Lawson G Lowrey, 'Personality distortion and early institutional care' (1940) 10 *American Journal of Orthopsychiatry* 576; Barbara Tizard, *Adoption: A second chance* (Free Press 1977).

<sup>51</sup> Lianne Fisher, Elinor W Ames, Kim Chisholm, and Lynn Savoie, 'Problems reported by parents of Romanian orphans adopted to British Columbia' (1997) 20 *International journal of behavioral development* 67.

<sup>52</sup> *Ibid*; Celia Beckett, Diana Bredenkamp, Jenny Castle, Christine Groothues, Thomas G O'connor, and Michael Rutter, 'Behavior patterns associated with institutional deprivation: a study of children adopted from Romania' (2002) 23 *Journal of Developmental and Behavioral Pediatrics* 297.

<sup>53</sup> Fisher et al. (n51).

worldwide pushed many countries to review their child care systems.<sup>54</sup> Supporting these states, UNICEF suggested the transfer from collective care to individual consideration of needs and respect of rights.<sup>55</sup> Why individual care is important is explained by attachment theory.<sup>56</sup> Children in institutions are lacking one-on-one attention so that they are unlikely to form attachments with their caregivers. That is because only one caregiver is provided for ten to twenty children depending on the age of the children.<sup>57</sup> The resulting lack of attention is linked to the problems in the child's development listed in the paragraph above. Attachment theory emphasises the importance of continuity and sensitivity to the child where the former ensure emotional security and the latter acknowledges the need of the child as an 'individual with a mind'.<sup>58</sup> According to this theory, attachment develops between 6 and 12 months in the first year of the child.<sup>59</sup> During this time depending on what relationship has developed the child constructs his or her internal working model of self.<sup>60</sup> In positive relationships, when the needs of the child are met by a caregiver, the child feels self-reliant and valued.<sup>61</sup> In contrast, in the opposite scenario when the child is often rejected, such a child feels unworthy and incompetent.<sup>62</sup> Based on this model, children build a relationship with their caregiver. The attachment figure is used by the infant as the reliable ground to explore what is around and to come back to for reassurance.<sup>63</sup> What was taken for granted from Bowlby's attachment theory is that children should not be separated from their mother (or permanent mother substitute) in order to develop healthily mentally.<sup>64</sup> Therefore, the most damaging impact of

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<sup>54</sup> Leyla Ismayilova, Fred Ssewamala, and Aytakin Huseynli, 'Reforming child institutional care in the Post-Soviet bloc: The potential role of family-based empowerment strategies' (2014) 47 *Children and Youth Services Review* 136; Legrand (n41); Abebe (n42).

<sup>55</sup> Legrand (n41).

<sup>56</sup> John Bowlby, *Attachment and loss: Vol 1. Attachment* (2nd edn, London: Hogarth Press 1982); John Bowlby, *Attachment and loss: Vol 2. Separation: anxiety and anger* (London: Hogarth Press 1973); Kim MacLean, 'The impact of institutionalization on child development' (2003) 15 *Development and psychopathology* 853; Kim Chisholm, 'A three year follow-up of attachment and indiscriminate friendliness in children adopted from Romanian orphanages' (1998) 69 *Child development* 1092; Barbara Tizard and Jill Hodges, 'The effect of early institutional rearing on the development of eight year old children' (1978) 19 *Journal of child psychology and psychiatry* 99.

<sup>57</sup> MacLean (n44).

<sup>58</sup> Elizabeth Meins, Charles Fernyhough, Rachel Wainwright, Mani Das Gupta, Emma Fradley, and Michelle Tuckey, 'Maternal mind-mindedness and attachment security as predictors of theory of mind understanding' (2002) 73 *Child development* 1715.

<sup>59</sup> Bowlby (1982, n56).

<sup>60</sup> Bowlby (1973, n56).

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Mary D Salter Ainsworth, *Infancy in Uganda: Infant care and the growth of love* (Baltimore: Johns Hopkins University Press 1967).

<sup>64</sup> Pat Petrie, Janet Boddy, Claire Cameron, Valerie Wigfall and Antonia Simon, *Working with Children in Care: European Perspectives: European Perspectives* (McGraw-Hill Education (UK) 2006) 13.



institutionalisation is for children in early years, but in reality there are children of different ages in orphanages whose development is also delayed. The lack of the right environment and attention for the child's developmental process explains such delays.

Tizard in collaboration with Rees showed that children from orphanages are unlikely to develop attachment with their caregivers.<sup>65</sup> Attachment relationships between orphans and caregivers in residential care depend on particular institutions and how residential care is provided.<sup>66</sup> However, the harsh discipline, abuse and neglect in institutions,<sup>67</sup> and the staff turnover (that does not enable the establishment of continuity in relationships),<sup>68</sup> support Tizard and Rees' argument on the unlikelihood of attachment. The positive findings of Tizard and Hodges also proved that children can become attached to adoptive parents after living in institutions.<sup>69</sup> Meanwhile, MacLean argues that in order for children from orphanages to develop secure attachment relationships, more than 'good enough' parental skills are necessary due to a number of problems that come with such children.<sup>70</sup> This includes medical, intellectual, socioemotional and physical problems.<sup>71</sup> Overall, the developmental and attachment theories make it clear that the institutionalisation of children has a damaging impact on children's development and health.

To summarize, although there are cases where the child should be removed from the family in order to secure the best interests of the child, the state must provide family support services or family-based care as alternative care. This is because a family-based setting is more advantageous for the best interests of the child and his or her development in general. Therefore, my argument is that the child must have the right to be brought up in a family. This right of the child should exist alongside the other rights, for example the right to the best possible health and the right to education.<sup>72</sup> That is because all of these rights contribute to the optimal development of the child. At the same time, since the right of the child to be brought up in a family in the UNCRC arises from other provisions of the convention and its preamble, all state members, including Kazakhstan, must comply their commitment in ensuring family-based care for children deprived of parental care

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<sup>65</sup> Tizard and Rees (n46)

<sup>66</sup> MacLean (n44).

<sup>67</sup> Ismayilova, Ssewamala, and Huseynli (n54).

<sup>68</sup> Petrie et al. (n64) 13.

<sup>69</sup> Barbara Tizard and Jill Hodges, 'The effect of early institutional rearing on the development of eight year old children' (1978) 19 *Journal of child psychology and psychiatry* 99.

<sup>70</sup> MacLean (n44).

<sup>71</sup> *Ibid.*

<sup>72</sup> The UNCRC, arts 24 and 29.

and also in prevention of family and child separation in case of poverty and social exclusion of the family.

## 2.4 The role of family and parents in children's lives

According to Article 8 of the UNCRC a child has the right to identity and nationality. LeBlanc included this right in a group of membership rights.<sup>73</sup> Indeed, due to these rights a child obtains membership of a particular family, society and culture.<sup>74</sup> According to the UNCRC, a child should not be separated from his or her parents and 'as far as possible, the right to know and be cared for by his or her parents' should be upheld.<sup>75</sup> Parents are the primary persons in children's lives as those who are responsible for bringing the children into the world and are most likely to be interested in the welfare of their children.<sup>76</sup> In this section, I summarise the discussion on what constitutes the best interests of the child through the prism of the role of the family in the child's development and also the right of the child to be heard in a paternalistic society. Therefore, the aim of this section is to consider what family is and what paternalism is in a child-parent relationship. This discussion is important for this research in order to determine why family environment matters in children's lives.

### 2.4.1 Family

According to the Universal Declaration of Human Rights, 1948, 'the family is the natural and fundamental group unit in society'.<sup>77</sup> In addition to this, the Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children States that 'the first priority for the child is to be cared for by his or her own parents'.<sup>78</sup>

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<sup>73</sup> LeBlanc (n30) 102.

<sup>74</sup> Cecilia P Grosman, 'Argentina-Children's Rights in Family Relationships the Gulf Between Law and Social Reality' in Michael Freeman and Stephen J Toope (eds), *Children's rights: A comparative perspective* (Dartmouth Publishing Company 1996).

<sup>75</sup> The UNCRC, arts 7 and 9.

<sup>76</sup> Gerald Dworkin, 'Consent, representation and proxy consent' in Willard Gaylin and Ruth Mackin (eds) *Who speaks for the child: The problems of proxy consent* (New-York: Plenum Press 1982).

<sup>77</sup> The Universal Declaration of Human Rights, 1948, Art 16. The United Nations, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations.

<sup>78</sup> The United Nations Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally (adopted at the 95th plenary meeting on 3 December 1986) UN Doc. A/RES/41/85, art 3.

Research in Kazakhstan and the UK demonstrates the acknowledgment by children that family or parents, especially mothers, are very important for them.<sup>79</sup> The primary role and responsibility of parents in providing care to their child is also reflected in the legislation of both countries.<sup>80</sup> In spite of changes in the notion of family in contemporary society, for example, in Britain, family nevertheless remains highly important for most people.<sup>81</sup> The significance of family membership in Kazakhstan is explained by the cultural and social structure of the Kazakh society.<sup>82</sup> Archard explains that children should grow up within a family because they cannot grow up simply on their own and because their physical and psychological health depends on their access to such care.<sup>83</sup> Thus, the fact that family plays a crucial role in the best interests of the child is acknowledged by international treaties, psychological theories such as Bowlby's attachment theory, and children themselves.

Amongst all the members of a family, including parents, siblings, children, grandparents etc., it is mainly parents who have the primary relationship with their children, and the primary responsibility to care for them.<sup>84</sup> In recent decades, the notion of parenthood is undergoing changes alongside the notion of family itself in the light of the increasing number of divorces, same-sex families, and different ways of conceiving and giving birth to a child.<sup>85</sup> In this generation, there are different notions of the parent – legal, social, and genetic.<sup>86</sup> Therefore, the definition of the parent in the present day is becoming broader and more complex.<sup>87</sup> But, what matters for the best interests of the child is 'day-to-day

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<sup>79</sup> Virginia Morrow, 'Children, young people and their families in the UK' in Heather Montgomery and Mary Kellett (eds) *Children and young people's worlds: developing frameworks for integrated practice*. (Policy Press 2009); Ministry of Education and Science of the Republic of Kazakhstan Committee for the Protection of Rights Children, SANGE Research Center, Zh C Dzhandosova, A E Sharipbaeva, T V Kudashova, N Yu Baitugelova, Sh K Smagulova, F S Dzhandosova, Z E Baitugelova, E A Kolmogorova, K M Sharipbaeva, A T Zhappar, S Sh Serikbaeva, and A A Isagalieva, *Report on the situation of children in the Republic of Kazakhstan in 2016* (Ministry of Education and Science of Republic of Kazakhstan 2016).

<sup>80</sup> See Chapter 4 and 5 for further discussion.

<sup>81</sup> Simon Duncan and Miranda Phillips, 'New families? Tradition and change in partnering and relationships' in Alison Park, John Curtice, Katarina Thomson, Lindsey Jarvis, Catherine Bromley, and Nina Stratford (eds) *British Social Attitudes: the 24th Report* (London: SAGE 2008).

<sup>82</sup> See Chapter 3 Section 3.2 below.

<sup>83</sup> David W Archard, *Children, family and the state* (Achgate Publishing Limited 2003) 73.

<sup>84</sup> The UNCRC, art 18.

<sup>85</sup> Andrew Bainham, 'Parentage, parenthood and parental responsibility: subtle, elusive yet important distinctions' in Andrew Bainham, Shelley Day Sclater and Martin Richards (eds) *What is a Parent: A Socio-Legal Analysis* (Hart Publishing 1999); Andrew Bainham, 'Who or What Is a Parent?' (2007) 66 *The Cambridge Law Journal* 30.

<sup>86</sup> *Ibid.*

<sup>87</sup> The UNCRC does not define what is the parent, see Bonnie Steinbock, 'Defining parenthood' (2006) 13 *Children's Health and Children's Rights Children's Health And Children's Rights* 311.

interaction, companionship and shared experience' or 'psychological parenthood' because children do not have psychological comprehension of blood bonds.<sup>88</sup> An approach which places the child's needs above the interests of the adult should be applied when evaluating a specific child-adult relationship, in order to ensure the best interests of the child.<sup>89</sup> Such an approach should be considered as the central criterion in the decision-making process to promote the best interests of children in care, although the social and legal status of an adult might overweigh it.<sup>90</sup> Currently, cases where the biological parents want to take back their child from the adopted parents, even when there is already a strong emotional attachment between the child and the adoptive parents, in Kazakhstan present considerable difficulties for the court and social caseworkers.<sup>91</sup> In regards to such cases, the principle of the best interests of the child should be applied because the role of a parent can be fulfilled by biological or adoptive parents or other caregivers, but never by absent or inactive adults.<sup>92</sup>

The main role of parenting, as Eekelaar highlights is 'to mediate between the developing personality and the social world'.<sup>93</sup> In terms of the rights and interests of parents or guardians, firstly, they have the basic rights and interests as a human and secondly, representative rights regarding their children. At the same time, we should distinguish between the variety of situations that violate a child's interests and rights. From a legal perspective, in some cases priority can be attributed to the parent's right, for example the right to decide where to live may override the interest of the child's preference concerning where to study and *vice versa*.<sup>94</sup> In some cases, parents may abandon their duties toward their child, such as care, nurture, or in the worst scenario, even harm their children.<sup>95</sup> In the former, there are ways to address the issue through statutory services, whereas the latter cases require criminal investigation.

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<sup>88</sup> Joseph Goldstein, Albert J Solnit, Sonja Goldstein, and Anna Freud, *The best interests of the child: The least detrimental alternative* (Simon and Schuster 1996) 19.

<sup>89</sup> Steinbock (n87).

<sup>90</sup> Ibid.

<sup>91</sup> Ainash Ondiris, 'The City Court of Almaty made a decision in the case of the Almaty woman, who defends her adoptive son', news, 28 February 2017, <[https://tengrinews.kz/kazakhstan\\_news/gorsud-almaty-vyines-reshenie-delu-almatinki-kotoraya-313202/](https://tengrinews.kz/kazakhstan_news/gorsud-almaty-vyines-reshenie-delu-almatinki-kotoraya-313202/)> accepted 5 March 2017.

<sup>92</sup> Jane Aldgate and David Jones, 'The place of attachment in children's development' in Jane Aldgate (ed) *The Developing World of the Child* (Jessica Kingsley 2006).

<sup>93</sup> Eekelaar (n9) 52.

<sup>94</sup> See Kelly (n14). Kelly argues that there is no universal consensus and criteria regarding the best interests standard, which explains the inconsistent practice in court, among lawyers and those who are involved in custody disputes.

<sup>95</sup> Fortin (n5) 550.

To conclude, this brief discussion refers to the social nature of family and parents as the natural environment for a child's life that contribute to his or her development. In contrast, children in institutions are lacking the right environment in which to grow up and thrive. Thus, based on the discussion above on the significance of the family and overall theoretical framework, in the chapters which follow I attempt to demonstrate what exactly in the law and practice in Kazakhstan does not correspond with the best interests of the child.<sup>96</sup>

#### 2.4.2 Paternalism

The concept of paternalism is discussed in this thesis in the context of the process of decision-making related to children and their rights.<sup>97</sup> In particular, it is defined here as the power exercised by parents or other caregivers over their children. Paternalism is inevitably associated with children's rights due to the incapacity of younger children, in particular, to decide what is best for their development.<sup>98</sup> Such acknowledgement is represented in law by the entitlement of the parents or guardians to make decisions on behalf of a child.<sup>99</sup> Taking these parents or guardians' rights into consideration requires us to consider the will and the interest theories of children's rights.<sup>100</sup> Such empowering of the parents or guardians is explained in the former as 'relevant power and choices that can be exercised on behalf of a child through others possessed of required capacities – parents, guardians, tutors, curators and the like'.<sup>101</sup> In some literature, the exercising of children's rights on their behalf by parents or guardians in both the UK and Kazakhstan is called the representational mechanism, which aims to protect children's interests and rights.<sup>102</sup> In fact, practice shows that although such a mechanism works in many families, there are situations when the interests of family members might override the child's

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<sup>96</sup> See Chapters 4 and 6 below.

<sup>97</sup> Fortin (n5); Eekelaar (n9). This thesis acknowledges the existence of feminist perspectives on paternalism, oppression and patriarchy that have relevance for both children and women. However, for the sake of this research, the discussion on paternalism is limited to the family interests of the child in care and the child's right to be brought up in the family.

<sup>98</sup> Fortin (n5) 19-20.

<sup>99</sup> The UNCRC, art 18.

<sup>100</sup> Hart (n8); MacCormick (1977, n8); MacCormick (1982, n8).

<sup>101</sup> Ibid, see also Ross (n8).

<sup>102</sup> Ibid.

interests.<sup>103</sup> Children's liberationists consider parents as 'the chief oppressors'<sup>104</sup> and family as 'the place where, at best, parents might exploit their children and treat (them) as a mixture of expensive nuisance, slave and ideal Cute Child; at worst, a place where parents could abuse their children in private'.<sup>105</sup> Such cases raise the question as to whether family is a private or public issue and to what extent the state may control and protect family members from such abuse or domestic violence. However, in order to be heard, the child needs to be listened to and to have the space and opportunity to express his or her views.<sup>106</sup> Historically and culturally, from state to state children and women are differently empowered in regard to expressing their view and wishes.<sup>107</sup> Children deprived of parental care belong to one of the most marginalised and vulnerable groups and as the research indicates they are often not listened to and are often powerless in the face of adults who think that they know better what is the best for the child.<sup>108</sup>

Within the family, the nature of the relationships depends on the balance of the interests and rights of each member of the family. The paternalist approach to the child diminishes the role of the child in society and in the family, and allows adults' views to dominate in terms of the decision making process.<sup>109</sup> Jane Fortin has argued that in contemporary UK society children are generally excluded from an adult's life and adults do not have to take children seriously.<sup>110</sup> As a result, the younger generation wants to avoid responsibility not just in the family context, but in society more generally.<sup>111</sup> Fortin and Eekelaar insist on the great value of involving children in different stages of their development process from childhood and towards the reality of adult life.<sup>112</sup> Current research supports this approach and emphasises the importance of developing the skills of self-responsibility and self-

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<sup>103</sup> Clem Henricson and Andrew Bainham, *The child and family policy divide: Tensions, convergence and rights* (Joseph Rowntree Foundation 2005) 2-4, 11.

<sup>104</sup> Herbert Baron Laming, *The protection of children in England: A progress report*, vol 330 (The Stationery Office 2009).

<sup>105</sup> John Caldwell Holt, *Escape from childhood* (EP Dutton New York 1974) 126.

<sup>106</sup> Laura Lundy, 'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33 British educational research journal 927

<sup>107</sup> Mary Kellett, 'Children and young people's voice' in Heather Montgomery and Mary Kellett (eds) *Children and young people's worlds: developing frameworks for integrated practice* (Policy Press 2009).

<sup>108</sup> See Hanne Warming, "How Can You Know? You're Not a Foster Child": Dilemmas and Possibilities of Giving Voice to Children in Foster Care' (2006) 16 Children Youth and Environments 28; Robin N Haar, *Violence against children in residential institutions in Kazakhstan: assessment of the situation* (UNICEF 2011).

<sup>109</sup> Fortin (n5) 22-23.

<sup>110</sup> Ibid 743.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid; Eekelaar (n9).

protection in a child.<sup>113</sup> The level of awareness of the child's rights to make a decision and to be heard is beneficial not only for the child, but for any parent who is interested in the successful future of their child. Children's liberationists argue against a paternalistic approach saying that there should be room for development of the child's autonomy, especially for mature adolescents, in order to foster the development of their decision-making skills and the skill of taking responsibility.<sup>114</sup>

The right of the child to be heard, declared in Article 12 of the UNCRC, requires from the states' parties that the child should be given the opportunity to express freely their views in regards to any proceedings related to them. This includes situations when the child can form such views, but is as yet unable to report them.<sup>115</sup> In addition, these views should be given 'due weight'.<sup>116</sup> The General Comment No. 7 of the Committee on the Rights of the Child emphasises that in order to ensure the participation of the child in the decision-making process, the state parties should take all appropriate measures.<sup>117</sup> This includes a child-centred approach whereby young children are treated as 'an active member of families, communities and societies with their own concerns, interests and points of view'.<sup>118</sup> In other words, the autonomy of the child and the right of the child to be heard means the right to be listened to, that dignity is respected as well as the individual's point of view.

There are several examples in the UK of initiatives that promote children's voices, such as the UK Youth Parliament and The Children Research Centre.<sup>119</sup> In Kazakhstan, similar aims inspired the occasion when children established the Youth Government at School.<sup>120</sup> But, with regard to vulnerable children, more human and financial resources are needed to provide them with the opportunity to make their voices heard and express their opinion because of significant developmental delays in physical growth, intellectual delays (mental delays, delays in cognitive functioning).<sup>121</sup> This includes for example, the

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<sup>113</sup> Ibid; Eekelaar (n9).

<sup>114</sup> Eekelaar (n9); Fortin (n5) 26.

<sup>115</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Manual on Human Rights Reporting Under Six Major International Human Rights Instruments* (UN Office of the High Commissioner for Human Rights (OHCHR) 1997) 426.

<sup>116</sup> The UNCRC, art 12.

<sup>117</sup> United Nations Committee on the Rights of the Child, 'General Comments No. 7' (20 September 2006) CRC/C/GC/7/Rev.1, para. 14.

<sup>118</sup> Ibid, para. 5.

<sup>119</sup> Kellett (n107).

<sup>120</sup> Ministry of Education and Science of the Republic of Kazakhstan Committee for the Protection of Rights Children, SANGE Research Center, Zh C Dzhandosova et al. (n79).

<sup>121</sup> MacLean (n44); Ismayilova, Ssewamala and Huseynli (n54); Legrand (n41).

provision of trained personnel who are able to listen rather than disempower children with their status. According to my research, I might suggest that listening to children at school or in hospital might also help to prevent the separation of children from their families as problems might be identified at an early stage. However, this raises the issue of the role of institutions, rather than families, for children and this will be considered in the next section.

Paternalism within the family is justified when it has positive intentions such as protecting children from ‘foolish, self- destructive choices’.<sup>122</sup> Eekelaar’s concept of ‘dynamic self-determinism’ is justified too since it takes into account the opinion of a legally competent child in the process of decision making when it concerns that particular child.<sup>123</sup> Fortin justifies from a moral perspective the adult view of the long-term well-being of the child against a child’s short-term desires.<sup>124</sup> The ideas discussed above have a particular relevance when claiming that family plays a crucial role in a child’s life and a ‘positive paternalism’ is justified for child development. Children need families and the exclusive or consistent care of committed adults.<sup>125</sup> In fact, there are no such adults in children’s institutions, namely children are not looked after consistently by one adult and there is no one-to-one care provided because children live in groups and receive care as part of the group.<sup>126</sup> Consequently, residential care can be a cause of harm to the child’s development process.<sup>127</sup> Therefore, in circumstances where there are no parents or when the child needs protection from abusive parents, the state needs to consider other options for the care and upbringing of vulnerable children deprived of their parents. At the same time, in spite of critiques of paternalism in regards to children that are discussed in this section, family-based care as the better environment for child development and the child’s best interests, should be provided by the state for the child deprived of parental care.

## 2.5 The role of the state

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<sup>122</sup> Fortin (n5) 28.

<sup>123</sup> Eekelaar (n9).

<sup>124</sup> Fortin (n5) 29.

<sup>125</sup> Archard (n83) 72.

<sup>126</sup> Ismayilova, Ssewamala and Huseynli (n54); MacLean (n44).

<sup>127</sup> Ibid; Mary O Hearst, John H Himes, Spoon Foundation, Dana E Johnson, Maria Kroupina, Aigul Syzdykova, Musa Aidjanov, and T Sharmonov, ‘Growth, nutritional, and developmental status of young children living in orphanages in Kazakhstan’ (2014) 35 *Infant mental health journal* 94.



According to Article 4 of the UNCRC the role of the state is to help children by upholding the rights to which they are entitled. Children can enjoy such rights fully when the state's attempts are genuine and/or successful and reflect child policy and social ideology.<sup>128</sup> The UNCRC relies heavily on the state's engagement with regard to children's welfare, the acknowledgement of children's rights and the status of the child in society. Children's rights should be taken seriously and the state plays the main role in fostering such an attitude.<sup>129</sup> The acknowledgement of the status of the child in social policy and legal guidance for the adults involved in adult-child relationships might contribute to the improvement of children's lives and attitudes towards children. Freeman called it 'part of the social revolution'.<sup>130</sup> The scholars argue that the lack of relevant services and resources undermine children's rights.<sup>131</sup> Without services and resources, children's rights only exist on paper while in reality children's interests are subservient to the interests of the agencies and the state. The lack of adequate resources to implement children's rights is a common theme in documents provided by the UN Committee on the rights of the child.<sup>132</sup>

A rights-based approach to child protection measures in individual state draws upon the UNCRC, which imposes obligations on states to promote children's rights.<sup>133</sup> Hence, the majority of UNCRC member states have provided education, healthcare, and criminal law for the protection of children, and services for children without parental care.<sup>134</sup> Even though each of the afore-mentioned state activities deserves to be considered, the current research focuses on the role and duties of the state in terms of its intervention in specific family circumstances – occasions where children may need to be separated from their families or where there is no one in the extended family who can provide care. In this context the state should act in accordance with the best interests principle (Article 3, UNCRC) in fulfilling the right to know and be cared for by his or her parents (Article 7,

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<sup>128</sup> Freeman (n28); Fortin (n5) 3.

<sup>129</sup> Ibid.

<sup>130</sup> Freeman (1998) (n7) 435.

<sup>131</sup> Ibid; O'Neill (n6).

<sup>132</sup> United Nations Committee on the rights of the Child, 'General Comment No.5' (27 November 2003) UNCRC/GC/2003/5, paras 6-8; United Nations Committee on the rights of the Child, 'Concluding observations on the fourth periodic report of Kazakhstan' (30 October 2015) UNCRC/C/KAZ/CO/4, paras 11-13.

<sup>133</sup> The UNCRC, art 4.

<sup>134</sup> See comparative studies on children rights across the world: Michael Freeman and Stephen J Toope (eds), *Children's rights: A comparative perspective* (Dartmouth Publishing Company 1996); Penelope Welbourne and John Dixon (eds), *Child Protection and Child Welfare: A Global Appraisal of Cultures, Policy and Practice* (Jessica Kingsley Publishers 2013).

UNCRC) the right of the child not to be separated from the parents (Article 9, UNCRC), the child's right to protection from all forms of violence (Article 19, UNCRC) and the right to special protection and assistance from the state such as alternative care (Article 20, UNCRC). Closer reading of these articles highlights the role of the state in taking appropriate measures to protect, to assist, to meet the child's needs and to ensure the child's rights. In Article 20 as well as in Article 4 of the Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, the options for alternative care are shown in a hierarchy starting from family-based care, provided by relatives or a substitute family, and indicating that institutional care is only a last resort where other preferred options cannot be provided.<sup>135</sup> In fact, Kazakhstan, like the other post-Soviet states, operates a reverse hierarchy in which children are placed, as a first resort, in institutions as other formal options have not yet been developed.<sup>136</sup> The deinstitutionalisation of children in post-Soviet states, as Cantwell suggests, depends on the political will and or pressure from international institutions such as UNICEF or OHCHR.<sup>137</sup>

In the context of the theme of this thesis the state has another role in addition to the provision of alternative care structures and procedures. The state also has to ensure that children are protected from harm.<sup>138</sup> The United Nations Committee on the Rights of the Child has emphasised that, 'for rights to have meaning, effective remedies must be available to redress violations'.<sup>139</sup> Although the majority of parents bring up their children with love and care, there are a significant number of children's deaths due to parental abuse or neglect in both the UK<sup>140</sup> and Kazakhstan.<sup>141</sup> Dependency and vulnerability are two characteristics, which are intrinsic in women and children.<sup>142</sup> Some feminists contend

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<sup>135</sup> The United Nations Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally (adopted at the 95th plenary meeting on 3 December 1986) UN Doc. A/RES/41/85, arts 4 and 20.

<sup>136</sup> Nigel Cantwell, 'The human rights of children in the context of formal alternative care' in Wouter Vandenhoe, Ellen Desmet, Didier Reynaert, Sara Lembrechts (eds), *Routledge international handbook of children's rights studies* (Routledge 2015); Legrand (n41); see also Chapter 4.

<sup>137</sup> Ibid.

<sup>138</sup> The UNCRC, art 19; Fortin (n5) 550.

<sup>139</sup> United Nations Committee on the Rights of the Child, 'General measures of implementation' (3 October 2003), UN Doc UNCRC/GC/2003/5.

<sup>140</sup> Lisa Harker, Sonja Jütte, Tom Murphy, Holly Bentley, Pam Miller and Kate Fitch, *How Safe Are Our Children?* (London: NSPCC 2013).

<sup>141</sup> Manas K Akmatov, 'Child abuse in 28 developing and transitional countries—results from the Multiple Indicator Cluster Surveys' (2010) 40 *International Journal of epidemiology* 219.

<sup>142</sup> Hilary Lim and Jeremy Roche, 'Feminism and Children's Rights' in Jo Bridgeman and Daniel Bertrand Monk (eds) *Feminist Perspectives on Child Law* (London: Cavendish 2000).

that due to children's rights, the concept of family privacy has been undermined.<sup>143</sup> The family privacy approach prompted disputes surrounding the level of state intervention in family issues. While the intention of the state is to support the family and to assist them in difficult life circumstances, such interventions should be appropriate in terms of child protection and the justification for it, where there is possible disagreement between the state and parents (family).<sup>144</sup> This seems a weak part of the state-parent relationship because of the lack of agreed criteria for state intervention, even in English law.<sup>145</sup> It may be appropriate to refer to Freeman and his suggestion of co-operation between lawyers and scholars from other relevant sciences (politics, sociology, psychology), in order to improve children's lives.<sup>146</sup> Social workers should have more precise criteria for family intervention and from what it is that children need to be protected.

According to the contemporary law of both Kazakhstan and England, it is notable that neither state will intervene in families or parent-child relationships unless there is a need to protect the child,<sup>147</sup> or the parental relationship has broken down. Archard calls this approach 'the relationship between the liberal state and the family'.<sup>148</sup> Therefore, the majority of States rely on parental care as a moral duty and tend to intervene in family life only in the case of parental consent or where there is a legal basis allowing States to intervene in family life in order to protect the interests of the child.<sup>149</sup> In other words, the state leaves the family in privacy as long as there is no need to intervene to protect a child's life, health, dignity or development. However, the UNCRC is criticised for not providing clear guidance for practitioners whose role involves deciding whether or not to intervene.<sup>150</sup> Fortin argues that it is not easy to find a proper balance between excessive state interference in the family and failure to prevent child abuse or even death.<sup>151</sup> However, drawing on the entire discussion of this chapter it might be concluded that although State intervention in the family is a complicated sphere of family law, the right balance might be found by applying the concept of the best interests of the child taking the child as the primary consideration. Therefore, any activity of the state should be focused on family support in order to prevent separation of the child from his or her

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<sup>143</sup> Ibid.

<sup>144</sup> Fortin (n5) 555.

<sup>145</sup> Ibid 557.

<sup>146</sup> Freeman (n7).

<sup>147</sup> LRCRK, arts 23, 24, 44; the CA 1989, art 31.

<sup>148</sup> Archard (n83) 124-125.

<sup>149</sup> Ibid 117-125.

<sup>150</sup> Kelly (n14).

<sup>151</sup> Fortin (n5) 591.

family. In other words, the state's role is 'to assist the parents in fulfilling their responsibilities' and only in the case of parents who for any reason cannot do so should the state step in to ensure the rights and needs of the child.<sup>152</sup>

## 2.6 Conclusion

The rights-based approach taken in this research is appropriate because children have rights according to the UNCRC and other domestic law in both Kazakhstan and England. Although the UNCRC is criticised for being soft law, broad and not precise, the UNCRC established the legal framework governing child-adult relationships and the duties of the state and parents towards children, including protection of the child's rights and promotion of the child's interests and their healthy development.

This chapter provides evidence of the significance of a family environment for the child's best interests, namely his or her developmental process. The discussion covered the child's right not to be separated from the family unless such separation is in his or her best interests, the child's right to protection against all forms of violence, and the child's right to special protection and assistance related to alternative care. However, as the analysis shows the acknowledgement of the child's need for a family and the declaration of relevant rights are not enough. From state to state and from culture to culture, the understanding and implementation of children's rights and the child's best interest varies. This happens in spite of the UNCRC that establish the unified approach in regards to children's rights.

Each section of this chapter demonstrates variations in the interpretation of the theory in practice. Freeman explains the differences in the social construction of social phenomenon and the need for inter-disciplinary research in order to improve the child's life.<sup>153</sup> The problem with the institutionalisation of children deprived of parental care in the post-Soviet region is widespread because of the same inherited practices, which considered the institutionalisation of children as normal.<sup>154</sup> However, the treatment of children who could not be looked after by their parents in pre-Soviet Kazakhstan was different. In accordance with customary law, the child remained within the extended family and had the right to change the guardian at a particular age if he or she was not

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<sup>152</sup> Hodgkin and Newell (n10) 231.

<sup>153</sup> Freeman (n7).

<sup>154</sup> Cantwell (n136); Legrand (n41).

satisfied with the care provided.<sup>155</sup> It could therefore be argued that the understanding of the child's best interests and the acknowledgement of the capacity of more mature children were better in the nomadic Kazakh society than under the Soviet regime. Further discussion of this issue is provided in the next chapter that covers the historical and cultural background of Kazakhstan and the relevant practices related to the treatment of children and family in the pre-Soviet times, during the Soviet Union era and in post-Soviet Kazakhstan.<sup>156</sup>

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<sup>155</sup> See Chapter 3 below for the evidence.

## Chapter 3

### Family and children in Kazakhstan. Historical and cultural background of family and children treatment in Kazakhstan

#### 3.1 Introduction

This chapter aims to address partially two research sub-questions. It particularly discusses the reasons why institutionalisation became the main solution in Kazakhstan for the accommodation of children deprived of parental care, and the impact of the historical background of Kazakhstan on contemporary legislation and practice in the realm of child care. This chapter examines the history and culture of Kazakh people in the context of family and the treatment of children from two centuries ago up to the present day. The reason for selecting this timeframe is that it embraces pre-Soviet, Soviet and post-Soviet periods when Kazakh society suffered significant political, economic, social and cultural changes. The study of the history and culture of Kazakh people demonstrates the transformation of family culture in Kazakhstan over the course of these three periods.<sup>1</sup> I also explore the potential of kinship relationships for family-based care of children in present day Kazakhstan and whether or not there is a lesson to be learned from history about the way in which better care might be provided for children without parental care. My focus on Kazakh culture (in spite of the multi-ethnicity of present day Kazakhstan) is explained by the fact that Kazakh culture is the dominant one in the current Kazakhstan and Kazakhs are the biggest grouping in contemporary Kazakhstani society, though it was not the same during the Soviet time.<sup>2</sup> After the collapse of the Soviet Union, the restoration of Kazakh culture happened alongside the policy of nationalisation.<sup>3</sup> Therefore, in my research, I focus on Kazakh culture, namely the family and the treatment of children.

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<sup>1</sup> Manish Jha, 'Ethnicity and nation building in post-Soviet Kazakhstan' (2003) 7 *Himalayan and Central Asian Studies* 25.

<sup>2</sup> Sholpan Zharkynbekova, Aliya Aimoldina, and Damira Akynova, 'Cultural and language self-identification of ethnic minority groups in Kazakhstan' (2015) 9 *Sociolinguistic Studies* 289; Juldiz Smagulova, 'Language policies of Kazakhization and their influence on language attitudes and use' (2008) 11 *The International Journal of Bilingual Education and Bilingualism* 440; G Zh Kukanova, *Dissemination of data based on the results of the National Population Census of the Republic of Kazakhstan 2009* (The Statistics Agency of the Republic of Kazakhstan 2012) 14. Kazakh people constitute of 63.1% (2009) of the total population of Kazakhstan. In contrast, the number of Kazakhs in the Soviet period was nearly 30% of the total population of Kazakhstan, where 'Kazakh-speakers found themselves dominated politically, economically, and culturally, and threatened demographically'.

<sup>3</sup> Jha (n1); Smagulova (n2).

The pre-Soviet Kazakh family was patrilineal and extended in the context of the nomadic Kazakh clans. Family structure that drew upon the clan system inevitably demonstrated the economic routine of people who inhabited the Kazakh steppe. The way these families lived was regulated mostly by traditions, the customary law *Adat* and partly by *Sharia* (Muslim law), and so the first section of this chapter examines the legal framework of family construction and the treatment of children characteristic of the nomadic way of life. Being nomads, the Kazakh people did not leave written evidence of their history and even their law was oral. Therefore, analysis of this period is drawn mostly from data that were provided by Russian travellers of the eighteenth and nineteenth centuries and the somewhat rare literature about Kazakh family law. Thus, it is worth noting that there is a chronic lack of sources on family law in the earlier periods of Kazakhstan so that there is occasionally the need for the use of inference.

Changes that happened in family relations in Kazakhstan during the Soviet period are analysed in the next section. These encompass the shift from the extended family to the nuclear family, gender equality in Soviet society and the process towards the institutionalisation of children. Such social changes were driven by the economic interest of the Communist party in the Kazakhstani region.<sup>4</sup> Rapid industrialisation required labour sources, including women, so that there was considerable state intervention into Kazakh families. Any national differentiation such as traditions, culture or language were banned. Demographic changes in the ethnic composition of regions, the illiteracy of the majority of Kazakhs, and the loss of prestige of being Kazakh can all be linked to the Soviet ideology of the construction of the ‘Soviet man’. Kazakh people suffered for being Kazakh at the hands of Russian-speaking nations who ‘define indigenous Kazakh as archaic, inferior, and incapable of modern nationhood and self-governance’.<sup>5</sup> Because of the social and economic policy of the Communist party in the region, Kazakh people found themselves in the minority unlike any other titular nations of the Soviet Union states.<sup>6</sup> A well-trained Slav workforce was sent to the Kazakh territory to develop agriculture and the mining of coal and the extraction of oil.<sup>7</sup>

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<sup>4</sup> Dilip Hiro, *Inside Central Asia: A Political and Cultural History of Uzbekistan, Turkmenistan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkey, and Iran* (Gerald Duckworth & Co 2009) 234-237.

<sup>5</sup> Saulesh Yessenova, “‘Routes and roots’ of Kazakh identity: Urban migration in postsocialist Kazakhstan’ (2005) 64 *The Russian Review* 661; Zharkynbekova, Aimoldina, and Akynova (n2).

<sup>6</sup> See Section 3.3 below; see also Zharkynbekova, Aimoldina, and Akynova (n2); Jha (n1).

<sup>7</sup> Hiro (n4) 234-238.

The concluding section is devoted to the discussion on family and children in contemporary Kazakhstan, including the family policy of independent Kazakhstan, and the role of the preserved traditions of the Kazakh family and the treatment of women and children in contemporary Kazakh society. It shows the connection between traditional and religious specifics of the Kazakh family and historical, political, social and economic changes. However, the main contribution of comparative analysis of the three different periods of the Kazakh family is to reveal the premise of the contemporary family policy of the Republic of Kazakhstan towards strengthening the family and the deinstitutionalisation of children. Historically Kazakh society is based on tribal structure and unwritten customs. In contemporary Kazakhstan a similar approach is being pursued in regard to family and children in spite of the rigid regime of Soviet Union ideology of no differentiation between cultures and nations.

This chapter takes the reader throughout three different time periods in Kazakhstan to inform the reader of the background to the research problem that will be discussed in detail in the following chapter 4. Overall, this chapter demonstrates that the approach to the research problem offers Kazakhstani policy makers an opportunity to assess the positive and negative aspects of strategies aimed at promoting the best interests of the child deprived of parental care. At the same time, this chapter informs this research and the reader, and contributes to the construction of a fuller picture of the research problem.

### 3.2 The Pre-Soviet traditional Kazakh family structure and the treatment of children

This section as the title indicates, discusses how Kazakhstan society operated when Kazakh people lived as nomads and how in this society the issue of children deprived of parental care was addressed. First of all, it is important to know how the society and family structure were organized and then specifically how children were treated in such a society. This section shows that Kazakh people practiced family-based care before institutions for children appeared in the Kazakh steppe. Therefore, there was a time when every child was provided with a family environment when his or her parent could not provide care or died. How this was regulated and what the environment contributed to such practice is revealed in this section.



### 3.2.1 Family structure in nomadic society

The family relationships of a nomadic society were embedded into the entire social structure of Kazakh nations as a tribal society. The formation of Kazakh nations and territory was completed from the fifteenth to the sixteenth centuries based on tribal associations, *zhuz*, who inhabited the general Kazakh territory.<sup>8</sup> The formation of *zhuz* occurred in part due to the way the Kazakh people lived, mainly as nomads, and the territory they occupied in the past, mainly Mongolian *uluses* (Mongolian states) so that Kazakh tribes were divided into three *zhuzes*: *Ulu Zhuz* (Great Horde, South of Kazakhstan), *Orta Zhuz* (Middle Horde, North and East of Kazakhstan) and *Kishi Zhuz* (Small Horde, West of Kazakhstan).<sup>9</sup> Kazakh people kept a variety of livestock including horses, sheep and cattle and hence there was nomadic pastoralism in the Kazakh steppes as the dominant production system, which remained until the Socialist period.<sup>10</sup> The family and social structure was based upon the nomadic –pastoralist society and systems of clans.<sup>11</sup> This social organisation remained unchanged until Russian imperial interventions in the nineteenth century.<sup>12</sup> Marx differentiated between the Asian way of production and the feudal<sup>13</sup> and bourgeois, alluding to it as the Eastern countries' way of social and economic development.<sup>14</sup> The nuclear family with its private property was a part of an extended family that occupied land for winter pastures, while several extended families related by kin represented a clan and shared land (not always amicably) with other clans or tribes for the summer pastures.<sup>15</sup> The physical location of several

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<sup>8</sup> Lawrence Krader, *Social Organization of the Mongol-Turkic Pastoral Nomads* (The Hague: Mouton 1963) 189-209; Janna Khagai, 'The Role of Clans in Post-Independence State-Building in Central Asia' (ECPR Joint Sessions of Workshops, Uppsala, April, 2004); Gani Aldashev and Catherine Guirking, 'Colonization and Changing Social Structure: Kazakhstan 1896-1910' (2016) ECARES Working Papers; see also Sanzhar D Asfendiyarov, *Istoriya Kazakhstana* (The History of Kazakhstan) (Alma-Ata 1993) 80-81.

<sup>9</sup> Krader (n8) 191.

<sup>10</sup> Gani Aldashev and Catherine Guirking, 'Colonization and Changing Social Structure: Kazakhstan 1896-1910' (2016) ECARES Working Papers 10/2016, <[https://dipot.ulb.ac.be/dspace/bitstream/2013/2281 ... GER-colonization.pdf](https://dipot.ulb.ac.be/dspace/bitstream/2013/2281...GER-colonization.pdf)> accessed 4 November 2017.

<sup>11</sup> Ibid.

<sup>12</sup> See subection 3.4.1. for the evidence and further discussion.

<sup>13</sup> Ibid. Nomadic life and nomadic pastoralism remained in Kazakhstan until formation of the Soviet Union when the livestock and land was taken from Kazakh people in the light of collectivization; socialism and anti-bourgeois.

<sup>14</sup> Zharkynbekova, Aimoldina, and Akynova (n2).

<sup>15</sup> Lev F Balluzek, 'Kazakh Customary Law' in S Yushkov (ed), *Collection of materials of Kazakh Customary law* (Publishing house of Academy of Sciences Kazakh SSR 1948); Ivan A Kozlov, 'Customary Law of Kyrkyz' (some Russian travellers called Kazakh as Kyrgyz) in S Yushkov (ed), *Collection of materials of Kazakh Customary law* (Publishing house of Academy of Sciences Kazakh SSR 1948). Land

households and extended families was called an ‘*aul*’ (village), that, together with other clans, constituted the ‘*ru*’ (Kazakh tribe).<sup>16</sup> Access to the land was based on economic and historical ties between tribes, in particular, several extended families had closed access to the pastures in winter, while several clans of one ‘*ru*’ (tribe) had open access to the land on summer pastures.<sup>17</sup> The family identity was based on the bloodline of the father, as was the clan identity.<sup>18</sup> This structure of society that interrelated with the land occupation and nomadic pastoralism remained until the nineteenth century when the Russian emperors changed its policy in regards to Kazakhstan and gradually took the land from the Kazakh.<sup>19</sup> The Russian scholar Fucs states that it is possible to describe the development of the Kazakh family in the eighteenth and nineteenth centuries as the evolution of a patriarchal Slavic type of family similar to the Roman patriarchal family and then from the Roman patriarchal family to the individual family.<sup>20</sup> The power of father and husband over members of the family was close to despotic and the way of the managing property was similar to that of a Roman patriarchal family without any of the democracy that existed in a Slavic type of family.<sup>21</sup> Families tended to be large in number, with up to twenty members in one household, which provided a large workforce and a source of income through the marriage of daughters, selling sons to work or even selling children as slaves in years of famine.<sup>22</sup> According to Fucs, women and children were treated as part of family property and this was justified by the tradition and law of the nation at the time.<sup>23</sup> The Fucs’ perspective on Kazakh family and society structure was taken from economic and property perspectives while it embraced more than that.<sup>24</sup> Every family was a part of a tribal unit that was linked to the particular *zhuz*, three (*Ulu Zhuz*

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rights of Kazakhs according to Kazakh Customary law were not strictly defined. According to the remaining written evidence, land rights on winter pastures belonged to extended families and were acknowledged by others, while this was not clear in regard to land rights for summer pastures. The head of extended families had to send information to other families about where they would like to stay during the summer and once somebody from this family arrived there he or she had to sign an agreement on the territory otherwise another family could take the place while the head of the former family observing the territory and the rest of the family were on their way. Hence, conflicts between different clans about summer pastures happened often; See also Aldashev and Guirkinger (n10).

<sup>16</sup> Aldashev and Guirkinger (n10).

<sup>17</sup> Balluzek (n15); Aldashev and Guirkinger (n10).

<sup>18</sup> Ibid.

<sup>19</sup> Following political, administrative and military interventions, nomadic pastoralism was gradually replaced by sedentary agriculture. The changes in family structure were inevitable and described in Section 3.3 of this Chapter.

<sup>20</sup> Savelli L Fucs, *Customary law of Kazakhs in the eighteenth and first half of nineteenth century* (Science 1981) 17.

<sup>21</sup> Ibid 18.

<sup>22</sup> Ibid 17.

<sup>23</sup> Fucs (n20) 17.

<sup>24</sup> Fucs (n20); Krader (n8) 189-209

(Great Horde), *Orta Zhuz* (Middle Horde) and *Kishi Zhuz* (Youné Horde) of which consists the Kazakh nation as the state. Therefore, belonging to the family and tribe was crucial.

Family issues in Kazakh society were regulated until 1925 according to the Customary law '*Adat*'.<sup>25</sup> There was no agreement between Kazakh intellectuals on the connection between Islam and Kazakh culture, *Adat* and *Sharia* in pre-Soviet times.<sup>26</sup> Before the Russian intervention, having a nomadic way of life, Kazakh people could not pray regularly so people followed *Sharia* superficially and considered themselves as half-Muslims.<sup>27</sup> The promotion of the provisions of *Sharia* and the spread of Islam was the initiative of colonizing Russia who considered religion as the way to control the masses.<sup>28</sup> During this period, *Sharia* (Muslim law) and Islam was adopted in Kazakhstan by the upper class mainly in order to exert control over others in society and to justify the privileges of wealthy people.<sup>29</sup> In fact, however, in terms of family and marriage issues, people first exercised the provisions of *Adat*, and secondly, *Sharia*.<sup>30</sup> Hence, my argument is that Kazakhstan has never been a pure Muslim country; Kazakh family culture is a mix of Kazakh traditions and some religious norms.

In terms of engagement and marriage, *Adat* and *Sharia* did not contradict each other substantially, apart from in respect of a few provisions. For example, according to *Adat*, among Kazakh people marriage between relatives within seven generations (exogamous barrier) was and still is banned while *Sharia* allows marriage between cousins.<sup>31</sup> In terms of marital age, according to *Sharia* the acceptable age to marry was twelve years of age for boys and nine years for girls, while in *Adat* the acceptable age to marry was fifteen years of age for both boys and girls, and in some literature even sixteen.<sup>32</sup> Hence, in regard to marriageable age, the provisions of *Adat* are more correlated with the children's interests and rights as set out in the UNCRC. However, in some cases no one rule applied

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<sup>25</sup> Aspazia Z Zhakipova, *Development of family and marriage relations in Kazakhstan* (Alma-Ata 1971) 24-25, 36-37, see also Ualiev Saule, *Family and marriage relations of the population of Kazakhstan at the turn of the century: historical and demographic aspect* (LAP LAMBERT Academic Publishing 2014) 25.

<sup>26</sup> Hiro (n4) 238-239, for example Ali Khan Bukeihanov - the leader of the Kazakh nationalist party at the beginning of XX century said that 'Kazakhs are not Muslims or at very most half-Muslims...The preservation of customs and traditions is useful to Kazakhs, The Sharia is harmful to Kazakhs'.

<sup>27</sup> Ibid 239.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid, see also Fucs (n20) 38-39.

<sup>30</sup> Zhakipova (n25) 36-37, 43.

<sup>31</sup> Ibid 44.

<sup>32</sup> Ibid 45; Kozlov (n15).

because the property or tribal interest of the head of the family came first.<sup>33</sup> Therefore, marriage was a contract between parents or guardians whereby the groom's family paid a 'kalym' (payment for the bride) to the family of the bride. The size of 'kalym' varied depending on social status, family wealth and the beauty of the bride. Usually the 'kalym' was equal to 47 heads of livestock (cows, camels, or horses).<sup>34</sup> According to both *Adat* and *Sharia*, the bride and groom were never asked whether they wanted to marry each other. Sometimes, the bride could be twice as old as the groom, for example, a marriage between an 8-10 year old boy and an 18-20 year old woman.<sup>35</sup> Hence, in regard to marriage, children did what adults thought was right to do and what in the present time would be seen as a violation of a child's autonomy and the right to be heard. At the same time, in spite of the nomadic life and the lack of a written law, marriage and family matters were regulated by customary law and traditions.

Levirate, or in Kazakh 'amergenstvo', is a feature of the patriarchal tribal system and was regulated in Kazakh society according to *Adat*.<sup>36</sup> According to this custom, a widow had to stay in the tribe of her husband and get married one year after the death of husband to his brother or if there was no brother, to another male member of the tribe in accordance with the decision of the oldest male representative of the tribe 'aksakal' (translated as white beard).<sup>37</sup> However, according to some sources, a widow who had already had male children was not forced to remarry and could stay within the tribe of the husband.<sup>38</sup> From the perspective of Soviet authors, this custom was aimed at keeping property within the tribe, as women were accounted as property bought with the 'kalym', while from the perspective of some contemporary scholars, levirate is considered as a custom with positive benefits (although not currently in use) as it ensured children has someone to fulfil a father's role via male relative of the deceased.<sup>39</sup>

### 3.2.2 The treatment of children under Customary Law

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<sup>33</sup> Ualieva (n25) 26-29.

<sup>34</sup> Petr E Macovetskii, 'Materials of Kazakh Customary Law' in S Yushkov (ed), *Collection of materials of Kazakh Customary law* (Publishing house of Academy of Sciences Kazakh SSR 1948), *Adat* clearly regulated deals with 'kalym' in different circumstances like the death of married bride or groom.

<sup>35</sup> Zhakipova (n25) 45.

<sup>36</sup> Unknown author, 'Collection of Kyrkyz Customary Law' in S Yushkov (ed), *Collection of materials of Kazakh Customary law* (Publishing house of Academy of Sciences Kazakh SSR 1948); Ualieva (n25) 28

<sup>37</sup> Zhakipova (n25) 28.

<sup>38</sup> Fucs (n20) 58.

<sup>39</sup> Maira Kabakova at National Digital History portal, 'Values and traditions of the modern Kazakh family', <<http://e-history.kz/ru/contents/view/440>> accessed 10 October 2017.

In a patriarchal society, where the father had the main power over the other members of the family, Kazakh family relationships resemble the Roman patriarchal family in the time of the Law of the Twelve Tables.<sup>40</sup> The gender of a child was significant. According to the Soviet authors that explored Kazakh family relations, there are two approaches to the economic and social perspectives of family.<sup>41</sup> Kazakh people used to say ‘congratulations with forty seven’ when a girl was born, which related to the future ‘*kalym*’ that the father would receive on her marriage.<sup>42</sup> Another way of gendering children was saying ‘having a son gives you a horse, having a daughter gives you food’ with the meaning that a son can be sent for work to a wealthy family who would pay for his services in horses or other livestock while the marriage of a daughter provided food.<sup>43</sup> Such a perspective accords with the discussion by Fucs about property shared by Kazakh people.<sup>44</sup> In contrast to Fucs, Stasevich describes Kazakh people as gentle, caring, and loving parents whose children were strong and active.<sup>45</sup> The same caring approach towards children is identified in *Adat*.

In particular, the provisions of *Adat* obliged parents to raise, educate their children, marry their sons and allocate them to separate households, marry off their daughters and provide a dowry.<sup>46</sup> Traditionally, the father educated his sons and usually did not intervene in the relationship between mother and daughter in raising and educating their daughters.<sup>47</sup> The real upbringing started usually after the children reached 5 or 6 years old when children were divided in family interactions by gender, since at this age girls and boys started being involved in adult chores.<sup>48</sup> The father could arrange the marriage of his daughter in her childhood so that she had to marry the man her father chose for her. The power of the father was limited to the marriage partner of his daughter.<sup>49</sup> In contrast, in terms of sons, the power of the father was less after his sons were allocated to marriage but the sons still

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<sup>40</sup> Zhakipova (n25) 60.

<sup>41</sup> Fucs (n20) 61-62; Zhakipova (n25) 48.

<sup>42</sup> Ibid 52. The actual size of ‘*kalym*’ could be varied, the literature provides very different numbers.

<sup>43</sup> Fucs (n20) 61.

<sup>44</sup> Fucs (n20).

<sup>45</sup> I V Stasevich, ‘Girl, young women, older woman in the traditional Kazakh society. The specifics of education and place (status) in the social structure’ in M E Resvan (ed) *Rakhmat-name: collection of articles on the 70th anniversary of Rakhmat Rakhimovich Rakhimov* (MAE RAS 2008).

<sup>46</sup> Unknown author, ‘Collection of Kyrkyz Customary Law’ in S Yushkov (ed), *Collection of materials of Kazakh Customary law* (Publishing house of Academy of Sciences Kazakh SSR 1948).

<sup>47</sup> Aleksei I Levshin, *Description of Kirghiz-Cossack, or Kirghiz-Kaisak hordes and steppes*, part 3 (Carl Kraya Printing House 1832).

<sup>48</sup> Stasevich (n45).

<sup>49</sup> Balluzek (n15); Zhakipova (n25) 62

had to obey their father.<sup>50</sup> Children could not go against the authority of their parents and if they made claims against them to the people's judge (*'biy'*), their application would not be taken seriously unlike their parents who could make claims against their children for disobedience or abusive behaviour towards them.<sup>51</sup> In the case of parent's claims, children could be punished physically in the first instance, and banished from the tribe, stripped of their property, until the parents changed their mind for subsequent misdemeanours.<sup>52</sup> According to *Adat*, sons had to care for their retired parents, in particular the youngest son of the first wife (this son was never allocated to a separate household so stayed living with his parents even following marriage). In this way, *Adat* regulated and ensured the mutual care of parents and children.

Older sons, when they were married and older than twenty, could ask their father to provide them with some property for the new household. This process happened with each son in turn hence family property was divided between allocated sons with some left over for the father's family (families when father had more than one wife). The right to inherit belonged only to the youngest son. The father did not have responsibility for married (allocated) sons nor for married sons married without his agreement, but he was responsible for crimes committed by his unmarried sons and had to pay their fines (*'kun'*) according to criminal law.

In addition to legal regulation, in family matters traditions played a significant role. For example, such traditions as *'atalychestvo'* (*'ata'* - grandfather) and *'kara shanyrak'* (the house of parents) reveal the role of the sons according to their birth order.<sup>53</sup> In particular, the oldest son was responsible for the future support of the younger brothers and sisters while the youngest son was in charge of taking care of his retired parents.<sup>54</sup> The oldest son was usually sent to his grandparents to be taught specific skills to manage the younger family members in the future and to be critical and reflective in terms of was of bringing up and social support for these members of his biological family.<sup>55</sup> The youngest stayed with his parents until they died and by default he inherited the parents' property. As a member of Kazakh society and being Kazakh myself, I observe that such traditions are still in use in some Kazakh families and hence a written will (testament, bequest) is

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<sup>50</sup> Ibid.

<sup>51</sup> Kozlov (n15). *'Biy'* was the people's judge who was chosen from the community as the most honest, wise and knowledgeable in regards to the people's customs.

<sup>52</sup> Ibid 91.

<sup>53</sup> Kabakova (n39).

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

unusual among Kazakh people. There are many other traditions related to children that used to be and still are in use by Kazakh people from the day the child is born, their first step, and until he or she is retired.<sup>56</sup> Hence, life without family is a huge loss for children in Kazakh society where parents usually accompany their child throughout their entire life. At the same time, belonging to a family means belonging to a tribe and a particular social group where the child could obtain community support. As such, in pre-Soviet Kazakh society, children left without parental care found a home among the extended family or were adopted within their tribes within a legal regulatory framework.<sup>57</sup> Namely, the general rule for guardianship was to keep the child within the extended family of his or her father.<sup>58</sup> According to *Adat* a child should stay under guardianship until the boy reached adulthood at age fifteen and the girl get married.<sup>59</sup> Close relatives usually attested to the age of the child. This social practice among Kazakh on custody and adoption ensured paternal authority and preservation of bloodlines as well as property.<sup>60</sup> The significance of these rules for ensuring a family environment is clear since it correlates with the interest of children at crucial stages in their development as discussed in Chapter 2, knowledge of their roots (this is important in a tribal society such as the Kazakh one) and the opportunity to grow up in a more familiar environment.<sup>61</sup>

Meanwhile, customary law also provided children left without parental care with the right to be heard, which corresponds with the currently endorsed interests of the child and right of the child to be heard as declared in the UNCRC.<sup>62</sup> However, this practice worked only in the following situation: when a child reached eight years of age, he or she had the right to ask to change his or her guardian for another close relative, especially when the existing guardian abused the trust placed in them regarding the care of children.<sup>63</sup> According to law, the child could ask his or her close relatives (not the guardian) to change the guardian to someone else from amongst their relatives - the decision was made within the family.<sup>64</sup>

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<sup>56</sup> Ibid; see also Zhaskairat T Ernazarov, *Family ritualism of Kazakh: symbol and ritual* (Kursiv 2003) 73-112.

<sup>57</sup> Unknown author, 'Collection of Kyrkyz Customary Law' in S Yushkov (ed), *Collection of materials of Kazakh Customary law* (Publishing house of Academy of Sciences Kazakh SSR 1948).

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Zhakipova (n25) 63-65.

<sup>61</sup> See Chapter 2 Sections 2.3 above.

<sup>62</sup> See Chapter 2 Section 2.2 above.

<sup>63</sup> Unknown author, 'Collection of Kyrkyz Customary Law' in S Yushkov (ed), *Collection of materials of Kazakh Customary law* (Publishing house of Academy of Sciences Kazakh SSR 1948). The age of the child was confirmed by his or her older family members.

<sup>64</sup> Ibid.

The oldest child, on reaching adulthood (15 years), became the guardian of the younger siblings and the property left by the parents.<sup>65</sup> It was possible for relatives not to exercise the right to be a guardian when: 1) the father appointed the guardian before he died or, 2) the widow decided to devote her life to the children and to looking after the family property and she became the guardian, or 3) the mother after the death of the father remarried the brother-in-law, this brother-in-law might ask to become the guardian.<sup>66</sup> According to *Adat* the guardian should do everything that a father would do if he was alive, including looking after family property (livestock mainly) in the same way as he would if it was his property, allocating of sons, marrying the daughters off to good families and providing daughters with dowries.<sup>67</sup> Children could argue and bring proceedings in front of the other elder members of the family if the guardian abused their trust in relation to the family property, where other relatives usually provided evidence of such abuse.<sup>68</sup>

Adoption was another type of child placement regulated by law. Adoption of children younger than five or six years of age was allowed among the family or extended family with the exception of uncles who could only adopt nephews above this age.<sup>69</sup> In the latter case, the child should be asked if he wanted to be adopted. Different sources from Russian travellers in the nineteenth century recorded different approaches in terms of the right of the adopted child to the family property; according to some of them, the adopted child did not have the right to the family property of the adoptive family while others said the contrary.<sup>70</sup> The later scholars assumed that there were different practice in different regions.<sup>71</sup> Adopted children usually took the name of the adoptive parents although when they achieved adulthood they could return to their original family where they still had the right to the property of the original family. *Adat* required an agreement between the adoptive father (and his wife) and the biological father (or another empowered man from the family).<sup>72</sup> This enabled the practice of adoption only between relatives as it was allowed according to *Adat* (that is possibly again because of exogamous barrier up to

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<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Zhakipova (n25) 63-64.

<sup>71</sup> Ibid 64.

<sup>72</sup> Unknown author, 'Collection of Kyrkyz Customary Law' in S Yushkov (ed), *Collection of materials of Kazakh Customary law* (Publishing house of Academy of Sciences Kazakh SSR 1948).



seven generations that has been strictly followed up to the present day).<sup>73</sup> The legal process of adoption required two witnesses or relatives when the child passed from his or her parent's *yurt* (nomadic home) to the *yurt* of the adoptive parents. From this time, the power of the parents ceased and was transferred to the adoptive parents. Adoption was mostly exercised and remained in use when relatives could not have their own children or when a poor family could not provide enough food and care for their big family. In the latter case and in the case of adoption by wealthy relatives, Fucs explained such adoption as motivated by the need for child labour.<sup>74</sup> This conclusion of Fucs is debatable. Stasevich, Hiro and other Russian scholars describe Kazakh people as family and children oriented and good parents.<sup>75</sup> The latter is reflected in their traditions towards family and children and the detailed regulation of custody and adoption issues in customary law. Despite the criticism by Fucs of the exploitative characteristics of a patriarchal family structure, guardianship and adoption, Russian scholars of Czarist Russia acknowledged that, children had the benefits of strong tribal and family relationships that ensured vulnerable children experienced a family environment, food, defence and the preservation of their family roots or in some cases membership of a clan and the extended family.<sup>76</sup> It also noticeable that *Adat* ensured the interest of the child in growing up in a family environment, the right to survive, and the right to be heard, that might be considered as a thoughtful and long-term approach based on the prevailing wisdom of the people. Therefore, it worth noting that the structure of a society based on tribes and clans enabled the child to stay within the family. Moreover, the evidence shows that children deprived of parental care were looked after within the extended family which correlates with the best interests of the child discussed in Chapter 2.<sup>77</sup> However, as the next section demonstrates, the changes in Kazakh society that happened during the Soviet Union era brought about changes in the care provided for the group of children under consideration.

### 3.3 The Soviet family and children in the Kazakh Soviet Republic

This section has aimed to demonstrate the basis of the research problem, namely the roots of such phenomena as institutionalisation of children in Kazakhstan. However, it firstly

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<sup>73</sup> Ibid.

<sup>74</sup> Fucs (n20) 64.

<sup>75</sup> Hiro (n4) 237-238; Stasevich (n45).

<sup>76</sup> Ibid; Macovetskii (n34).

<sup>77</sup> See Chapter 2 Section 2.2 above.

explains the social changes such as the shift from extended to nuclear family, and then it provides political and economic reasons of the emerged phenomena as institutionalisation of children in Kazakhstan. In other words, this section is one of the core parts of this thesis due to elucidation of research problem's roots.

### 3.3.1 The shift from extended to nuclear family

The process of change from the traditional clan-based family to the individual nuclear family in Kazakh society was a long one and started with the Russian colonization<sup>78</sup> and continued during the Soviet period.<sup>79</sup> The different interests of the Czarist administration and the Communist Party in relation to land and labour had different impacts on the history of the Kazakh family. The former interest forced the Kazakh people to change their migration paths and division of land use, but they still retained a nomadic lifestyle with some restrictions on land use. As discussed earlier, land did not belong to the nuclear family; it was the unwritten property of the tribe or extended family. Aldashev and Guirkinger assert that Russian settlements significantly limited the summer and winter pastures used by the Kazakhs.<sup>80</sup> This was one of the main reasons for the initial individualization among Kazakh extended families. However, due to the Czarist administration's lack of interest in resolving family issues, *Adat*, *Sharia* and traditions were applied to family cases until 1925.<sup>81</sup> Unlike his predecessor, Lenin decided to stop the practice of *Adat* in relation to family issues in Kazakh society as a part of a large scale policy of the abolition of the patriarchal family in Russia and the Eastern countries.<sup>82</sup> This included restrictions on the designation of surnames for Kazakh children, who usually applied their father or grandfather's name and added the suffix '*uly*' (son) or '*kzy*' (daughter), which showed tribal ties.

The Communist Party and the Soviet Government criticized the Czarist administration for taking land from the Kazakh people and not giving them equal human rights, which resulted in the great liberation wars in the territory of Kazakhstan and contributed to the lack of trust between the different nations.<sup>83</sup> However, the Soviet authorities also took

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<sup>78</sup> Aldashev and Guirkinger (n10).

<sup>79</sup> Zhakipova (n25) 90-107.

<sup>80</sup> Aldashev and Guirkinger (n10).

<sup>81</sup> Ualieva (n25) 76.

<sup>82</sup> Zhakipova (n25) 67. Kazakh society became the Autonomous Soviet Republic of the USSR in 1920.

<sup>83</sup> Ibid, 66.

land from the Kazakh people and justified it by ‘collectivism’ and the state interest that would provide equality for every citizen. Lenin emphasised the great gap in the social and economic development of Kazakh territory, which was rich in natural resources and cheap labour.<sup>84</sup> Therefore, the industrialisation process required a new approach to Kazakh society, one which regarded it as the source of a national work force where previously the main issue had been the patriarchal, feudal and tribal relationships. The initial legal acts of the Soviet authority were aimed at abolishing the existing customary laws on marriage and family.<sup>85</sup> Family and marriage had to be appropriate for the social and economic reforms. This was a slow process and took about fifteen to seventeen years.<sup>86</sup> In particular, customary law was in use in rural areas where the nomadic way of life still existed and where people were not aware of the new laws. In contrast to the Czarist administration, the Soviet authority was against the feudal class and wealthy Kazakh families who had huge numbers of livestock and dependent family members within the tribe.<sup>87</sup> However, the forced sedentary land reform, the collectivism of livestock rearing by nomadic people and the confiscation of property from the wealthy Kazakh classes resulted in the destruction of customary law, *Sharia* and a nomadic way of life and the emigration of wealthy Kazakh clans to China, Mongolia and other countries.<sup>88</sup> Additionally, while some Kazakh families emigrated with their livestock to other neighbouring countries, almost half of the rest died from starvation and diseases within 4 years from 1930 to 1933.<sup>89</sup> Eventually, the Soviet reforms such as the collectivisation and dekulakisation policies<sup>90</sup> in Kazakh society broke the traditional Kazakh family that was based on land dependence, pastoral production, customary law, traditions and patriarchal tribal family structures. This transformation led to both positive and negative consequences for families and individuals, but the cost of such transformation was human lives and the great emigration of Kazakh people from their motherland. The literature of the Soviet period does not discuss this much, but due to a massive influx of migrants, the great famine among

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<sup>84</sup> Fucs (n20) 1.

<sup>85</sup> Ualieva (n25) 72-84.

<sup>86</sup> Zhakipova (n25) 66-116; Ualieva (n25) 76.

<sup>87</sup> Robert Conquest, *The Harvest of Sorrow: Soviet Collectivization and the Terror-Famine* (Hutchinson 1986) 189-191; Aldashev and Guirkinger (n10).

<sup>88</sup> Zhakipova (n25); Ualieva (n25) 77.

<sup>89</sup> Jha (n1); Conquest (n87) 189-198.

<sup>90</sup> Conquest (n87) 189-198.

Kazakh people and the migration of the natives, the Kazakh ethnic group found themselves to be in a minority and almost lost their identity, traditions and culture.<sup>91</sup>

The issue of family was one of the main focuses of the Soviet Government which aimed to abolish the patriarchal family structure and increase the size of the work force. According to the Decree “Regarding the separation of the church from the government and schools” (1918), the Communist Party first separated the government and schools from the church.<sup>92</sup> This was followed by the Code of laws about civil status, marriage, family and guardianship rights (1918). Both established the legal status of monogamy, voluntary marriage, and the equal rights of spouses in family and society. The Decree of the Presidium of the Supreme Soviet of the USSR (1944) concerning the support of mothers and strengthening maternal health and the Code on Marriage and Family of the Kazakh SSR (1969) set out the main legal frameworks relating to the family in the Soviet times. These two acts ensured women had equal rights to men to divorce, property, health provision, and maternal leave and support, but at the same time Soviet policies led to the forcible breaking of customs and traditions of the indigenous people, and the ethnic and ethno-cultural foundations of Kazakh society.

In terms of parenting, spouses had equal rights and duties toward the child, but only in officially registered marriages, according to Soviet family law. Until 1969, if a child was born outside an officially registered marriage, only the mother had rights and duties towards the child.<sup>93</sup> Following the introduction of a new Code relating to marriage and the family in 1969, a single mother with or without a potential father could go to the court and ask to establish paternity.<sup>94</sup> Therefore, until 1969 there was not real equality in parental rights between the different genders. In addition, mothers obtained special support from the state in the Soviet period in accordance with the Decree of the Presidium of the Supreme Soviet of the USSR (1944), which required support for mothers and the strengthening of maternal health. Maternity leave, financial support, and social respect was guaranteed according to this decree and there was a special award for mothers with more than five children. Women inevitably played a significant role in the population expansion after the Second World War when there were many single mother families:

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<sup>91</sup> Jha (n1); Aimoldina and Akynova (n2); Smagulova (n2); Conquest (n87) 198.

<sup>92</sup> Zhakipova (n25) 87.

<sup>93</sup> Zhakipova (n25) 127.

<sup>94</sup> Ibid 148-149.

women were responsible for raising the new Soviet generation to build a Communist society.

However, women had to participate in industry too and the state started other initiatives for the liberation of women from domestic affairs or ‘domestic slavery’, such as public canteens and institutions for children, including nurseries (usually for children up to two years old) and kindergartens (for children up to six or seven years old).<sup>95</sup> The Soviet authority made sure that women could leave their children in institutions so that they could work for the state. At the same time, maternal institutions responsible for the mother’s health and baby’s health appeared in the territory of Kazakhstan.<sup>96</sup> Resistance on the part of male members of families was strong and it took time for the Soviet authority to involve the Kazakh women in industry and agriculture.<sup>97</sup> This initiative was justified as empowering women and ensuring gender equality in industry and social life, but in reality women did not have a choice. They were pushed into state-controlled work - refusal could lead to public humiliation or even cause serious issues for the rest of the family members.<sup>98</sup>

Therefore, although the increase in the status of women, and in this case Kazakh women, in Soviet society, is undeniable, the genuine reason for promoting women’s rights had more to do with the interest of the state in women’s labour.

### 3.3.2 Institutionalisation of children in the Soviet period

Traumatic events in the first half of the Soviet period, such as the great famine, political repression, forced migrations and World War II, caused a significant increase in the number of street children in Kazakhstan.<sup>99</sup> The first significant number of unaccompanied street children among Kazakhs was during the great famine or Goloshchekin’s (the first secretary of the Kazakhstan Communist Party) genocide and the Soviet collectivization policy between 1926 and 1937 when approximately 1,750,000 - 2,020,000, or half of the

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<sup>95</sup> Zhakipova (n25) 107.

<sup>96</sup> Ibid 108-109.

<sup>97</sup> Ibid 105.

<sup>98</sup> Rochelle Ruthchild, ‘Sisterhood and socialism: the Soviet feminist movement’ (1983) *Frontiers: A Journal of Women Studies* 4. Feminist approach to the role of women in the Soviet Union is that in fact women obtained ‘doubled burden’ of domestic and work responsibilities, the emancipation was forced by economic necessity.

<sup>99</sup> Judith Harwin, *Children of the Russian State: 1917-95* (Aldershot: Avebury 1996) 9-25; Alan M Ball, *And now my soul is hardened: Abandoned children in Soviet Russia, 1918-1930* (University of California Press 1994) 100; National Digital History portal ‘Evacuation of the Soviet population to Kazakhstan’ <<http://e-history.kz/en/contents/view/1656>> accessed 07 November 2017.

Kazakh population died.<sup>100</sup> This was the outcome of the campaign of collectivisation and settlement of Kazakhs that resulted in the loss of livestock, grazing pasture and land.<sup>101</sup> It was this, followed by political repression (1931-1945) that brought to Kazakhstan the children of ‘enemies of the people’ who were deported to Karaganda Forced Labour Camp (Karltag) and Akmolinsk Women’s Forced Labour Camp (ALZHIR).<sup>102</sup> According to the existing data, over one million people were imprisoned in Karltag.<sup>103</sup> In regards to women who passed through ALZHIR camp, it is known that 7,224 women of 62 nationalities lived in this camp as the wives of traitors of the Motherland.<sup>104</sup> Children of the wives of traitors of the Motherland, including infants, born (1,507) and lived in the ALZHIR camp with their mothers.<sup>105</sup>

The evacuation of people, industry, and forced migration during World War II were reasons for another great influx of accompanied and unaccompanied children of different ethnic groups to Kazakhstan, including Germans, Koreans, Ukrainians, Latvians, Poles and others.<sup>106</sup> Therefore, the institutionalisation of children in Kazakhstan was an inevitable consequence of the time and the Communist and totalitarian regime.<sup>107</sup> Due to limited literature, definite data on when and which legal act regulated the establishment of the first children institution in Kazakhstan requires additional research, including possible work in archives which is beyond the scope of this thesis. What is found in relation to this topic is that the residential care in Kazakhstan similar to the other post-

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<sup>100</sup> Zhulduzbek B Abylkhozhin, Manash K Kozybayev, and Makash B Tatimov, ‘The Tragedy of Kazakhstan’ (1989) 7 The questions of history 53.

<sup>101</sup> Isabelle Ohayon, ‘The Kazakh Famine: The Beginnings of Sedentarization’ (*SciencesPro*, 28 September 2013) <<https://www.sciencespo.fr/mass-violence-war-massacre-resistance/en/document/kazakh-famine-beginnings-sedentarization>> accessed 07 November 2017.

<sup>102</sup> Touraj Atabaki and Sanjyot Mehendale (eds), *Central Asia and the Caucasus: transnationalism and diaspora* (Routledge 2004) 40-41; see also The Museum and memorial complex of political repressions and totalitarianism victims “ALZHIR”, ‘ALZHIR” camp history’ <<http://museum-alzhir.kz/en/about-museum/alzhir-camp-history>> accessed 07 November 2017.

<sup>103</sup> Peter Ford, ‘Dark Tourism in Kazakhstan’s Gulag Heartland. Under the USSR, Kazakhstan hosted a sprawling network of prison camps that housed millions of prisoners’ *The Diplomat* (25 May 2017) <<https://thediplomat.com/2017/05/dark-tourism-in-kazakhstans-gulag-heartland/>> accessed 07 November 2017.

<sup>104</sup> The Museum and memorial complex of political repressions and totalitarianism victims “ALZHIR”, ‘Statistic’ <<https://museum-alzhir.kz/en/about-museum/statistic>> accessed 07 November 2017.

<sup>105</sup> The Museum and memorial complex of political repressions and totalitarianism victims “ALZHIR”, ‘ALZHIR” camp history’ <<http://museum-alzhir.kz/en/about-museum/alzhir-camp-history>> accessed 07 November 2017; Joanna Lillis, *Dark Shadows: Inside the Secret World of Kazakhstan* (Bloomsbury Publishing 2018).

<sup>106</sup> National Digital History portal (n99).

<sup>107</sup> See Andrew B Stone, ‘Growing Up Soviet? The Orphans of Stalin’s Revolution and Understanding the Soviet Self’ (Dphil thesis, University of Washington 2012) 36-44; Harwin (n99) 9-16.

Soviet states operated as large Soviet-style institutions.<sup>108</sup> Meanwhile, according to the history of the children's homes of Russia, that was described in literature, the early Soviet state's children's homes started on the basis of the pre-Revolutionary time children's home of Russia.<sup>109</sup> Related to Kazakhstan, it is notable that having had a nomadic social organisation until the 1920s, such institutions for children might have appeared in Kazakhstan only after the life style on the Kazakh territory became settled down due to industrialisation of the region as discussed in this chapter.<sup>110</sup>

While orphanages undeniably enabled many children to escape death, the Soviet government through such children's institutions also aimed to raise a 'New Soviet People'.<sup>111</sup> Thus, institutions for children enabled the Communist party to raise Communists who shared the same ideology, were prepared to work for the state and have the same values and aims as the state. In particular, such brainwashing was deemed necessary for children who had been inappropriately influenced by their parents – so-called 'enemies of the people', who had acted immorally according to the Soviet authority, or by other people on the street who had had an inappropriate impact on the child (did not work, drank alcohol or were put in prison).<sup>112</sup> However, such brainwashing, according to the studies of Kirschenbaum and Bronfenbrenner was practiced in ordinary child institutions too.<sup>113</sup> It started in early childhood via teaching programs in the kindergarten and continued through youth 'voluntary labour' organisations and school organizations such as the *Komsomol*, *Young Pioneers*, and *Little Octoberists* at primary and secondary school.<sup>114</sup> State gain (interests) was the priority, not only for adults, but also for children. Family interest was pushed aside, as second to the interests of the state so that through political ideology the role of the family was diminished.<sup>115</sup>

Other institutions for children such as boarding schools and 'prolonged' schools were provided in the period of Nikita S. Khrushchev who aimed to build communism by using

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<sup>108</sup> Leyla Ismayilova, Fred Ssewamala, and Aytakin Huseynli, 'Reforming child institutional care in the Post-Soviet bloc: The potential role of family-based empowerment strategies' (2014) 47 *Children and Youth Services Review* 136.

<sup>109</sup> Ibid; see also Judith Harwin, *Children of the Russian State: 1917-95* (Aldershot: Avebury 1996) 11; Alan M Ball, *And now my soul is hardened: Abandoned children in Soviet Russia, 1918-1930* (University of California Press 1994).

<sup>110</sup> See pages 61, 73 and 88 in this chapter.

<sup>111</sup> Ibid 215-217.

<sup>112</sup> Ibid; see also 13-15; Ball (n99) 1-17.

<sup>113</sup> Lisa A Kirschenbaum, *Small comrades: revolutionizing childhood in Soviet Russia, 1917-1932*. (Routledge 2013); Urie Bronfenbrenner, *Two Worlds of Childhood, US and USSR* (Russell Sage Foundation 1970).

<sup>114</sup> Ibid; see also Stone (n107) 198-199; Harwin (n99) 16.

<sup>115</sup> See Subsection 3.3.1 of this chapter.

the Leninist and Bolshevik principles in terms of education.<sup>116</sup> Boarding school and ‘prolonged’ schools were mainly provided for children of working parents, single mothers, widows who could not cope with difficult children and other children in need.<sup>117</sup> Such schools and ‘prolonged’ school allowed parents to work and leave their children in these institutions during the week and take them home at the weekend, on public holidays, and during school holidays.<sup>118</sup> These new educational bodies appeared in the 1960s and were widely established throughout the USSR. Within ten years the number of children attending these types of schools reached roughly four million.<sup>119</sup> These schools were nearly always free, although in some cases parents paid up to a third of the total cost. Children were involved in ‘socially useful activity’, labour in another words, in order to build up a communist approach in small communities to work and to raise future hard workers.<sup>120</sup> However, in the long-term these institutions with no tuition fees had adverse effects. For example, parents relied heavily on the state to provide food, books, health care, education and social activity for their children. This led to parents in post-Soviet countries assuming that children could be left to the state, even up to the present day.<sup>121</sup> However, in the Soviet period there was little concern for the emotional needs of children.<sup>122</sup> Poor conditions and violence existed in the children’s institutions, but this was only revealed after the collapse of the USSR and became the reason to reform child institutional care in post-Soviet states.<sup>123</sup> The institutionalisation of children in the Soviet Union was the direct outcome of the political, social and economic interests of the state. By the same token, deinstitutionalisation in the present day depends on the political will and sufficient resources.<sup>124</sup>

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<sup>116</sup> Effie Ambler, ‘The Soviet boarding school’ (1961) 20 *American Slavic and East European Review* 237; Harwin (n99) 27-29. Nikita S. Khrushchev was in power in Soviet Union from 1953 to 1964.

<sup>117</sup> Michael Kaser, ‘Soviet boarding schools’ (1968) 20 *Europe-Asia Studies* 94.

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*, see also Catriona Kelly, *Children's world: growing up in Russia, 1890-1991* (Yale University Press 2007) 260-263.

<sup>121</sup> Ismayilova, Ssewamala, and Huseynli (n108); see also Chapter 5 Section 5.3 below.

<sup>122</sup> *Ibid.*; Maria G Kroupina, Liza Toemen, Musa M Aidjanov, Michael Georgieff, Mary O Hearst, John H Himes, , Dana E Johnson, Bradley S Miller, Spoon Foundation Research team, Aigul M Syzdykova and Toregeldy S Sharmanov, ‘Predictors of developmental status in young children living in institutional care in Kazakhstan’ (2015) 19 *Maternal and child health journal* 1408; Gabriela Walker, ‘Postcommunist deinstitutionalization of children with disabilities in Romania: Human rights, adoption, and the ecology of disabilities in Romania’ (2011) 22 *Journal of Disability Policy Studies* 150.

<sup>123</sup> *Ibid.*

<sup>124</sup> Nigel Cantwell, ‘The human rights of children in the context of formal alternative care’ in Wouter Vandenhole, Ellen Desmet, Didier Reynaert, Sara Lembrechts (eds), *Routledge international handbook of children's rights studies* (Routledge, 2015); Jean-Claude Legrand, ‘Child care system reforms in Eastern and Central Europe and Central Asia: Why there is a need to focus on children below three years’ (2015) 15 *Irish Journal of Applied Social Studies* 2.



### 3.4 Families and children in contemporary independent Kazakhstan

The last section before the conclusion of this chapter has sought to demonstrate the general situation in contemporary Kazakhstan in the considered field: family and children. First section analyses the family policy of Kazakhstan showing a formal approach of the Government of Kazakhstan to these matters (family and children). The next subsection of this section demonstrates the general picture related to family and children in contemporary Kazakhstan focusing on what Kazakh people could preserve from its pre-Soviet Kazakh culture and traditions. This subsection highlights that in the post-Soviet Kazakh society family ties remain crucial for every Kazakh member of society. Therefore, the lack of family ties and relationship in the Kazakh context has its own negative consequences for future family and career of the child deprived of parental care. Overall, this section shows two crucial characteristics of the present system of child care and society such as formalism and tribalism. The disputes on these two factors is important since such aspects of Kazakhstani society primarily hold the development of the state back. Thus, this section and this chapter in total are the starting point of discussion research problem that will be continued in the rest of the thesis.

#### 3.4.1 The family policy of independent Kazakhstan

After the collapse of the Soviet Union in 1991, Kazakhstan declared its independence, as did other Central and Eastern European countries, and started to transition from communism to democracy.<sup>125</sup> One of the main documents from that time that revealed the state's goals was "The Strategy for Development of the Republic of Kazakhstan until the year 2030".<sup>126</sup> The development of the institution of marriage and of the family became part of a long-term priority that was aimed at improving the health, education and welfare of the citizens of Kazakhstan. In terms of family, this document emphasized the traditional approach to family and society, saying:

As a matter of fact, I submit to public judgement a proposal of imposing a tax on those unwilling to have children,<sup>127</sup> having in view the subsequent allocation of these assets in support of families with many children. On a local level too it is necessary to look for new

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<sup>125</sup> Khagai (n8).

<sup>126</sup> Official website of the President of the Republic of Kazakhstan, 'The Strategy for development of the Republic of Kazakhstan until the year 2030' (1997), [http://www.akorda.kz/en/official\\_documents/strategies\\_and\\_programs](http://www.akorda.kz/en/official_documents/strategies_and_programs) accessed 8 November 2017.

<sup>127</sup> In fact, this did not reflect in any law of Kazakhstan.

ways and means of supporting families, pregnant women and children. Indeed, we have to thoroughly consider the issue of the eventual improvement of the institutions of marriage, the family, and that of unmarried mothers. If we claim to be a society of high morals, we have to toughen mutual matrimonial responsibilities, primarily those to children. When parents care for their children and children, when grown up, for their aged parents, when women command respect in the family and in society, then we may be sure of our country. After all, these principles were from time immemorial inherent to the Kazakhs, they must be restored and cherished.<sup>128</sup>

In order to implement this part of the Strategy, the President of the Republic of Kazakhstan in 1998 established the National Commission for Family and Women's Affairs that continued the work of the Council on Family, Women and Demographic Policy (1995). According to the special Decree of the President, the Commission became a consultative and advisory body to the Head of State in order to develop issues regarding women, children and families, and to defend the interests of the family based on the context of the Strategy.<sup>129</sup> The most significant achievements of this Commission are the Strategy of gender equality 2006-2016 (2005), the special department of internal affairs that aimed to protect women from violence (1999), the establishment of a Family Day (1st of March, since 2013) and the annual national competition '*Mereily otbacy*' (translated as glorious and happy family) (since December 2013).<sup>130</sup> All of these even taken together, can hardly be described as a coherent family policy, and moreover some researchers have argued convincingly that until recently there was no real family policy in Kazakhstan.<sup>131</sup>

To address the issue of the lack of family policy, the Government of Kazakhstan approved the "National Action Plan for Strengthening Family Relations, Moral and Ethical, and Spiritual and Moral Values in the Republic of Kazakhstan for 2015-2020", which later was abolished due to the approval of the "Concept of Family and Gender Policy of the Republic of Kazakhstan until 2030" (December 2016) and a new Action Plan for the implementation of this policy (March 2017).<sup>132</sup> The necessity of the latter document

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<sup>128</sup> Ibid.

<sup>129</sup> Decree of the President of the Republic of Kazakhstan On the National Commission for Family Affairs and Gender Policy under the President of the Republic of Kazakhstan 2006. This decree abolished the previous one dated 22 December 1998.

<sup>130</sup> Official website of the President of the Republic of Kazakhstan, 'Important milestones in the calendar of the National Commission for Family Affairs and Gender Policy of the President of the Republic of Kazakhstan', <<http://www.akorda.kz/ru/o-nacionalnoi-komissii>> accessed 10 November 2017.

<sup>131</sup> Ainagul Sharipbaeva, Akbota Zhapparova, and Natalya Baytugelova, *Family unhappiness: reasons and prevention. Manual for teachers, psychologists and all interested persons* (Ministry of Education and Science of the Republic of Kazakhstan and Research Center 'Sange' 2009).

<sup>132</sup> The Concept of family and gender policy of the Republic of Kazakhstan until 2030, approved by the Decree of the President of the Republic of Kazakhstan 2016; The Action Plan for the implementation

instead listed above is explained in the preamble of the Concept of Family and Gender Policy. It says that the process of social modernisation incorporates the inevitably linked process of the formation of sustainable and contemporary families and the achievements of the policy of gender equality.<sup>133</sup>

However, the absence of family policy until recently shows that criticism that existed and was mentioned earlier was well founded.<sup>134</sup> The New Action Plan for the implementation of Family and Gender Policy outlines fifty-four activities until 2019. According to the Government half of them do not need financial allocation, some rely on local budgets, some on charity and sponsors and only a few will require funds from the republic budget. In particular, the work related to children in institutions (see below) according to the Government does not need financial resources:

To intensify the work on creating a regulatory framework for the transformation of educational organizations for orphans and children left without parental care into centres for supporting families and children in difficult situations in life, preparing potential parents for the admission of children to families; continue the disbanding of orphanages, and the creation of foster families.<sup>135</sup>

The lack of funding is clearly a controversial issue and will be discussed later in this thesis. It is noticeable that the Government of Kazakhstan believes that family policy does not need to be entirely funded. With this kind of approach, there is some concern as to whether all the activities mentioned in the plan will be completed in practice (or successfully completed). For example, as is discussed in the next two chapters, practitioners cannot imagine how the above transformation might happen and there is a high percentage of children returned by foster and adoptive families.<sup>136</sup>

Kazakhstan is a developing state and has many different plans and strategies for further development, including social development. The Government of Kazakhstan accepted that before 2009 there was a more declarative intention than real social support for their society and that ‘human capital’ is important.<sup>137</sup> Thus, the emergence of family policy more recently might be seen as part of the gradual process of the entire development of

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of the Family and Gender Policy Concept in the Republic of Kazakhstan until 2030 (first phase 2017 - 2019) approved by Resolution of the Government of the Republic of Kazakhstan 2017.

<sup>133</sup> Ibid.

<sup>134</sup> Sharipbaeva, Zhapparova, and Baytugelova (n130).

<sup>135</sup> The Action Plan for the implementation of the Family and Gender Policy Concept in the Republic of Kazakhstan until 2030 (first phase 2017 - 2019) approved by Resolution of the Government of the Republic of Kazakhstan 2017.

<sup>136</sup> See Chapter 4 Section 4.4 and Chapter 5 Section 5.2 for further discussions and evidence.

<sup>137</sup> The Concept of family and gender policy of the Republic of Kazakhstan until 2030, approved by the Decree of the President of the Republic of Kazakhstan 2016.

the state. However, there is still no clear understanding by the state on how to address family issues. During the last two years (2018-2019), there were several changes in the Government structure and family matters were moved from one ministry to another, regarded as 'hot potatoes' since social tension is increasing and requires urgent measures to be taken.<sup>138</sup>

The social tensions that contributed to the resignation of the Government and First President of Kazakhstan in March 2019 came about partially due to media pressure, including social media such as Facebook and Instagram. This historical event shows that the media is becoming a driving force of change. It could be that the cultural phenomenon 'Уят' (shame) has expanded from purely family matters (the murder of the Olympic winner, the death of the five girls, the protests of mothers)<sup>139</sup> to authority matters. As an example related to this research, an indication of the symbolic approach is the case that happened in Astana (capital of Kazakhstan) on 4 of February 2019 when five girls of one family (born in 2006, 2008, 2013, 2015 and 2018), died from a fire in a coal furnace while their parents were at work.<sup>140</sup> The response of the Vice -Minister of the Ministry of the Labour and Social Protection asked why parents had to work at night was: 'It is their choice'.<sup>141</sup> The description of the living conditions of this family according to the media indicates that it was poverty that drove the choice of the parents to leave their children alone. The family of seven members lived in one room in a temporary building and were

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<sup>138</sup> Victor Mather, 'Denis Ten, Olympic Skating Medalist, Stabbed to Death in Kazakhstan' *The New York Times* (19 July 2019) <<https://www.nytimes.com/2018/07/19/sports/denis-ten-olympic-skater.html>> accessed 20 July 2018; Irina Sevostyanova, 'The head of the Interior Ministry responded to the demands of the public about his resignation' *Forbes.kz* (14 September 2018)

<[https://forbes.kz/process/kasyimov\\_ob\\_otstavke\\_s\\_kakogo\\_vremeni\\_menya\\_naznachali\\_eto\\_vashi\\_problemyi/](https://forbes.kz/process/kasyimov_ob_otstavke_s_kakogo_vremeni_menya_naznachali_eto_vashi_problemyi/)> accessed 15 September 2018; Renat Taskinbayev, 'Kazakhstani grief. Five girls -sisters were carried out on their last journey' *Tengrinews.kz* (5 of February 2019), <<https://tengrinews.kz/fotoarchive/1137/>> accessed 5 February 2019; Asel Satayeva, "It is their choice" - Vice-Minister about the night work of the parents of the dead girls' *Tengrinews.kz* (05 February 2019) <[https://tengrinews.kz/kazakhstan\\_news/eto-vyibor-vitse-ministr-nochnoy-rabote-roditeley-pogibshih-362657/](https://tengrinews.kz/kazakhstan_news/eto-vyibor-vitse-ministr-nochnoy-rabote-roditeley-pogibshih-362657/)> accessed 5 February 2019; Zhadra Zhulmuhametova, 'Mothers of many children gathered spontaneously in Astana and Almaty. What do they want to change?' *Informburo.kz* (7 of February 2019) <<https://informburo.kz/stati/mnogodetnye-materi-stihiyno-sobiralis-v-astane-i-almaty-chto-oni-hotyat-izmenit.html>> accessed 7 of February 2019; Catherine Putz, 'Nazarbayev Fired the Kazakh Government. The Kazakh president told his government to resign following public protests in the capital in recent weeks' *The Diplomat* (22 February 2019) <<https://thediplomat.com/2019/02/nazarbayev-fired-the-kazakh-government/>> accessed 05 March 2019. On 21 of February 2019 Kazakhstani Government was resigned that follows the public protests.

<sup>139</sup> Ibid.

<sup>140</sup> Taskinbayev Renat, 'Kazakhstani grief. Five girls -sisters were carried out on their last journey' *Tengrinews.kz* (5 of February 2019), <<https://tengrinews.kz/fotoarchive/1137/>> accessed 5 February 2019.

<sup>141</sup> Satayeva Asel, "It is their choice" - Vice-Minister about the night work of the parents of the dead girls' *Tengrinews.kz* (05 February 2019), <[https://tengrinews.kz/kazakhstan\\_news/eto-vyibor-vitse-ministr-nochnoy-rabote-roditeley-pogibshih-362657/](https://tengrinews.kz/kazakhstan_news/eto-vyibor-vitse-ministr-nochnoy-rabote-roditeley-pogibshih-362657/)> accessed 5 February 2019.

in a lot of debt. It also suggests that social services were not available or were passive as Carolyn Hamilton stated.<sup>142</sup> In reality, there are not enough affordable and state nurseries for children younger than two years old while maternity leave is paid only for one year.<sup>143</sup> The minimum and guaranteed monthly payment of benefits for the family during maternity leave in 2019 was 14,500 *tenge* (Kazakhstani currency) which is about \$37 while according to the First President Nursultan Nazarbayev the average salary of the family in Kazakhstan is about 500,000 *tenge* or about \$1,128.<sup>144</sup> This is thirty times the income of the family on benefits. This clearly supports the arguments of Legrand, that children in Eastern Europe and Central Asia, are in institutions not always because of abusive families or neglect, but also because of levels of poverty, inequality and lack of adequate social services to prevent family separations.<sup>145</sup>

However, the problem of the contemporary situation is that nothing has changed, apart from the names in positions of authority: the First President Nursultan Nazarbayev ‘*Elbasy*’<sup>146</sup> remains in power being in a special position as the head of the leading political party and other state organisations<sup>147</sup> while the Second President has not issued yet any commands relating to structural changes in regards to family support that require significant structural transformation and allocation or a review of the budget. Formally, the guilty officials were punished and resigned, but nothing was learned and or has improved in spite of some ongoing initiatives in the Administration of the President, Government and leading party Nur Otan.<sup>148</sup>

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<sup>142</sup> Carolyn Hamilton and Jonathan Watkins, *Modelling for Integrated Child Protection System in Kazakhstan* (UNICEF 2011) 13.

<sup>143</sup> Tengrinews.kz, ‘Children will be accepted in kindergartens of Almaty according to the new rules’ (15 of February 2018) <<https://tengrinews.kz/story/v-detsadyi-almaty-budut-prinimat-po-novyim-pravilam-337693/>> accessed 1 of October 2019; Aigul Mukhambetova, ‘Ministry of Education and Sciences RK calls on entrepreneurs to open kindergartens’ *Zakon.kz* (28 November 2016) <<https://www.zakon.kz/4831555-mon-rk-prizyvaet-predprinimatelejj.html>> accessed 1 of October 2019; The Law of the Republic of Kazakhstan About Compulsory Social Insurance 2003, art 23-2.

<sup>144</sup> The Law of the Republic of Kazakhstan About Compulsory Social Insurance 2003, art 23-2; Informburo.kz, ‘Maternity payments and benefits in 2019’ (21 May 2019) <<https://24.kz/ru/news/social/item/292265-dekretnye-vyplaty-i-posobiya-kak-oni-izmenyatsya-v-2019-godu>> accessed 1 of October 2019; Sputniknews.kz, ‘Nazarbayev: a family in Kazakhstan on average earns 500 thousand tenge’ (29 December 2018) <<https://ru.sputniknews.kz/radio/20181229/8683795/nazarbaev-srednyaya-zarplata-kazahstan.html>> accessed 25 January 2019.

<sup>145</sup> Legrand (n124).

<sup>146</sup> The Constitutional Law of the Republic of Kazakhstan dated July 20, 2000 About the First President of the Republic of Kazakhstan – Elbasy.

<sup>147</sup> Inbusiness.kz, ‘Kassym-Zhomart Tokayev expanded the powers of the First President Nursultan Nazarbayev’ (22 October 2019) <<https://inbusiness.kz/ru/last/kasym-zhomart-tokaev-rasshiril-polnomochiya-nursultana-nazarbaeva>> accessed 23 October 2019.

<sup>148</sup> See Chapter 4 Section 4.3.

### 3.4.2 The cultural features of the treatment of families and children in contemporary Kazakh society

The role of the family and the tribe has strengthened the new Kazakh society. Despite the serious struggle with the kinship aspects of Kazakh society by the administration of the Russian Empire and later by the authorities of the Soviet Union, tribal and kinship ties and patterns of behaviour remain a crucial component of the Kazakh social construction.<sup>149</sup> As Stasevich stated in his observation of Kazakh people's family life 'the strength of kinship turned out to be stronger than economic transformation'.<sup>150</sup>

Kazakh people preserve and follow the majority of their traditions and they in common with other ethnic groups remain mainly Muslim.<sup>151</sup> However, not all Kazakh traditions are based on religion; some of them have even older roots, dating back to before Islam and Sharia came to the steppe, when the nomads of the Kazakh territory practiced paganism and worshiped the sky, fire (flames) and spirits. 'Syrğa salu' (putting earrings on a new bride before the wedding), 'Kyz uzatu' (the wedding party on the bride's side), 'Kara shanyrak' (the responsibility of the youngest child to care for the parents), 'Kyrkynan shygaru' (welcoming the child forty days after its birth), 'Tusay kesu' (first step of the child), 'Ui alastu' (cleaning the house from bad spirits with fire) and other family traditions and ceremonies are still in current use across the whole country.<sup>152</sup> These customs characterise different stages of life of the family members or family life in general, and have deep meaning and are explored in the science of ethnography of the Kazakh nations.<sup>153</sup>

Tribal allegiance in the present day is mainly a matter of two issues: career building and marriage. A notorious example of the former is the history of the first president's family Nursultan Nazarbayev.<sup>154</sup> Coming from one of the *Ulu Zhuz* (Great Horde) tribes,

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<sup>149</sup> I V Stasevich, 'Marriage and family of Kazakh in the late XIX-early XXI century. Time and Tradition' in R R Rahimov and M E Rezvan (eds), *Central Asia: Tradition in Change. Issue II* (MAЭ PAH 2008).

<sup>150</sup> Ibid.

<sup>151</sup> A A Smailova, A Zh Ashuev, G Zh Kukanova, E N Musabek, N E Alkuatova, Yu K Shokamanov, N A Mukhtarova, E Zh Alykpasheva, S S Abduraimov, S T Nukutov, A R Ikambaeva, SH A Iskakova, and L N Sergazieva, *Analytical report. "Results of the National Population Census of the Republic of Kazakhstan 2009"* (Agency of the Republic of Kazakhstan on Statistics, LLP Investment and Industrial Corporation "AstanaBlankIzdat" 2011) 25; Saniya Edelbay, 'Traditional Kazakh Culture and Islam' (2012) 3 *International Journal of Business and Social Science* 122. Muslims of 24 nationalities constitute 70% of the population of Kazakhstan (11 million people).

<sup>152</sup> A B Kalysh, *Family and marriage in the contemporary Kazakhstan: Monograph* (Almaty Arys 2013) 195-210; Ernazarov (n56) 30-31, 94-111.

<sup>153</sup> Ibid.

<sup>154</sup> Khagai (n8); Hiro (n4) 274-280.

Nazarbayev provided most of the high-ranking positions to the members of this *zhuz*.<sup>155</sup> At the same time, he ensured his power by involving his close relatives into the control over the country. His first daughter Dariga Nazarbayeva – ‘a professional opera singer’ became the chairwomen of the upper chamber (*Senat*) of Parliament of Kazakhstan.<sup>156</sup> Her ex-husband Rahat Aliyev had several positions and made a fortune before he died in prison in Austria.<sup>157</sup>

The Austrian justice department has rejected suggestions of murder in a long-running controversy over the death in jail of Rakhat Aliyev, once one of the most powerful figures in Kazakhstan until he fell foul of his former father-in-law and president of the country, Nursultan Nazarbayev ... He was appointed to several key government posts, including deputy head of intelligence. Helped by his political connections, he built up a business empire in the oil-rich republic.

In spite of the split in the family of Nursultan Nazarbayev,<sup>158</sup> his family has developed significant power and wealth.<sup>159</sup>

Nazarbayev has three daughters—Dariga, Dinara, and Aliya—who are all powerful women in their own right. Dariga has long promoted herself as a great host for international gatherings; Aliya runs the Elitstroy construction company, which has built many of the country’s steel-and-glass office blocks, while Dinara Kulibayeva jointly controls the giant Halyk Savings Bank with her husband Timur.<sup>160</sup>

Having the close relatives in power, Nazarbayev shared a certain amount of power with representatives of the *Small Zhuz* since they occupy the western territory of Kazakhstan that is rich on oil.<sup>161</sup> The members of the *Middle Zhuz* were less in favour of Nazarbayev, although it is known that his official wife comes from this *zhuz*.<sup>162</sup> This example demonstrates the level of influence of the tribal belonging to career building in Kazakhstan.

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<sup>155</sup> Ibid.

<sup>156</sup> Hiro (n4) 275; Senate of the Parliament of the Republic of Kazakhstan, ‘Biography. Nazarbayeva Dariga Nursultanovna’ <<http://senate.parlam.kz/en-US/blog/601/biography>> accessed 30 December 2019.

<sup>157</sup> Ibid 278-280; Ewen MacAskill and Luke Harding, ‘Ex-Kazakhstan official was not murdered in Austrian jail, judge rules’ *The Guardian* (17 December 2015) <<https://www.theguardian.com/world/2015/dec/17/ex-kazakhstan-was-not-murdered-in-austrian-jail-judge-rules>> accessed 13 November 2017.

<sup>158</sup> Hiro (n4) 278-280.

<sup>159</sup> John M Roberts, ‘Nazarbayev’s gift to Kazakhstan: An orderly transition?’ Atlantic Council (19 March 2019) <<https://www.atlanticcouncil.org/blogs/new-atlanticist/nazarbayev-s-gift-to-kazakhstan-an-orderly-transition/>> accessed 1 of April 2019; Finextra, ‘Battle of the Billionaires as Utemuratov and Kulibayev Vie For Presidency’ (26 September 2018) <<https://www.finextra.com/blogposting/16046/battle-of-the-billionaires-as-utemuratov-and-kulibayev-vie-for-presidency>> 1 of April 2019.

<sup>160</sup> Ibid (2019).

<sup>161</sup> Khagai (n8).

<sup>162</sup> Ibid.

In terms of marriage the avoidance of kinship, and childbearing, until the ‘seventh knee’ (exogamy up to seven generations) is still in practice, and most Kazakh families keep notes on the generations keeping lists of names of fathers, tribes and clans inside the tribe. Therefore, knowing which tribe you belong to is crucial in Kazakh society and is a significant loss for Kazakh children deprived of parental care, with long-term consequences. Levirate, the forced marriage of a widow to another male member of the extended family of the deceased husband, is no longer practiced but care by kin on both the parents’ sides (mother or/and father) remains the main tool in the placement of orphans and children deprived of parental care. In particular, this practice is widespread in the West and South of Kazakhstan where a more traditional approach to family remains due to the prevalence of Turkic nations over Slavs.<sup>163</sup> Traditionally, in the average Kazakh family children are supported by their parents until their parents retire (sometimes even when the parents retire they keep helping with looking after the grandchildren) when it’s the turn of the children to care for their elderly parents. For example, parents help their children financially to obtain higher education, assist in marriages and wedding parties, with buying a house, getting a job (tribal impact), looking after grandchildren, while later children help their parents with access to health care, organising family events (anniversaries, events of siblings, funerals of relatives), buying ‘*sogym*’ (an entire horse or cow as the winter time meat) and if they can afford it, travelling abroad. Listening to the advice of the ‘*aksakal*’ (‘an old man with a white beard’) and obtaining blessings from the elders of both genders is widely practiced. All of these are accompanied by family traditions and ceremonies from the birth of the child, ‘*Besyke salu*’ (putting in a baby bed) till ‘*Kyrky*’ (forty days since death). Knowledge of your ancestry and genealogy provides conscious understanding of your status in Kazakh society and confirms your ethnic identity.<sup>164</sup> It is common among Kazakh people to start conversations with questions like: What is your *ru* (tribe)? Therefore, a lack of knowledge of tribe and kinship constitutes a lack of ethnic identity that in consequence deprives a child of the family and social support and family attachment, described above, during the person’s entire life. A detailed

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<sup>163</sup> Ualieva (n25) 232; Zharkynbekova, Aimoldina, and Akynova (n2); The Committee for the Protection of Children's Rights of Ministry of Education and Science of the Republic of Kazakhstan, ‘Information on the number of orphans and children left without parental care in the Republic of Kazakhstan (by regions) as of September 1, 2015’, <<https://www.bala-kkk.kz/sites/default/files/upload/files/-%D0%BE%D0%BF%D0%B5%D0%BA%D0%B0%281%29.pdf>> accessed 13 November 2017.

<sup>164</sup> Stasevich (n149).



discussion of the impact of Kazakh traditions on decision-making regarding guardianship and adoption when a child is left without parental care will follow in Chapter 5.

### 3.5 Conclusion

By the end of this chapter, reader should be familiar with historical, cultural and social aspect of the research problem. There is general introduction of the legal and practical issues regarding to family and children in contemporary Kazakhstan that is going to be narrowed and continued in the next chapter. This chapter also shows to reader the potential of Kazakh culture and traditions to provide care to children deprived of parental care within family.

The idea of considering two centuries of Kazakh history was to demonstrate what Kazakh families have been able to retain from their original culture in spite of the Russian intervention and its colonisation policy followed by the rigid totalitarian regime of Stalin and the Soviet Union ideology. The examination of the history of Kazakh culture, particularly family traditions, enables us to better understand the tendency of the contemporary family policy of Kazakhstan that has taken the traditional family approach and the strength of family ties into account. It also explains the significance of the family ties and belonging to a particular family and tribe for the identity of the child in Kazakh society not only in the past but also in contemporary Kazakhstan. At the same time, this historical and cultural study shows a direct correlation between the transformation of family-marriage relations and the social and economic dynamics of Kazakhstan.<sup>165</sup> In particular, the value and nature of family life (and specifically women and children) varies in accordance with the economic, political or social interests of the various stakeholders historically (the Czarist administration, the head of tribe (or family) in nomadic society, the Communist party) and the lack of such interests (independent Kazakhstan of 1991-2009). However, such political, economic and social interventions in Kazakh society were not always entirely successful and Kazakh families continued informally to follow their traditions and customs.

For instance, in spite of the Russian colonisation of Kazakhstan (which lasted almost two centuries), due to the lack of interest in the imperial Russian state in family issues, the Kazakh families continued their routine based on *Adat* and *Sharia* until 1925, which both

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<sup>165</sup> Ualieva (n25) 3.

regulated the processes of marriage, divorce, guardianship and adoption.<sup>166</sup> In what was a strong patriarchal society, women and children were disempowered, having few rights, on the one hand, but they were ensured a family environment on the other. ‘*Kalym*’ (payment for the bride), levirate, polygamy, early marriage (both genders), women abducted for marriage purposes were allowed by *Adat* and *Sharia* and were criticized later by Soviet scholars and politicians. However, the Kazakh family due to its tribal structure preserved strong family ties and had beneficial laws and customs in terms of the placement of children deprived of parental care, family and food, and these customs and laws also took in to consideration to some extent children’s the interests and autonomy. In contrast to the Czarist administration, the Communist party took a great interest in family structures and their way of life. Their interest in natural resources and the huge territory of Kazakhstan prompted rapid industrialisation of the region and forced settlement, confiscation of property, the breaking of family ties and that of the tribal system. All of these caused a sharp decline in the Kazakh population and even rendered them a minority group within their territory. It was during this time that major economic and social developments took place encompassing education for all, documenting (including birth certificates and passports), construction programmes, moves towards gender equality amongst others, but they came at great cost, including the lives of millions and with humiliation. However, the primary change during the Soviet Union period in Kazakh society that matters in the context of this research is the shift from extended family to nuclear family and the institutionalisation of children deprived of parental care. After the collapse of the Soviet Union, in the early days of independent Kazakhstan, the situation with children in institutions did not change due to another big challenge. The economic crisis of the nineties and 2008 gave rise to high levels of unemployment, poverty and alcoholism, contributing to a growing number of children in institutions.<sup>167</sup> Discrimination against women and domestic violence grew for reasons such as the restoration of the traditional stereotype of women’s roles and the patriarchal family structure, the reduction in women in the ‘outdoor life’ in the early years of independence, and changes in the proportions of Turkic and Slavic nations.<sup>168</sup> The family and gender

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<sup>166</sup> Aldashev and Guirkinger (n10); Ualieva (n25) 76-77; Zhakipova (n25) 69, 87-105.

<sup>167</sup> Ismayilova, Ssewamala, and Huseynli (n108); see also United Nations Committee on the Elimination of Discrimination against Women, ‘Report of the Committee on the Elimination of Discrimination against Women’ (Twenty-fourth session (15 January-2 February 2001) and Twenty-fifth session (2-20 July 2001) UN Doc A/56/38.

<sup>168</sup> Terry L Koenig, Richard Spano, David Kaufman, Matthew R Leiste, Ane Tynysbayeva, Gani Madyarbekov, and Assem Karataevna Makhadiyeva, ‘A Freirean analysis of Kazakhstani social work

policy of Kazakhstan recognised such issues and aimed to address them through the activities planned up to 2030, albeit they have not been very successful in doing so.<sup>169</sup>

Family ties and strong family traditions helped people to survive all the unstable political, economic and social situations described above and could be taken into account by policy makers as beneficial for children who are deprived of parental care. Namely, the practice of the pre-Soviet Kazakhs of looking after children deprived of parental care within the extended family might be promoted by the Government of Kazakhstan more actively on social media to encourage people to keep children safe within the family (nuclear or extended family) and to recruit foster families for children deprived of parental care.

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education' (2017) 60 *International Social Work* 156, see also United Nations Committee on the Elimination of Discrimination against Women, 'Report of the Committee on the Elimination of Discrimination against Women' (Twenty-fourth session (15 January-2 February 2001) and Twenty-fifth session (2-20 July 2001) UN Doc A/56/38.

<sup>169</sup> Ibid. Such outcomes might be considered as the side effect of the informal nationalisation program of the Kazakhstani authorities and the social approach to state intervention.

## Chapter 4

### Decision- making for children's placements in contemporary Kazakhstan: the inconsistencies of law and practice

#### 4.1 Introduction

This chapter aims to address one of the key questions of this research: to what extent do Kazakhstani law and practice represent the child's best interest in the context of the family environment? The argument of this chapter is that the child care system in Kazakhstan has not yet developed a decision-making process for child placements which correlates with the best interests of the child in the family environment. Arguments in support of this contention draw upon a combination of an analysis of the relevant legislation and an analysis of the data from the field where this legislation operates. The former is a doctrinal analysis of primary legislation while the latter came from the practitioners interviewed for this research. Hence, the chapter at its core consists of original fieldwork data, collected in Kazakhstan, and sheds more light on the research problem (the next chapter is also based exclusively on the Kazakhstani research). A detailed comparison with the English context was deliberately avoided due to the complexity of each of the Kazakhstani and English systems and the differences in, their structures, their legal cultures, and their social and cultural contexts. This is explained by my research design that is based upon contextual comparison and is presented in Chapter 7. A comparative approach was applied in Section 4.2 of this chapter in regard to different levels of the law within Kazakhstani jurisdiction (key laws versus subordinate legislation).

Overall, the drawbacks of the system can be explained by a series of interdependent factors. The inconsistency, contradictions and confusions in the legislation are the result of imposing the new legislation of the newly independent Kazakhstan onto the existing rigid child care system with its limited resources inherited from the Soviet time. There are also other reasons for the continuing operation of the old system, such as the reluctance of the main stakeholders to change, the marginalisation of children deprived of parental care within the society, and the old stereotypes that persist in relation to them. However, the latter is the discussion of the next chapter.

The relevant legislation and practice are investigated in the context of the role of decision-makers and the type of placement for children deprived of parental care. The discussion does not cover preventive measures in detail and focuses more on children's placement

procedures. This approach is explained by the lack of effective preventive measures and resources for doing so that I mention in Section 4.3 of this Chapter. The chapter starts with an introduction to the key legislation and the principles that drive the child care system. There are not many primary pieces of legislation that regulate matters in regard to the placement of children deprived of parental care in contrast to the list of regulations. However, inconsistencies, gaps and contradictions in Kazakhstani law make it not easy to follow. At the same time, the legislation is often not clear in terms of which agency is responsible for making specific decision. The competence of one agency might appear in the range of legal acts and sometimes it is still not clear which department does what. This trend is also discussed in the next section related to the decision makers since it is often a puzzle to find the particular agency within a local authority that deals with cases concerning children deprived of parental care. Identifying this agency is crucial because it is the point where the process of any placement is started.

The last two sections of the chapter are devoted to the study of the procedures in the decision-making process. These two sections demonstrate the gap that exists between the current system and the child's best interest in the context of the family environment.

## 4.2 Key legislation and principles of laws related to working with children deprived of parental care

This section aims to give the reader a brief overview of those aspects of the legal system of Kazakhstan that are relevant to this research. The legal system of Kazakhstan might seem simple in the beginning but the discussion of the legislation in this chapter demonstrates its complexity. This complexity is caused by the hierarchy of legal acts, the large number of acts 'with multiple references', and confusions and inconsistencies between acts of a different status.<sup>1</sup> It is also explained by the adaptation of this legislation to the existing resources and the system that was inherited from the time of the Soviet Union.

The legislation of Kazakhstan in the social spheres has been criticized for being purely declarative and failing to implement the international treaties in practice.<sup>2</sup> In the context of this research and this particular chapter the issues of the declarative or formal character

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<sup>1</sup> Ademi Bidaishiyeva, Kalamkas K Nadirova, Saltanat Kuldinova, Nurlan Apakhayev, Zhanna A Khamzina, and Yermek A Buribayev, 'Improving quality of legal regulation for social rights of family and child within new social course in the Republic of Kazakhstan' (2018) 21 Journal of Legal, Ethical and Regulatory Issues 1.

<sup>2</sup> Ibid.

of legislation will be raised several times. This section provides only a brief overview of the key legislation and some secondary regulations as examples to demonstrate their complexity. However, the rest of this chapter provides the contextual analysis of the relevant legislation, including the key pieces of legislation and secondary regulations.

To start with, the following pieces of legislation might be named as the fundamental laws in the sphere of working with children deprived of parental care: the Convention on the Rights of the Child (UNCRC), the Code on Marriage (Matrimony) and Family 2011(CMMF), the Law on the Rights of a Child in the Republic of Kazakhstan 2002 (LRCRK) and the Law of Kazakhstan on Special Social Services 2008 (LSSS). The UNCRC was ratified by Resolution of the Supreme Council of the Republic of Kazakhstan on 8th June 1994. According to Article 4 and Article 6 of the Law of Kazakhstan On Legal Acts (2016), the UNCRC takes precedence over national laws and applies directly, but it is not incorporated into the hierarchy of national legal acts of Kazakhstan. The complexity of the legal system is already apparent, for example from the LRCRK that partially replicates the provisions of the UNCRC. The question here is why has Kazakhstan replicated the UNCRC? However, as analysis will demonstrate later, the repetition of children's rights in the national law does not yet mean that children's rights are fulfilled in practice or that this law has ensured the implementation of the UNCRC.

The CMMF regulates, along with other family matter issues, the questions of guardianship (custody), the operation of the Republic's data bank of children deprived of parental care, the main issues related to fostering and host families, adoption and the orders relating to the deprivation and restriction of parental rights.<sup>3</sup> Some regulations relating to the same areas appear in Section 5 of 'The Rights of Children Deprived of Parental Care' in the Law on the Rights of a Child in the Republic of Kazakhstan. The difference from the CMMF, is that article 30 of the LRCRK provides the list of type of organizations (institutions) where the child deprived of parental care might be placed. However, in spite of the title of the law, which implies that the rights of the child are its focus, no one article (provision) of Section 5 of the LRCRK mentions any children's rights. The lack of any reference to the rights of children deprived of parental care in section 5 of the above law seems inconsistent with section 4, relating to the child and the

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<sup>3</sup> The Code on Marriage (Matrimony) and Family 2011 (CMMF), ss 3 and 4.

family, and which refers to the child's right to be raised in the family. Namely, according to article 21 of this law,

Every child has the right to live and be nurtured in the family, the right to know his parents and other close relatives, the right to their care and upbringing, except when it is contrary to his interests.<sup>4</sup>

It is noteworthy that this right as such does not appear in the UNCRC in the same terms as in the Kazakhstani legislation although it might be derived from the other provisions of the UNCRC.<sup>5</sup> However, the existence of the right in Kazakhstan does not mean that the right is entirely upheld in practice.<sup>6</sup> In addition, this right is not supported by other relevant measures like family support and social services for the family. Therefore, article 21 of the LRCRK is declarative in nature because it does not mention any 'implementation mechanisms'.<sup>7</sup> As Legrand noticed, the majority of children deprived of parents in post-Soviet states are social orphans whose families are suffering from poverty so that the separation of children from the family is the result of 'the absence of social protection mechanisms and services for families and children' and it is not in their best interests.<sup>8</sup>

A positive aspect of the LRCRK, is that article 17 of this law, clarifies that orphans are included in the group of children deprived of parental care. In contrast, orphans are often mentioned separately in the CMMF and other laws.<sup>9</sup> For instance, the LSSS recognises orphanhood separately and distinguishes between it and the absence of parental care as two different legal bases for a person to be considered in a difficult life situation (in need).<sup>10</sup> A child in either category is eligible to apply for special social services provided by the state in accordance with this law.<sup>11</sup> In fact, the subordinate legislation to which

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<sup>4</sup> The Rights of a Child in the Republic of Kazakhstan 2002 (LRCRK), art 21.

<sup>5</sup> The UNCRC, arts 7, 9, and 18.

<sup>6</sup> See Sections 4.4 and 4.5 below. In contrast, the use of institutional placements are stipulated by legislation, and this will be discussed later in this chapter.

<sup>7</sup> Bidaishiyeva et al. (n1).

<sup>8</sup> Jean-Claude Legrand, 'Child care system reforms in Eastern and Central Europe and Central Asia: Why there is a need to focus on children below three years' (2015) 15 *Irish Journal of Applied Social Studies* 2.

<sup>9</sup> According to the CMMF 2011, art 1 (1)(5), a child (children) left without the custody of parents (parent) is defined as a child (children) left without a custody of parents (parent) - a child (children) that lost a custody of one or both parents, due to restriction or deprivation of their parental rights, recognition as missing, declaration as decedent, recognition as incapable or partially capable, service of sentence in the places of deprivation of freedom, avoidance of the child's nurturing or protection of his (her) rights and interests, as well as with refusal to take a child from an educational or healthcare organization, as well as in other cases of absence of parental custody and that is in need for the security of required protection of his (her) rights and interests, provided by the Laws of the Republic of Kazakhstan.

<sup>10</sup> The Law of Kazakhstan on Special Social Services 2008 (LSSS), art 6 (1).

<sup>11</sup> *Ibid*, arts 6 and 12.

the LSSS refers<sup>12</sup> indicates that only disabled orphans and children deprived of parental care are eligible for the services mentioned in these regulations while other children are not eligible for these services. There is thus an inconsistency between the legislation at different levels. Able-bodied children cannot apply for social services according to this law since there is no agency or institution that provides such services. Optimistically, it might be predicted that in the case of further development in the social work sphere in Kazakhstan the norms of the LSSS might be applicable to all children.<sup>13</sup> This is because it implies the existence of a social work practice that includes assessment, and a role for social workers in identifying needs and required services, namely according to article 14 of the Law,

Special social services are provided on the basis of assessing and determining the need for special social services for a person (family) who is in a difficult life situation determined by a social worker in assessing and determining the need for special social services.<sup>14</sup>

Currently, social workers are not mentioned in the CMMF or in LRCK and are not included in the practice of working with orphans and children deprived of parental care who at present fall under the competence of the education system and system of health. Hence, there is a clear contradiction between the positive intention to provide social workers in one law and their absence in the formulation of other existing laws. It also might be considered as a violation of the principle of non-discrimination in the UNCRC if a social worker is not available for a healthy child deprived of parental care, and is only provided for a child deprived of parental care with health issues, including a disability.

Regulations and standards vary depending on the type of placements available for children deprived of parental care. They also might differ in the context of the kind of organisation or commission involved or which working process or type of public service is regulated.<sup>15</sup> For instance, there are regulations governing the placement of children under 3 (with health issues up to 4) years old in institutions known as Baby Homes, and these regulations concern the way the organisation works and what kind of services

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<sup>12</sup> The Standards for the Provision of Special Social Services in the Field of Social protection of the Population, approved by the Order of the Minister of Health and Social Development of the Republic of Kazakhstan dated March 26, 2015.

<sup>13</sup> Yu Yu Abramova, 'The Evolution of the Content of Social Work in the Post-Soviet Space of the Republics of Moldova, Belarus, Lithuania, Kazakhstan' (2016) Bulletin of Nizhny Novgorod University named after NI Lobachevsky Series: Social Sciences. The social work in Kazakhstan is a subject of constant development as in other ex-Soviet countries.

<sup>14</sup> LSSS 2008, art 14.

<sup>15</sup> See Section 4.4 and 4.5 for the discussion on regulations and examples.



children are expected to receive there. This piece of legislation is called the Regulations on the activities of the health organization for orphans, children left without parental care from birth to three years old, with mental and physical development defects from birth to four years, carrying out psychological and pedagogical support for families at risk of abandoning a child, that was approved by the Order of the Minister of Healthcare of the Republic of Kazakhstan of December 27, 2017.<sup>16</sup>

Another example is the Standard rules for the activities of the Adaptation Centres for Minors approved by the Order of the Minister of Education and Science of the Republic of Kazakhstan on June 18, 2013. This regulation governs the operation of the Adaptation Centres for Minors where children of all ages are referred in the first instance when there is no family member found to leave the child with. The activities of eight types of institutions for children deprived of parental care are also regulated by similar standards, which are approved by the same order of the Minister of Education and Science.

An exceptions to the above-mentioned legal regulation of the activities of institutions for children, is the Law of the Republic of Kazakhstan About Family-Type Children's Villages and Youth Homes (2000). This law is the only higher hierarchy piece of legislation that regulates the activities of the institutions for children deprived of parental care. This might be explained by the international standards that are in force as part of the government of Kazakhstan's agreement with the International Fund "SOS KINDERDORF INTERNATIONAL".<sup>17</sup> This type of placement for children deprived of parental care first appeared in 1997 as an initiative of Sara Nazarbayeva, the wife of the First President of Kazakhstan Nursultan Nazarbayev.<sup>18</sup> Later in 2004 an agreement was signed between the Government of the Republic of Kazakhstan and the International Fund "SOS KINDERDORF INTERNATIONAL" and ratified by the relevant Law in

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<sup>16</sup> Mygorod.kz, 'Illegal activity of Baby houses in Kazakhstan' (13 June 2017) <<http://mygorod.kz/?p=19542>> accessed 20 September 2018. This regulations replaced the Rules for the organization of the activities of the Baby's Home and Rules for the admission of children to the Baby's Home and extracts from it approved by the order of the Chairman of the Agency of the Republic of Kazakhstan for Health Affairs of June 6, 2000, that lost force by the order of the Minister of Health of the Republic of Kazakhstan dated April 22, 2014. From 2014 to the end of 2017 there was no regulations on the activities of the Baby's Home, this was noticed by the Ombudsmen of Human rights in 2017.

<sup>17</sup> SOS Children's Villages International, 'What we do' <<https://www.sos-childrensvillages.org/our-work>> accessed 25 September 2018. This fund is well known across the world as organisation that works with communities and partners in different states to provide children with alternative care in loving and supportive family-type environment.

<sup>18</sup> SOS Children's Villages, 'About us' <<http://www.sos-kazakhstan.kz/ru/page/o-nas>> accessed 25 September 2018.

December 2004.<sup>19</sup> Unlike the other regulations related to institutions for children deprived of parental care, this law takes as its starting point the rights of children in the context of activities of this type of organisation for children deprived of parental care.<sup>20</sup> It also mentions the main principles that are relevant to the particular type of activities that are regulated by this law.<sup>21</sup>

It is possible that some of the regulations may be missing from this research because responsibility for children deprived of parental care is spread across a variety of systems (education, health, and social protection) and Ministries. The latter includes the Ministry of Education and Science, the Ministry of Healthcare, the Ministry of Labour and Social Protection, the Ministry of Internal Affairs and the local departments for each of these regulations can be approved at the central or at the local level. In July 2018, a new regulation relevant to the subject of child protection was instituted by: the Ministry of Social Development of the Republic of Kazakhstan. This Ministry includes the Committee on Youth and Family Affairs. At the stage of writing this chapter (September 2018), their regulation does not cover the themes covered by this thesis questions, but this might be changed. Therefore, it is possible that some regulations might be omitted, but the effort was made to explore all those relevant to the decision-making process of children's placements. Even though such a variety of agencies are involved in the process, I did not find any regulation or rule that governs interagency collaboration. Thus, the listed agencies are disconnected, and so there is no integration in the approach and no joined up focus on the child's interests.<sup>22</sup>

As outlined above, the regulations are the critical issue, as well as the impact of inconsistencies in the law on the operation of the existing child care system. Such conflicts must be resolved to ensure that the main principles of the UNCRC, including the principle of the best interests of the child in both the long and short term, can be implemented in Kazakhstani legislation and practice.<sup>23</sup> The international treaties are

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<sup>19</sup> The Law of the Republic of Kazakhstan On ratification of the Agreement between the Government of the Republic of Kazakhstan and the International Society for the Creation of SOS Children's Villages "SOS KINDERDORF INTERNATIONAL" 2004.

<sup>20</sup> The Law of the Republic of Kazakhstan About Family-Type Children's Villages and Youth Homes 2000, arts 4-10.

<sup>21</sup> Ibid, art 3 (1).

<sup>22</sup> See Section 4.3.

<sup>23</sup> Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (UNICEF 2007) 38; Legrand (n8); Mary O Hearst, John H Himes, Spoon Foundation, Dana E Johnson, Maria Kroupina, Aigul Syzdykova, Musa Aidjanov, and T Sharmonov, 'Growth, nutritional, and developmental status of young children living in orphanages in Kazakhstan' (2014) 35 *Infant mental health journal* 94; Roza Alimbayeva, Marzhan Baimukanova, Raikhan Sabirova, Baizhol Karipbaev, and

considered as ‘the standards of state social policy’.<sup>24</sup> However, I demonstrate below that though the UNCRC is reflected in the fundamental laws related to children in Kazakhstan, there is still a significant distance between the international and national legal frameworks, as a result in particular of the declarative style of some national provisions and the low level of implementation of the UNCRC in practice.<sup>25</sup>

The analysis of the empirical data from the fieldwork in Kazakhstan clearly shows awareness of the contradictions of the primary law, regulations, and practice by all parties: The institutionalisation and the underdevelopment of family-based placements are the consequences of the existence of an old and rigid child care system and the lack of financial and human resources to replace that system.<sup>26</sup> Resources are needed to change the system, to add new social services and to revise the entire approach to decision-making that currently thinks in terms of institutions first and only after will consider a family placement.<sup>27</sup> Kazakhstan ratified all of the international documents related to children’s rights and reflected them to some extent in domestic law. The state increased financial support for alternative families, and since 2010 reduced the number of institutions and implemented a new form of alternative families.<sup>28</sup> However, all of these do not alter the state approach that is based on agency interests.

At present, the legislation of Kazakhstan is seriously defective in terms of the general principles of the UNCRC,<sup>29</sup> and their implementation in domestic law and regulations.

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Mendigul Tamabayeva, ‘Psychological peculiarities of the professional self-determination of social orphans in senior adolescence’ (2018) 23 International Journal of Adolescence and Youth 457; Maria G Kroupina, Liza Toemen, Musa M Aidjanov, Michael Georgieff, Mary O Hearst, John H Himes, , Dana E Johnson, Bradley S Miller, Spoon Foundation Research team, Aigul M Syzdykova and Toregeldy S Sharmanov, ‘Predictors of developmental status in young children living in institutional care in Kazakhstan’ (2015) 19 Maternal and child health journal 1408. National and international scholars proved that institutions for children damaged their development process and negatively impact on their life as an adult, therefore Kazakhstan has to move on from the institutional placement as this does not work for the best interest of the child and his or her future as an adult. So far, this intention of Kazakhstan is only declarative and not consistence and sustainable in the legislation and practice.

<sup>24</sup> Ayman Bekmuratovna Omarova, Binar Adamovna Taitorina, Adilet Tokhtamysovich Yermekov, Bulat Doszhanov, Yermek Abitayevich Buribayev, and Z A Khamzina, ‘Application of International rules ensuring social rights of families and children in Kazakhstan’ (2017) 8 Journal of Advanced Research in Law and Economics 153.

<sup>25</sup> M T Akimzhanova and G A Ilyassova, ‘Realization of international legal norms in the sphere of child’s rights protection in the Republic of Kazakhstan’ (2017) 1 Law 101.

<sup>26</sup> Legrand (n8).

<sup>27</sup> Nazgul Assylbekova and Anuarbek Kakabayev, ‘Kazakhstan’ in Penelope Welbourne and John Dixon (ed), *Child Protection and Child Welfare: A Global Appraisal of Cultures, Policy and Practice* (Jessica Kingsley Publishers 2013) 204. For instance in 2011, there was one specialist for 27,738 children in Kazakhstan instead one specialist for 5,000 children as recommended according to the world practice.

<sup>28</sup> See Section 4.4 of this Chapter.

<sup>29</sup> Kulyash Magzumovna Kasienova, ‘Legal framework for adoption in the Republic of Kazakhstan’ (2016) 3 International scientific journal Symbol of Science 165. The comparison of the author of the legal frameworks of Kazakhstan and Kyrgyzstan shows the wider range of the principles in Kyrgyzstan than in

Structurally, the principles are usually set out in the early parts of the law and therefore apply to all areas under that law. There are no specific principles presented in a particular section that regulate specific situations relating to child placement.<sup>30</sup> The following principles were selected from the list of general principles of national law as being relevant to working with children deprived of parental care:

From the CMMF:

- inadmissibility of arbitrary interference by someone in the family affairs;
- priority of the family nurturing of children, caring for their development and prosperity;<sup>31</sup>

From the LRCRK:

- priority of preparing children for a full life in society;<sup>32</sup>

From the Law About Family-Type Children's Villages and Youth Homes:

- priority protection of rights and legitimate interests of pupils;<sup>33</sup>

From the Standard rules for the activities of types of educational organizations for orphans and children left without parental care,

- the principle of cooperation between pupils and adults.<sup>34</sup>

Although the UNCRC takes precedence over national law, the lack of emphasis placed on general principles in the domestic legal acts demonstrates that these principles are not taken seriously by the national law makers. Consequently, there is no understanding of what constitutes the best interests of the child or the concept of a child-centred system among the majority of practitioners.<sup>35</sup> This also shows inconsistencies between the national law and international treaties ratified by Kazakhstan.

Moreover, the principles identified and analyzed pertaining to one law are not consistent with the principles from another law. For instance, the principle of 'priority of the family nurturing of children, caring for their development and prosperity' from the CMMF is not reflected among the principle of the LRCRK or among the principles of the LSSS. Furthermore, in spite of the existence of the principle of priority of the family nurturing

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Kazakhstan, that in addition reflect some of the main principles of the UNCRC such as no-discrimination and the right to be heard. The legislation of Kyrgyzstan also has the principle of no separation of the family and the child and ensuring of stability and continuity of upbringing and education of the child.

<sup>30</sup> See Sections 4.4 and 4.5 of this Chapter.

<sup>31</sup> The CMMF, art 2 (2).

<sup>32</sup> The LRCRK, The Preamble

<sup>33</sup> The Law of the Republic of Kazakhstan About family-Type Children's Villages and Youth Homes 2000, art 3 (1).

<sup>34</sup> The Standard Rules for the Activities of Institutions for Children Deprived Parental Care, approved by the order of the Minister of Education and Science of the Republic of Kazakhstan of June 18, 2013.

<sup>35</sup> See Chapter 5 Section 5.3 below.

children in the CMMF, and the same right of the child in the LRCRK (Article 21), this approach is contradicted in the legislation and in practice.

The next three sections reveal the decision -making process of placement of children deprived of parental care and provides the evidence that supports the argument that Kazakhstani legislation is not consistent and is contradictory in regard to the principle of the priority of the family nurturing children.

#### 4.3 The role of the guardianship authority, the court, and the commissions in the decision –making

This section has aimed to demonstrate the child care system and its elements. It shows the complexity and the lack of transparency of decision-making process which in consequence does not correspond with the best interest of the child. According to Article 117 (para. 2) of the CMMF, all referrals from individuals and legal entities regarding orphans and children deprived of parental care should be sent immediately to the local authority. An exception to this rule is the provision for the directors of medical organisations who should inform the local guardianship authority about abandoned newborn babies within three working days.<sup>36</sup> Based on this information, the local authority is responsible for investigating the child's living conditions within three days<sup>37</sup> and ensuring the protection of the rights and interests of the child until deciding on his or her placement.<sup>38</sup> However, it is not clear in the CMMF which department in the local authority is responsible for children deprived of parental care and what kind of protection services are expected to be called upon. At the same time, there is no reference to any other legislation to help find the answers to these questions. However, the response to these two questions was found partially in the Rules for the implementation of the functions of the state in guardianship and trusteeship.<sup>39</sup> Hence, to identify the particular department in the local authority that is responsible for children deprived of parental

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<sup>36</sup> The CMMF, art 117 (3).

<sup>37</sup> Examination of the child's living conditions is limited by living condition of the child so that it does not aim to assess the problem of the family in depth. This is because it is not required within the work of the local guardianship authority, there are no human resources and mechanism of doing assessment of the family and the child's life. However, this examination is inevitable part of all decision-making process of the child's placement.

<sup>38</sup> The CMMF, art 117 (4).

<sup>39</sup> The Rules for the Exercise of the Functions of the State for Guardianship and Trusteeship, approved by the Resolution of the Government of the Republic of Kazakhstan 2012.

care is one more example of the complexity of the system. According to the above Rule, two different departments might be implicated - 'the authorized bodies of education and health'.<sup>40</sup> However, scrutiny of other legislation to identify what these bodies are<sup>41</sup> shows that the issues of children in need is not a priority in the list of functions and duties of the Ministry of Education and Science while medical organizations do not recognise themselves as bodies of guardianship and trusteeship. For example, in the Decree of the Government of the Republic of Kazakhstan called "Questions of the Ministry of Education and Science of the Republic of Kazakhstan" (2004), the questions related to guardianship or trusteeship functions of local departments of education appear in the provisions 47, 47-3, and 116 after all other matters related to education. Provision 47 refers to the local departments of education in terms of adoption, custody, guardianship, foster and host families although according to provision 116 some issues related to children in need fall under the responsibility of other, un-named, organisations. Therefore, the legislation and the systems related to children in care are confusing and unclear. The system and legislation have 'multiple reference rules' so that it is possible only in practice to identify the specific departments within the local authority bodies which are responsible for the issues related to children deprived of parental care. Depending on the situation, in some cases, it is the guardianship authority, while in other cases it is the decision of the *Akim* (Mayor) of the district, city, region or the capital, depending on the location of the child.<sup>42</sup>

The gaps in the CMMF regarding the other protection services are filled in by the Rules for the Implementation of the Functions of the State in Guardianship and Trusteeship, that lists the protection services provided by the local guardianship authority.<sup>43</sup> These include ensuring the temporary placement for children deprived of parental care, ensuring the protection of the property of the child, preparing the alternative family placement for the child and other services.<sup>44</sup> Thus, this is another inconsistency between the pieces of

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<sup>40</sup> Ibid, para 6.

<sup>41</sup> The Code of the Republic of Kazakhstan On the Health of the People and the Health Care System 2009, art 32 (2); Decree of the Government of the Republic of Kazakhstan called Questions of the Ministry of Education and Science of the Republic of Kazakhstan 2004; The Regulations on the activities of the health organization for orphans, children left without parental care from birth to three years old, with mental and physical development defects from birth to four years, carrying out psychological and pedagogical support for families at risk of abandoning a child, approved by the Order of the Minister of Healthcare of the Republic of Kazakhstan of December 27, 2017.

<sup>42</sup> See Sections 4.4 and 4.5 below.

<sup>43</sup> The Rules for the Exercise of the Functions of the State for Guardianship and Trusteeship, approved by the Resolution of the Government of the Republic of Kazakhstan 2012, paras 7 and 9.

<sup>44</sup> Ibid.

legislation of different levels. Namely, in contrast to the list of protection services in the Rules, article 116 of the CMMF, amongst all the forms of protection of the rights and welfare provided for by the Rules for orphans and children deprived of parental care, mentions only their placement.<sup>45</sup>

There is another contradiction related to the agency/organisation that is responsible for the child's placement. According to the Standard Rules that regulate the activity of the Adaptation Centres for minors, the Adaptation Centres are responsible for looking after homeless children, children in need, children deprived of parental care and minors who are in the process of referral to specialised educational organizations and must inform prosecutors within 24 hours and the local guardianship authority within three days of the child's arrival.<sup>46</sup> However, according to Article 117 (para. 2) of the CMMF and the Rules for the Implementation of the Functions of the State in Guardianship and Trusteeship, the local guardianship authority is the organisation that is supposed to ensure the temporary accommodation of the child in need.<sup>47</sup> Therefore, it is rightly noted by Hamilton and Watkins that the child protection system is not 'child centred'. In particular, in their research conducted on behalf of UNICEF Kazakhstan in 2010, they identified a number of shortcomings:

multiple referral points and investigation responsibilities; police generally first point of contact; system is not 'child centred'; resources focussed on institution, not community; no system of linking policy with local need.<sup>48</sup>

In spite of the amendments that have happened in the system since 2010, Hamilton and Watkins' considerations are still applicable. The system as it was depicted by Hamilton and Watkins in 2010 graphic below (figure 4.1) remains almost the same with only a few changes (see the notes in red superimposed on the graphic). What changed from 2010 is that Departments of Child Protection within the local authority were abolished since it was decided that these departments duplicated the function of the guardianship authority.<sup>49</sup> In the opinion of one of the respondents of the conducted interview, who

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<sup>45</sup> CMMF, art 116 (1).

<sup>46</sup> The Standard Rules for the Activities of Institutions for Children Deprived Parental Care, approved by the order of the Minister of Education and Science of the Republic of Kazakhstan of June 18, 2013.

<sup>47</sup> The Rules for the Exercise of the Functions of the State for Guardianship and Trusteeship, approved by the Resolution of the Government of the Republic of Kazakhstan 2012, para 9.

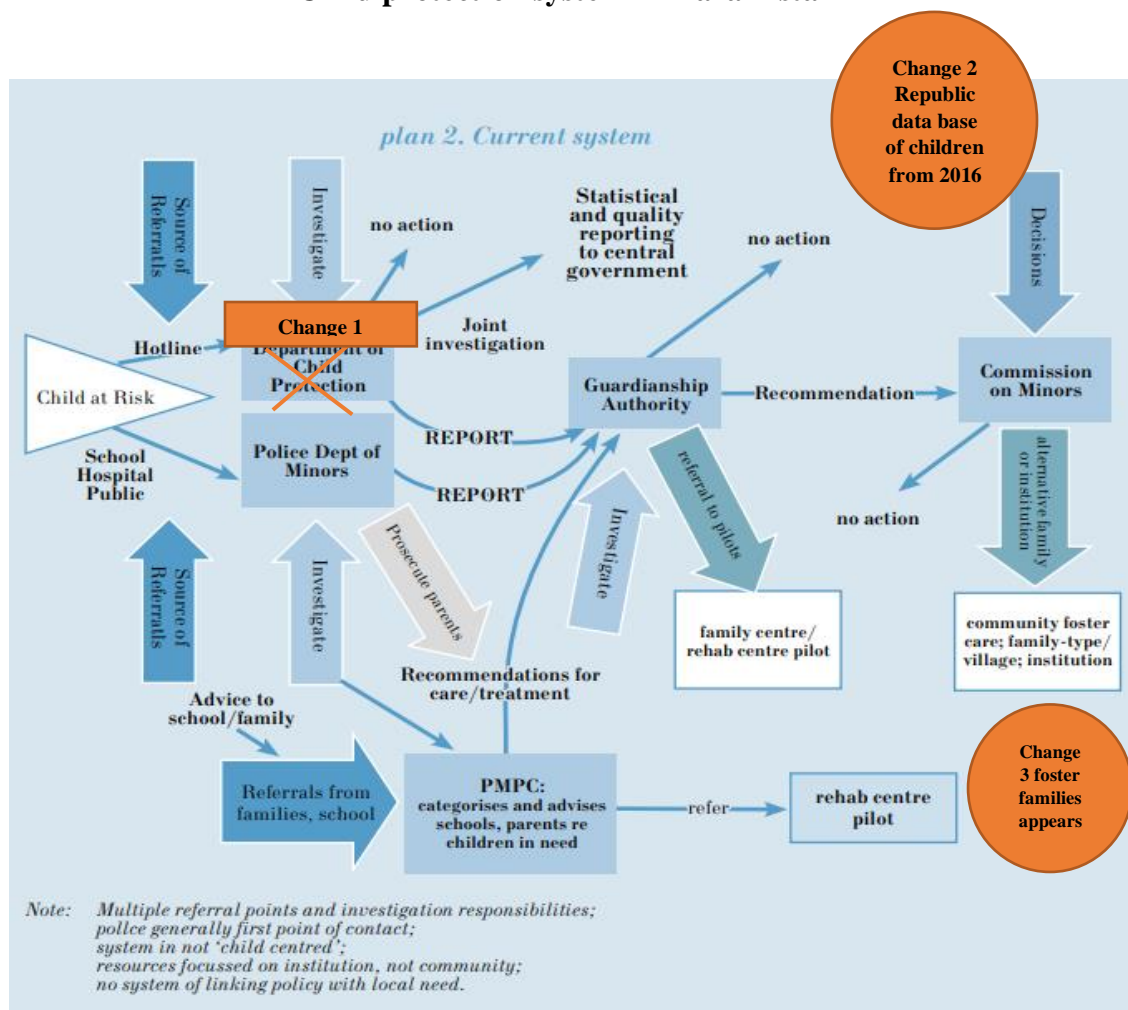
<sup>48</sup> Carolyn Hamilton and Jonathan Watkins, *Modelling for Integrated Child Protection System in Kazakhstan* (UNICEF 2011) 13.

<sup>49</sup> Interview with Nagima on 17 April 2018, see also the Decree of the Government of the Republic of Kazakhstan On Certain Issues of Staff Limits for Ministries, Other Central and Local Executive Bodies and the Abolition of Some State Institutions 2013; Tengrinews.kz, 'Departments for the protection of children's rights abolished in Kazakhstan' (15 of February 2014)

used to work in this department from 2007 to 2013, the closure of these departments has meant that there is now no agency remaining that protects children's rights within the local authorities and in addition there is a shortage of staff in the guardianship authority.<sup>50</sup> The result of these changes is that some children remain with no clear status because there are not enough people in the system to make the necessary applications to the court.<sup>51</sup> The status of the child as one whose parents have been officially deprived of their parental rights is one of the condition for the child to be adopted if his or her parents are alive.<sup>52</sup>

**Figure 4.1**

**Child protection system in Kazakhstan<sup>53</sup>**



<[https://tengrinews.kz/kazakhstan\\_news/upravleniya-po-zaschite-prav-detey-uprazdnili-v-kazahstane-250495/](https://tengrinews.kz/kazakhstan_news/upravleniya-po-zaschite-prav-detey-uprazdnili-v-kazahstane-250495/)> accessed 25 September 2018.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid; see also Assylbekova and Kakabayev (n27). In 2011, there was one specialist for 27,738 children in Kazakhstan instead one specialist for 5,000 children as recommended according to the world practice (the workload on one specialist is 5 times more than recommended).

<sup>52</sup> The CMMF, art 84 (2)

<sup>53</sup> Hamilton and Watkins (n48) 13; the CMMF, chapters 15-1 and 17-1.



Another innovation in the child care system is the republic's database that was introduced in 2016 for the registration of children deprived of parental care.<sup>54</sup> In addition, there are two type of foster families appeared from 2012 (small foster family or 'patronage') and 2016 (big foster families) as an alternative family-based placement options.<sup>55</sup>

However, in spite of these changes, one of the main problems remains, which is the lack of adequate means and resources to address the children's needs (interests) in terms of family-based placements.<sup>56</sup> The guardianship authority works with children deprived of parental care based on practices that are rooted in the socialist regime,<sup>57</sup> and has not developed enough to be able to provide preventive services that support families in need and alternative families.<sup>58</sup> At the moment, the role of gatekeeping is played by the Juvenile Commission, as in other post-Soviet states.<sup>59</sup> Its work does not seem to be efficient and consistent since it is an extra burden which is not budgeted for or monitored. The Juvenile Commission consists of the chairman, deputy chairman, commission members and a secretary.<sup>60</sup> The Commission members are the deputies of the relevant *Maslikhats* (local representative body in the Republic of Kazakhstan),<sup>61</sup> representatives of the departments of internal affairs, education, culture, health, justice, the authorized body for employment, guardianship and trusteeship, public and other organizations interested in preventing crime, neglect and homelessness among minors.<sup>62</sup> The chairman of the commission is the deputy *Akim* (Mayor) of the corresponding administrative-territorial unit.<sup>63</sup> According to regulations that govern the activity of this

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<sup>54</sup> See Section 4.4.

<sup>55</sup> See Section 4.4.

<sup>56</sup> United Nations Committee on the rights of the Child, 'Concluding observations on the fourth periodic report of Kazakhstan' (30 October 2015) UNCRC/C/KAZ/CO/4, paras 11-13, 36-37; Hamilton and Watkins (n48) 26.

<sup>57</sup> Ibid, see also A T Ayazbayeva and M K Zhurunova, 'Social and legal protection of children left without parental care in the Republic of Kazakhstan' (Scientific-practical conference "Modern problems of the humanities and social sciences, Eurasian Humanities Institute, Astana, December 2016); S A Mulikova, S K Kenzhebaeva, and M K Abdakimova, 'The practice of social work with orphans and children left without parental care in Kazakhstan' (2015) 11 International Journal of Applied and Basic Research 102.

<sup>58</sup> Ibid.

<sup>59</sup> Andy Bilson, *The Development of gate-keeping functions in Central and Eastern Europe and the CIS: Lessons from Bulgaria, Kazakhstan and Ukraine* (University of Central Lancashire and UNICEF 2010) 46-47; Assylbekova and Kakabayev (n27).

<sup>60</sup> The Law of the Republic of Kazakhstan On the Prevention of Juvenile Delinquency and the Prevention of Child Neglect and Homelessness 2004, art 9 (4).

<sup>61</sup> The Law of the Republic of Kazakhstan On Local Government and Self-Government in the Republic of Kazakhstan 2001, art 1 (1)(11).

<sup>62</sup> The Law of the Republic of Kazakhstan On the Prevention of Juvenile Delinquency and the Prevention of Child Neglect and Homelessness 2004, art 9 (5).

<sup>63</sup> Ibid, art 9 (4).

commission, its functions include applying to the court to deprive parents who do not provide proper care of their rights and also applying to the court to protect the rights of the child.<sup>64</sup> However, the legislation does not say which exact body, agency or department applies to the court. The most likely resource of this Commission is the guardianship authority. According to the legislation of Kazakhstan on the prevention of domestic violence, this Commission is also in charge of the prevention of child abuse in the cases of domestic violence, but there are also no mechanisms, instructions or human resources to back up work with such children.<sup>65</sup> The only social service provision clearly referred to in subordinate legislation is that children of the victims of domestic violence should be accommodated together in the organisations that provide social services to the victims of domestic violence.<sup>66</sup> The Commission might ask the guardianship authority to support minors in need and in difficult life situations.<sup>67</sup> The assistant of the Minister of Education and Science Raisa Sher raised the issue of the inefficiency of the Commission within the extended board meeting of the Ministry of Education and Science of Kazakhstan on 15 February 2019 and pointed out the lack of meetings of the Commission during the whole of 2018 in one of the regions of Kazakhstan.<sup>68</sup> The inefficient functioning due to the voluntary basis of the work of this Commission is also apparent in other post-Soviet states.<sup>69</sup> The above analysis of the current situation indicates that the measures in Kazakhstan in regards to children in need, as well as being inconsistent and confusing are purely formal i.e. exist on paper but with no resources to provide adequate social support services.

It may be argued that the current child care system and in particular the limited staff in the authority of guardianship is inherited from the Soviet era practice.<sup>70</sup> The same concern was raised by one of the respondents during the interviews for this research:

To improve the work of the authority of guardianship, first of all, you need to increase the number of staff and you need to create such conditions for them so that there is no staff

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<sup>64</sup> The Model Regulation on the Commission for Minors and the Protection of their Rights, approved by Decree of the Government of the Republic of Kazakhstan 2001, paras 9 (5), 12.

<sup>65</sup> The Law of the Republic of Kazakhstan On Prevention of Domestic Violence 2009, art 9; The standard for the provision of special social services to victims of domestic violence, approved by the Order of the Minister of Health and Social Development of the Republic of Kazakhstan 2016, para 26.

<sup>66</sup> The Standard for the provision of special social services to victims of domestic violence, approved by the Order of the Minister of Health and Social Development of the Republic of Kazakhstan 2016, para 26.

<sup>67</sup> Ibid, para. 9 (6).

<sup>68</sup> Edugovkz, 'The extended board meeting of the Ministry of Education and Science of Kazakhstan' (online translation, 15 February 2019) <<http://parent.kz/2Ebn9uQ>> accessed on 15 of February 2019.

<sup>69</sup> Bilson (n59) 46-47

<sup>70</sup> Hamilton and Watkins (n48) 6; Assylbekova and Kakabayev (n27).

turnover, because people come and then leave very quickly, they don't have time to get familiar with the specifics of the work ... people who work in schools, institutions have their own specifics, they need to be understood, not to accept just anyone, just people with a diploma of a teacher, still very important is motivation .., working conditions are very important, payment is very important ... In order for the guardianship authorities to also work effectively, these Family Support Centres are still needed, you need to create them, you need to train specialists, you need to constantly upgrade these skills to these specialists to act as such technical services providing services to families.<sup>71</sup>

As an active member of the social movement of Kazakhstan “The Child must live in a family” through social media such as Facebook and WhatsApp, I am partially involved in the discussion of the ongoing (March-April 2019) reform in Kazakhstan in the child care sphere and also have access to the documents that are elaborated within the working groups.<sup>72</sup> Social reforms with regards to the work of the police and with regards to vulnerable families were initiated by the society in the light of two accidents in the two main cities of Kazakhstan: Nur-Sultan (Astana) and Almaty<sup>73</sup> which forced the Government, main political party “Nur-Otan”, the Administration of the President and the Parliament to urgently discuss and address social issues. The overview of documents shows that this activity does not have a sustainable approach since the majority of activities described in these documents rely on existing resources. For example, according to the amendments to a range of legislation related to the activities of organisations that have a role in child protection, school teachers are obliged to report any signs of abuse against children or between children, while the personnel of the medical organisations for children under 4 years old which provide temporary accommodation for them, are obliged to provide psychological and pedagogical assistance for families whose children are in such organisations.<sup>74</sup> According to the draft of another list of amendments that are currently under discussion (4 of April 2019), new agencies should appear in the near future that will help the local authority to place children in a family. This was an initiative of an NGO called “*Ana-Yi*” (Mother’s home or home for mother) and was supported by

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<sup>71</sup> Interview with Zhuldyz (NGO) on 16 March 2018.

<sup>72</sup> The Law of Kazakhstan On Legal Acts 2016, art 10. Law-making process sometimes include establishing the working group with representative from different state officials, NGOs, experts from different fields, and members of Parliament. As a member of social movement I had an access to the documents that were elaborated with participation of the NGOs in the sphere of children’s rights.

<sup>73</sup> See Chapter 3 Section 3.4 Subsection 3.4.1 above.

<sup>74</sup> The Law of the Republic of Kazakhstan On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on issues related to the activities of organizations performing the functions of protecting the rights of the child 2019.

the first president of Kazakhstan Nazarbayev N.A. (resigned on 19 of March 2019).<sup>75</sup> According to the draft, social services will be provided by NGOs such as international adoption agencies, but with a wider spectrum of types of placement, including adoption, custody, guardianship, and foster families. The implementation plan of another project, “*Bakytty otbasy*” (Happy family), initiated by the main political party “*Nur-Otan*” seems under-resourced since the majority of activities with regards to the strengthening of families have not been allocated any financial resources and rely on the work of regional branches of the party, local authorities, charities, regional entrepreneurs and NGOs.<sup>76</sup> In regards to such placement of children in guardianship, foster families and institutions the local authority plays the primary role since they make decisions.<sup>77</sup> In adoption, the communication with local authority is also significant, but the final decision –maker is the court.<sup>78</sup> The cases of adoption are considered in the specialised inter-district Juvenile Courts that appeared in Kazakhstan relatively recently, in two main cities Astana and Almaty in 2007, and the other fifteen Juvenile Courts that have been instituted in the rest of Kazakhstan since 2012.<sup>79</sup> It assumes that the court is the decision-maker in the cases of adoption, albeit as practice shows adoptive parents are also very dependent on both the local authority and in some cases on birth parents.<sup>80</sup> Namely, in some cases the birth parents are required to provide their written agreement for the adoption to the Court in order for the case to proceed.<sup>81</sup> According to paras. 13, 21 and 33 of the Rules on the Transfer of Children, citizens of the Republic of Kazakhstan, for Adoption, when the permission of the birth parents is not required, the local authority should provide their consent to the Court based on the decision of the commission that operates according to

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<sup>75</sup> Tamara Abubakarova and Amina Malakshinova, ‘Nazarbayev supported the idea of creating the first Kazakhstani agency for the adoption of children’ *Informburo.kz* (28 November 2018) <<https://informburo.kz/novosti/nazarbaev-podderzhal-ideyu-sozdaniya-pervogo-kazahstanskogo-agentstva-po-usynovleniyu-detey.html>> accessed 28 November 2018.

<sup>76</sup> Email from Sholpan Baibolova to author with the draft of The Concept of the state policy of the Republic of Kazakhstan for children until 2030 for the discussion (18 February 2019); email from Sholpan Baibolova to author with the draft of National strategy Action for Children in the Republic of Kazakhstan for 2016 – 2020 (9 February 2019).

<sup>77</sup> See Sections 4.4 and 4.5.

<sup>78</sup> The Civil Procedure Code of the Republic of Kazakhstan 2015, art 27 (3).

<sup>79</sup> See The Decree of the President of the Republic of Kazakhstan On the Formation of Specialized Inter-District Courts for Minors 2007; The Decree of the President of the Republic of Kazakhstan On the Formation of Specialized Inter-District Courts on Cases of Minors and Amendments to Certain Decrees of the President of the Republic of Kazakhstan 2012; the Decree of the President of the Republic of Kazakhstan On the Formation and Elimination of Certain Specialized Courts of the Republic of Kazakhstan 2014.

<sup>80</sup> The Rules for the Transfer of Children Who are Citizens of the Republic of Kazakhstan, for Adoption, approved by Resolution of the Government of the Republic of Kazakhstan 2012, paras 3, 6, 13, 21 and 33.

<sup>81</sup> The CMMF, art 93.

the above rules.<sup>82</sup> In cases of the adoption of the child by his or her stepfather or stepmother, or the adoption of the child by relatives with the consent of the parents, the consent and decision of the commission are not required.<sup>83</sup> The process of how this commission works is not provided in writing, and the Regulation merely states that:

the order of activity and composition of which (Commission) are determined by the authorized body in the field of protection of the rights of children of the Republic of Kazakhstan.<sup>84</sup>

Therefore, amongst all other actors, as stated above, the court as the final decision-maker in the case of adoption ensures transparency, albeit corruption exists in the court level too.<sup>85</sup> The court's role has both positive and negative implications. The positive implication is that the child is not adopted until all chances of a reunion with their family of origin are exhausted. The negative implication is that the decision-making process of the Commission is questionable and echoes a corrupt mechanism<sup>86</sup> that is still heavily in use according to the opinion of the practitioners and the reports of the prosecutors.<sup>87</sup> Notably, a matter that might also have contributed to the corrupt practices in the adoption of babies (babies are in the highest demand by adoptive parents)<sup>88</sup> is that in spite of the numerous pieces of legislation related to child placements, there were no regulations in place from 2014 to 2017 governing the activities of the Baby Homes.<sup>89</sup> According to the data provided by the prosecutors:

- in 2013 there were 25 crimes related to child trafficking (the child might be sold whilst in the institutions, more often though in maternity hospitals),<sup>90</sup>

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<sup>82</sup> The Rules for the Transfer of Children Who are Citizens of the Republic of Kazakhstan, for Adoption, approved by Resolution of the Government of the Republic of Kazakhstan 2012, paras 3, 6, 13, 21 and 33.

<sup>83</sup> Ibid, para 6.

<sup>84</sup> Ibid.

<sup>85</sup> Informburo 31, 'Why trafficking of children is still flourishing in Kazakhstan?' <<https://www.youtube.com/watch?v=9jrGdK1rJgg>> accessed 01 August 2018; Kana Beisekeyev, 'Kazakh adoptees in the USA' (posted on 22 February 2017) <<https://www.youtube.com/watch?v=UKYQpwqhQM>> accessed 1 September 2018.

<sup>86</sup> See Section 4.5. for explanation of the corruptive mechanism in adoption, the price of children varies from 2,000 to 25,000 US dollars.

<sup>87</sup> Official website of the General Prosecutor's Office of the Republic of Kazakhstan, 'Press- release on the meeting of the board of the General Prosecutor on the application of legislation on adoption' (Astana, 2014) <<http://prokuror.gov.kz/rus/novosti/press-releasy/press-reliz-o-zasedanii-kollegii-generalnoy-prokuratury-po-voprosam-1>> accessed 1 of August 2018.

<sup>88</sup> See Chapter 5 Section 5.2.

<sup>89</sup> Mygorod.kz, 'Illegal activity of Baby houses in Kazakhstan' (13 June 2017) <<http://mygorod.kz/?p=19542>> accessed 20 September 2018.

<sup>90</sup> Ibid; See also: Informburo 31, 'Why trafficking of children is still flourishing in Kazakhstan?', <<https://www.youtube.com/watch?v=9jrGdK1rJgg>> accessed 01 August 2018; TV Channel KTK, 'A resident of Almaty region sold a newborn for \$ 3,000' (17 of March 2013) <<https://www.ktk.kz/ru/news/video/2013/06/17/23137/>> accessed 01 August 2018. Trafficking of children

- during 2012-2013, 457 children were adopted by persons who were not registered as candidates for adoptive parents avoiding the legal procedures,<sup>91</sup>
- at the same time due to the fault of the guardianship authority, which excluded 1,858 orphans from the database with no reason, children were deprived of the opportunity to be adopted.<sup>92</sup>

This section provides an overview of the role of the main stakeholders in the decision making. However, due to the complexity and inconsistency in the legislation, it is still unclear how the system of child care operates. In order to understand who is the decision-maker in a particular case, it is helpful to explore the processes of each type of child placement, including their procedures and principles. The following two sections might be helpful in filling the gaps in knowledge and building a fuller picture of decision making as it is enacted in relation to different types of placements. These two sections have demonstrated in details the entire situation, including its legal framework and practice, showing the distance between operated practice from the interest of the child in family environment.

#### 4.4 Family-based placements

Overall, there are four types of family-based placements in Kazakhstan which are guardianship (or kinship care), adoption, small foster families (in Kazakhstani law called as ‘patronage’) and big foster families (the differences between big and small foster families will be explained below). As statistics shows, the most widespread placement is guardianship, then adoption and finally, foster families. There are various reasons for this pattern of placements that are discussed later in this section. In total, as of 1 July 2018, there were 26,263 children deprived of parental care in Kazakhstan; 77,45% of them had been placed in family environments, 21,4 % remained in institutions for children deprived of parental care and the rest 1,15% (301) are studying and living in accommodation provided by colleges and higher education organizations.<sup>93</sup> The state

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is explained by the high level of corruption, the existing of demand, poverty and the lack of understanding of what is better for children.

<sup>91</sup> See Section 4.4 that explains the legal procedures for family-based placement and adoption.

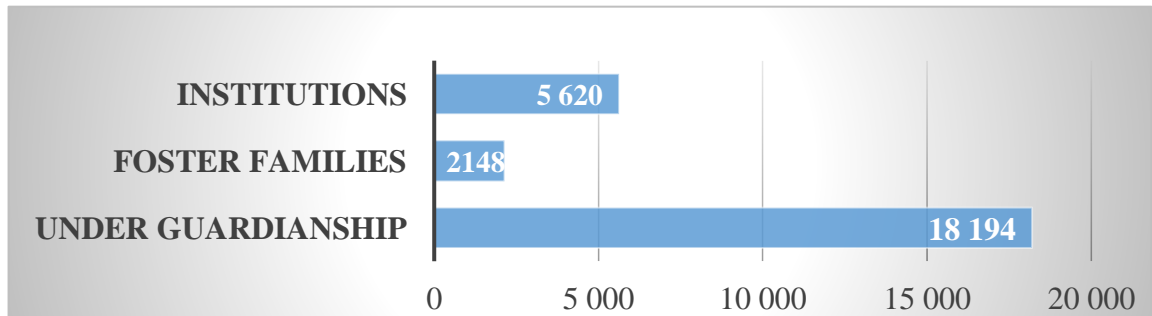
<sup>92</sup> Ibid.

<sup>93</sup> The Committee for the Protection of Children's Rights, *Main results in the field of children's rights protection for the first half of 2018 and priorities for activities before the end of 2018* (Ministry of Education and Science of the Republic of Kazakhstan 2018) 11.

provides statistics on adopted children separately so that the number of adopted children is not included in the total number of children deprived of parental care.<sup>94</sup> This is possibly because the process of adoption is long and the child might still be in an institution or under another legal placement (fostering or guardianship).

**Figure 4.2**

**The number of children deprived of parental care<sup>95</sup>**



This diagram was created by the author from the available statistics, which do not include a comparative number of adopted children within the reported period.<sup>96</sup>

The analysis of the Kazakhstani context,<sup>97</sup> legislation,<sup>98</sup> statistics and empirical data explain the above pattern of the different levels of popularity of family-based placements. Guardianship is well developed historically, and also less complicated in its procedures than adoption, while foster families are a newly introduced practice, not supported by prior and follow-up services.<sup>99</sup> The low figures in the latter two types of family-based placements are also explained by cultural and social norms in relation to the degree of welcome extended to children who are not related to the family along with the lack of knowledge of such alternative families and their differences from custody and adoption. The cultural and social aspects of the institutionalisation of children will be covered in section 5.1. of the next chapter.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> The Committee for the Protection of Children's Rights (n93) 11. It is only known that within the first half of 2018, less than 10 % of all family-based placed children were adopted, namely 165 children (4 in international adoption) out of 1839.

<sup>97</sup> See Chapter 3 above.

<sup>98</sup> See Section 4.2.

<sup>99</sup> See Section 4.5.

As discussed in Section 2 of this chapter, decision-making in a child placement is regulated partly by the CMMF and the LRCRK. In addition, there are several other rules and regulations that determine the process of family-based placements.<sup>100</sup>

Table 4.1 demonstrates the key procedures relevant to different types of family-based placements. Among the procedures, selecting the child from the database is one of the steps in adoption and fostering. Thus, according to secondary legislation, children deprived of parental care, first of all, are placed in institutions and then become the subjects of selection by alternative families from a database which operates much like the online shopping of goods.<sup>101</sup> In addition, as in online shopping, the selected child can be returned to the institution. This often happens because there are no designated state social services to recruit and to provide training for the potential families and who can identify whether the motivation for taking a child is appropriate. Equally, there are not aftercare social services that provide support to families to assist in the child's adaptation to the family and new environment. In this respect, Kazakhstan fails to observe the UN guidelines for the alternative care for children, that were developed to help states in implementing the provisions of the UNCRC that ensures the protection and wellbeing of children deprived of parental care.<sup>102</sup>

Amendments in the CMMF in regard to the republic database were enforced in Kazakhstan only from the 1<sup>st</sup> of January 2017.<sup>103</sup> This database consisted of information about children left without parental care. At the same time, this database is used for the registration of people who wish to adopt or foster a child left without parental care, to be raised in their family.<sup>104</sup> However, according to the regulations about different types of

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<sup>100</sup> The Rules for the Transfer of Children Who are Citizens of the Republic of Kazakhstan, for Adoption, approved by Resolution of the Government of the Republic of Kazakhstan 2012; the Regulation on Foster Care (patronage), approved by the Order of the Minister of Education and Science of the Republic of Kazakhstan 2015; the Regulation on Foster Family, approved by the Order of the Minister of Education and Science of the Republic of Kazakhstan 2016; the Rules for the Exercise of the Functions of the State for Guardianship and Trusteeship, approved by the Resolution of the Government of the Republic of Kazakhstan 2012.

<sup>101</sup> The Rules for the Transfer of Children Who are Citizens of the Republic of Kazakhstan, for Adoption, approved by Resolution of the Government of the Republic of Kazakhstan 2012, para 20; the Regulation on Foster Care (patronage), approved by the Order of the Minister of Education and Science of the Republic of Kazakhstan 2015, paras 11, 13.

<sup>102</sup> United Nations Guidelines for the Alternative Care of Children (adopted 24 February 2010), A/RES/64/142.

<sup>103</sup> The Law of the Republic of Kazakhstan On amendments and additions to some legislative acts of the Republic of Kazakhstan on the protection of the rights of the child 2016, art 1 (1) (18), art 2 (1); The Rules for the formation and use of the Republican data bank of orphans, children left without parental care, and people who want to take children to their families approved by the Order of the Minister of Education and Science of the Republic of Kazakhstan dated November 16, 2016 (registered with the Ministry of Justice of the Republic of Kazakhstan on January 11, 2017).

<sup>104</sup> The CMMF, art 118-2 (3).



family-based placements, it was found that for guardianship and adoption by residents of Kazakhstan who are related to the child, no registration is required while for Kazakhstani adoptive parents living abroad and foreigners such registration is mandatory.<sup>105</sup> In regard to the candidates for acting as foster families, the guardianship authority checks their documentation and provides them with access to the database of children from whom they can make their selection. Overall, the limited and confusing access to this database can have the effect of leaving children waiting for a family until potential families (adoptive or foster) select a child or the guardianship authority decides on their allocation to a particular family.

Thus, children who are not taken by relatives for adoption or guardianship, are first placed temporarily in the Adaptation Centres for minors (or shelter for children), and then they are transferred for permanent accommodation to other types of institutions. During the course of this journey, the children's data are registered in the Republic's databank and only then they become available to potential and registered alternative families (see table 4.1). However, according to Article 116 and 117 of the CMMF and Article 29 (paragraph 1) of the LRCRK, this process should be reversed so that family-based placements are looked at first while institutional placements should be considered as a last resort.

This overview of the rules, regulations and official statistics shows that guardianship is the most widely used resource for the child in the immediate aftermath of leaving parental care. In order to be placed in other types of families (except in the case of adoptive parents who are relatives of the parents of the child) the child must be housed in institutions first in order to be available for selection by potential candidates of alternative families. Therefore, as of 1 July 2018, of 20,342 of children deprived of parental care who have been placed in the family environment, 18,194 or almost 90% were under guardianship.<sup>106</sup> As discussed in Chapter 3, this is a reflection of the cultural practice of the Kazakh nation rooted in the Customary law of pre-Soviet Kazakhstan when children in need were mostly placed among relatives. This is also one of the findings of the fieldwork data, that will be discussed in the next chapter. However, although the above practice happens mainly between relatives, according to

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<sup>105</sup> The Rules for the Transfer of Children Who are Citizens of the Republic of Kazakhstan, for Adoption, approved by Resolution of the Government of the Republic of Kazakhstan 2012, para 27.

<sup>106</sup> The Committee for the Protection of Children's Rights (n93) 11.

Section 16 of CMMF, guardianship is not restricted to relatives, but extends to other people who are close to the family.

**Table 4.1**

**Main procedures (steps) for each type of family-based placement**

<b>Steps</b>	<b>Adoption</b>	<b>Guardianship</b>	<b>Small Foster family</b>	<b>Big Foster family</b>
1) Providing application about the intention to take the child	✓	✓	✓	✓
2) Registration in republic databank	✓*	-*	-*	-*
3) Providing documents	✓	✓	✓	✓
4) Providing document of survey of living conditions	✓*	✓*	✓*	✓*
5) Choosing the child	✓*	-	✓	✓
6) Meeting with the child	✓*	-*	-	✓
7) Obtaining agreement from the child older than 10	✓	✓*	✓	✓
8) Obtaining permission from the Commission	✓	-	-	-
9) Obtaining agreement from the parents	✓*	✓*	-	-
10) Obtaining agreement/decision from the bodies of guardianship and trusteeship	✓	✓	✓	✓*
11) Obtaining the Court decision	✓	-	-	-
12) Signing the contract	-	-	✓	✓

‘✓’ – yes; ‘-’ – no; ‘\*’ – conditional

### *Guardianship*

For the process of guardianship, potential guardians do not need to register in the Republic's database. To take responsibility for a child's upbringing, potential guardians need to apply to the local guardianship authority that is making the decision. The practical procedures are therefore not complicated. If the parents of the child are not restricted in their rights but are not able to provide care for their children, their opinion on who they would wish to have as guardian for their child is taken into account.<sup>107</sup> Unlike in other forms of family-based placement, the legislation with regards to guardianship is also less rigid in terms of the separation of siblings. Namely it states that,

the guardianship or custody of siblings raised in the same family by different persons is not permitted, except when these circumstances are in the interests of the children.<sup>108</sup>

With regards to the other types of family-based placements, the legislation is more strict, and allows separation only if children do not know about their relationship, did not live together and were not brought up together.<sup>109</sup> For example, one of the relevant regulations states that:

Separation of brothers and sisters is not allowed, except when it is in the interests of children and children do not know about their relationship, did not live and were not brought up together.<sup>110</sup>

Therefore, due to cultural traditions which promote caretaking of relatives' children on a relatively informal basis, guardianship is the most used form of child placement in the present practice in Kazakhstan.

### *Adoption*

In contrast to guardianship, adoption is a complicated and lengthy process. According to the statistics, within the first half of 2018, less than 10 % of all family-based placed children were adopted, namely 165 children (4 in international adoption) out of a total

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<sup>107</sup> The CCMF, art 122 (3).

<sup>108</sup> Ibid, art 119 (3).

<sup>109</sup> This might be when siblings are divided according to their age or health issues.

<sup>110</sup> The Regulation on Foster Care (patronage), approved by Order of the Minister of Education and Science of the Republic of Kazakhstan 2016, para 12.

of 1,839.<sup>111</sup> In order to be adopted the child must be in a position where his or her only parent or both parents:

- 1) died;
- 2) abandoned a child;
- 3) are deprived of parental rights and have not had them restored;
- 4) gave consent to the adoption of a child by relatives, or persons who are married to the mother or father of the adopted child (children);
- 5) are recognized incapable, recognized as missing or declared deceased;
- 6) are unknown.<sup>112</sup>

In addition to the above and as previously mentioned, there is one more, albeit very significant characteristic that increases the child's chance of being adopted. Namely, that the child does not have siblings, unless the candidates for adoption agree to adopt his or her siblings:

Adoption of brothers and sisters nurtured in one family, by different persons shall not be allowed, with the exception of cases when adoption is in the interests of the children and the children do not know about their kinship, have not lived and been nurtured together.<sup>113</sup>

During my fieldwork, Kazakh practitioners identified this as one of most the common obstacles to the adoption of children from large families.<sup>114</sup> Thus, the child is considered in the context of his or her family relationships but other elements relevant to the personal developmental process and other opportunities are treated as secondary and minor interests of the child. The latter is a controversial issue in the context of the best interest of each child separately and contrasts with guardianship where the legislation is not so rigid.<sup>115</sup> The UN Guidelines state that alternative care for children should not involve separating siblings 'unless this is against their wishes or interests'.<sup>116</sup> In contrast, the same guidelines state that every case should be considered 'in the best interests and rights of the child concerned' in consultation with the child if his or her capacity allows

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<sup>111</sup> The Committee for the Protection of Children's Rights (n93) 11.

<sup>112</sup> The CMMF, art 84 (2).

<sup>113</sup> Ibid, art 90.

<sup>114</sup> Interviews with Mira (NGO) on 13 of March 2018 and with Umyt (NGO) on 16 of March 2018.

<sup>115</sup> At the same time, international practice shows that siblings might be divided when it is in the best interests of each of them. For example, in England, the assessment of apart or together considers the separation of siblings when for example: there is large group of siblings which is difficult to accommodate together, or when the child is abused by his or her brother or sister. See The CA 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review, paras 3,21-3,22.

<sup>116</sup> The United Nations Guidelines for the Alternative Care of Children (adopted 24 February 2010), A/RES/64/142, para 17.

so.<sup>117</sup> Hence, this limitation of Kazakhstani legislation needs to be viewed in the light of the best interests and rights of the individual child.

However, this is not the only obstacle that decreases the chance of a child to be adopted. Another barrier and a crucial step in the adoption procedure is obtaining permission from the original (birth) parents of the child.<sup>118</sup> This is needed when the child's documents are incomplete. The child's status in regards to the connection with his or her birth parents normally needs to be backed up and defined by documentation: either they died; abandoned the child; are deprived of parental rights and have not had them restored; gave consent to the adoption of a child by relatives, or persons who are married to the mother or father of the adopted child /children; are recognized incapable, recognized as missing or declared deceased; or they are unknown. In fact, in practice it is common that there is no court decision that removes parental rights, or there is no written record of the mother of the child's abandonment as is required according to the procedures of abandonment of a child in a maternity hospital. Practitioners explained that this practice was a result of staff shortages in the institutions where relevant staff do not have enough time to have all documents in order or to apply to the court in order to make clear the status of the child and his or her parents.<sup>119</sup> In particular, it was argued that the social teachers<sup>120</sup> in the institutions for children deprived of parental care do not have enough time or qualifications to apply to the court to clarify the status of the child and his or her parents that are discussed above. In cases involving new-born children, there may well be no written evidence of the child's abandonment because the mother of the child left him or her for temporary a stay in the Baby Home and did not return as promised. However, where all other documents are in order, such permission is not required. According to Article 94 of the Code, permission is not required in the following circumstances when the parents are:

- 1) unknown or declared by court to be deceased, or recognized as missing;
- 2) recognized by the court as incompetent;
- 3) are deprived of the parental rights by the court;

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<sup>117</sup> Ibid, para 6.

<sup>118</sup> The CMMF, art 93.

<sup>119</sup> Interviews with Mira on 13 of March 2013 and with Umyt on 16 of March 2018; see also Assylbekova and Kakabayev (n27); Hamilton and Watkins (n48) 22-23.

<sup>120</sup> Interviews with Mira on 13 of March 2013 and with Umyt on 16 of March 2018. In the system of education, in the institutions for children deprived of parental care, social teacher replaces the role of social worker and lawyer.

- 4) do not live with the child and do not look after their upbringing and maintenance for more than six months for reasons recognised by the court as neglectful or illegal;
- 5) if there is a notification of child abandonment written by a single mother.

However, practitioners argue that in practice, the courts might still invite the birth mother to confirm that she cannot take care after the child or to provide to the biological mother the details of adoptive parents.<sup>121</sup> Such practice can complicate the adoption process or even provide opportunities for corrupt or unfair practices by the biological mother, judge or the authority of guardianship.<sup>122</sup> This might be one of the reason that other types of child's placement are preferred as a kind of concealed adoption. These include, for example, the use of foster families and this will be considered next.

### *Foster families*

Small and Big Foster families are similar family-related types of child placements, but have appeared in Kazakhstani law relatively recently, in 2012 (small) and 2016 (big).<sup>123</sup> It appears that the rather confusing distinction between the two types of family emerged because the legislation was developed as a series of inter-relating but not always coherent sets of procedures and definitions.<sup>124</sup> The main differences between two foster families are as follows: three children is the limit number for one placement in small fostering, with the exception of groups of siblings that can be bigger than three.<sup>125</sup> Big foster families, on the other hand, are obliged to have no less than four children and no more than ten.<sup>126</sup> As statistics show, fostering is not a popular practice yet. Less than 10

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<sup>121</sup> Interview with TV and Natalya on 16 of March 2018; see also Tengrinews.kz, 'Social activists spoke about the story of a child being taken away from adoptive parents' (7 of February 2017) <<https://tengrinews.kz/events/obschestvenniki-vyiskazalis-istorii-rebenkom-kotorogo-311713/>> accessed 25 March 2019. In 2017, the Juvenile court in Almaty decided to refuse in adoption of the boy, who was under the guardianship for about 1.5 years of potential adoptive parents, because there was not the court's decisions that deprived parental rights of the birth mother, although there was a written application of the mother of the child's abandonment.

<sup>122</sup> The Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated March 31, 2016 On the practice of application by the courts of legislation on the adoption of children, para 8; Zakon.kz, 'Citizen of Almaty city is fighting for her son in court with his biological mother who abandoned him at the maternity hospital' (29 of November 2016) <<https://www.zakon.kz/4831649-almatinka-boretsja-zasyna-v-sude-s.html>> accessed 10 August 2018.

<sup>123</sup> The CMMF, arts 133-136 in regards to small foster families (patronage); The Law of the Republic of Kazakhstan On amendments and additions to some legislative acts of the Republic of Kazakhstan on the protection of the rights of the child 2016, art 1 (1) (21). The CMMF on December 26, 2011 replaced The Law of the Republic of Kazakhstan About marriage and family 1998 and introduced the foster family (patronage) in Kazakhstan for the first time.

<sup>124</sup> See the discussion below in this section (pages 117-118) that explains differences between the two types of foster families.

<sup>125</sup> The Regulation on Foster Care (patronage) approved by the Order of the Minister of Education and Science of the Republic of Kazakhstan dated January 16, 2015, para 5.

<sup>126</sup> The Regulation on Foster Care approved by the Order of the Minister of Education and Science of the Republic of Kazakhstan of October 7, 2016, para 2.

percent of children end up in these types of placement, with only 2,148 out of 26, 263 of the total number of children deprived of parental care placed in foster families.<sup>127</sup> To be placed in such forms of families gives children the same status as for guardianship, but the process of child's placement is similar to adoption with no procedures in the Court. According to the regulations, the differences between two type foster families are not major. They relate to the organisations from which the children might be taken; the identity of the parties (who sign) the contract (this is signed by foster parents or caregivers in foster small family); the status of the child, the number of children that may be placed in one family, and the amount of payment that the family will obtain. According to the legal definitions of these types of placement, foster family is applicable form of placement for children who are already in an institution. The small foster family applies to children from all types of institutions (in health, social protection and education system), whereas the big foster family only applies to children who come from educational institutions.<sup>128</sup> Practitioners are also confused by these two type of foster families,

It is not clear what foster families are, if these are foster families, then it should be professional families ... If there is training for foster families, then this is a good option to avoid placing a child in an orphanage. Our foster big families are the same as foster small families with fortified financial baggage, more money is allocated but at the same time it is the same as foster small families. I do not see any difference.<sup>129</sup>

Fostering might be considered an occupation, as it is contract-based and fosterers are paid the same wage as that of a teacher. In respect of small foster families however, the contract is signed by the caregiver and the authority of guardianship, while for big foster families the contract in addition is signed by the organisation/institution where the child was living at the time of being fostered.<sup>130</sup> The length of contract is not settled in the regulations but the practice shows that the contract is generally signed for each calendar year. To extend the contract or to change the fostering family, the child is taken back to the institution that signed the original contract. This is another demonstration of the absence of an overall child-centred approach and a lack of adherence to the principle of the child's best interests.

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<sup>127</sup> The Committee for the Protection of Children's Rights (n93) 11.

<sup>128</sup> The Regulation on Foster Care approved by the Order of the Minister of Education and Science of the Republic of Kazakhstan of October 7, 2016, para 2; the Regulation on Foster Care (patronage) approved by the Order of the Minister of Education and Science of the Republic of Kazakhstan dated January 16, 2015, para 2.

<sup>129</sup> Interview with Mira (NGO) on 13 March 2018.

<sup>130</sup> Ibid, para. 11 and 20 (for big foster family) and paras 16 and 26 (for small foster family (patronage)).

In these type of placements, siblings are not permitted to be separated and the main issue of these options is that they are not considered as a temporary placement. In fact, these families are also registered on the republic's database and consequently are not available to those children who are not registered on the database. Thus, even for the temporary placement of a child, the potential family decides and chooses the child or children from the database. It might be concluded that the recent effort of the state to extend family-based placements does not work effectively in terms of providing professional foster families capable of taking on any kind of child at any stage e.g. in an emergency, as a temporary placement. Foster families are not trained to be ready to take child at any stage and the regulations do not require them to be.

These types of child placement are often considered as a form of concealed adoption where children might remain until they reach their 18<sup>th</sup> birthday while their caregivers are paid for their care. This what I was told during an interview in regard to fostering in Kazakhstan:

in fact, ... in Kazakhstan, our patronage (small foster family) is used as a hidden adoption.<sup>131</sup>

Thus, due to the similarities between these two types of placements, it would be better to merge them and to ensure that there is an effective review beforehand, in order to clarify the aim or tasks of this alternative family-based placement. It also should be questioned whether this type of temporary placement needs the same approach to child selection as is appropriate with adoptive parents. According to practitioners (see below) and the recommendations of the UN Guidelines for the alternative care for children, such alternative care options as foster families should address the 'emergency, short-term and long-term care' accommodation issues for children.<sup>132</sup> During the interviews for this research, the practitioners recommended the development of a professional approach in regards to fostering, that could provide care for all types of children, including disabled children and babies:

The foster family should be a professional family, these are people who should work as parents, the state will pay them money. But at the moment we have not so many families who are willing to devote their lives to the work of being parents (Zhuldyz, NGO, 16 March 2018)

We always say that patronage (small foster families) should not be used as a hidden form of adoption ... but they should be regarded as professional families. Not only for healthy children, but also for example, children with developmental delays, we cannot simply give them away to a non professional, but if there is a family that is trained and who knows how

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<sup>131</sup> Interview with Zhuldyz (NGO) 16 March 2018.

<sup>132</sup> The United Nations Guidelines for the Alternative Care of Children (adopted 24 February 2010) A/RES/64/142, para 54.



to work with this child, then you can safely transfer them .. I emphasize a patronage family (small foster family) is not just a kind of foster family that takes the child forever as in adoption, but who are under contract and who have certain obligations ...<sup>133</sup>

Therefore, the practitioners of Kazakhstan are aware of the current inconsistencies between different pieces of legislation and between law and practice, but without the political will it is difficult to change the situation. Currently, NGOs are trying to provide services recommended by the UN Guidelines and international practice, including training for potential candidates as alternative families and follow up support for families that accommodate children deprived of parental care.<sup>134</sup> It was also discovered that in one of the regions where a Family Support Centre<sup>135</sup> operates as a part of a local authority, similar training is also provided, but with no standard or training program for doing so. However, there is no legal basis for such NGO Family Support Centre initiatives, although such services are desperately needed for the benefit of both potential families and children in need of care. This approach is also recommended in the UN Guidelines, namely at paras 32 and 33 which state that,

States should pursue policies that ensure support for families in meeting their responsibilities towards the child and promote the right of the child to have a relationship with both parents..., ...Social policies and programmes should, inter alia, empower families with attitudes, skills, capacities and tools to enable them to provide adequately for the protection, care and development of their children.<sup>136</sup>

In fact, the existing practice of a child placement in families is limited by the paperwork and the lack of social services to either support struggling families to provide for their own children or support foster and adoptive families. Therefore, the formal approach of the state to ensure the right of the child to live in a family is clearly shown throughout this section.

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<sup>133</sup> Interview with Natalya (NGO) on 16 March 2018.

<sup>134</sup> Interviews with Dinara (public worker, ex-teacher of orphanage) on 15 March 2018, with Natalya on 16 March 2018, with Irina (NGO) on 17 March 2018, and with Dulat (NGO) on 21 April 2018.

<sup>135</sup> At the time of writing this chapter, Family support centres were in pilot stage in Kazakhstan and do not work on unified order, some of them works as Children support centres within Adaptation Centres for minors and helps minors, some of them are recalled as Support centres for children in life difficult circumstance that should replace the orphanages. The existing legislation, namely The Standard rules for the activities of types of educational organizations for orphans and children left without parental care, approved by the order of the Minister of Education and science of the Republic of Kazakhstan 2013, Appendix 7. Standard rules of activity of Support centres for children in difficult situations regulates only Children support centres. In contrast, the Action Plan for the implementation of the Family and Gender Policy Concept in the Republic of Kazakhstan until 2030 (first phase 2017 - 2019), approved by Resolution of the Government of the Republic of Kazakhstan 2017 implies transformation of orphanages into Family and Children Support centres.

<sup>136</sup> The United Nations Guidelines for the Alternative Care of Children (adopted 24 February 2010) A/RES/64/142, paras 32 and 34.

## 4.5 Institutional placements

This section has demonstrated the practice of institutional network for children deprived of parental care. It is worthy to emphasis that institutions for children deprived of parental care are pure executors of the decision made by local authority, mainly authority of guardianship.<sup>137</sup> It also shows the huge inheritance and soviet legacy that support the existing practice while as it was highlighted in Chapter 3, the soviet ideology that ignored the emotional needs of children, diminished the role of family and pushed aside the family interest in favour of the interest of the state.<sup>138</sup> This section reveals the giant machine that practice soviet legacy so that it might be argued that human resources that support it alive also preserved the soviet mentality. This section illustrates the size of the problem that requires adequate size of the power to make noticeable structural changes that in chain will amend the personnel' mentality toward child's rights and interests.

In total, as of July 1, 2018, there were 5,620 orphans and children deprived of parental care in 138 institutions.<sup>139</sup> As stated earlier, due to the existing mechanisms, children are inevitably first placed in institutions, in a temporary basis. The exception to this is the placement of children below 4 years old who are placed in the Baby Homes until they are 4 years old when they are transferred into other institutions for older children.<sup>140</sup> At the same time, the Baby Home is the only institution that accepts children for temporary placement from mothers until they have sorted their life difficulties.<sup>141</sup> However, this approach is questionable because of the child's needs as explained by the attachment theory which indicates strongly that at a very young age it is crucial to be surrounded by family<sup>142</sup> so temporary placement is not the best solution that the state should offer.

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<sup>137</sup> See Section 4.3 above.

<sup>138</sup> See Chapter 3 Section 3.2 Subsection 3.3.2

<sup>139</sup> The Committee for the Protection of Children's Rights (n93) 11.

<sup>140</sup> This practice does not correspond with the article 116 of The CMMF that emphasizes the priority of family-based placements before institutional placements.

<sup>141</sup> The Regulations on the activities of the health organization for orphans, children left without parental care from birth to three years old, with mental and physical development defects from birth to four years, carrying out psychological and pedagogical support for families at risk of abandoning a child, approved by the Order of the Minister of Healthcare of the Republic of Kazakhstan of December 27, 2017.

<sup>142</sup> John Bowlby, *Maternal care and mental health*, vol 2 (Geneva: World Health Organization 1951) 13; Legrand (n8); Kim MacLean, 'The impact of institutionalization on child development' (2003) 15 Development and psychopathology 853; Hearst et al. (n23).

According to the legislation of Kazakhstan, there are thirteen types of institutions for children deprived of parental care.<sup>143</sup> All of them are designed for different children depending on age, health issues and the reasons for being in need of placement (see table No. 2). Unlike the family-based placements that are partly regulated by primary laws,<sup>144</sup> the activities of all other institutions for children deprived of parental care are governed by subordinate legislation that includes regulations, rules, and standards (with the exception of family-type children's villages and youth homes whose activity is regulated by the law).<sup>145</sup>

The decision-making processes for child placements in different types of institutions are broadly similar and based on the decisions of local executive bodies (local authorities) who allocate children to eligible institutions for permanent accommodation according to their age, medical needs, and their reasons for being in the system (see Table 4.2 below).

The precise activities of the authorities in regard to children's safeguarding are not documented clearly. Close scrutiny of the competence of the different agencies involved in the working with children and the eligibility of the child to benefit from them according to the child's status, age, health conditions etc reveals the pattern and the complexity of provision.

Since there are no effective preventive measures, the intervention of the state most of the time starts at a point when the child is already in need of a placement.<sup>146</sup> According to the table above, in an emergency, if there is no family member to leave the child with,

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<sup>143</sup> LRCRK, art 30; The Standard Rules for the Activities of Institutions for Children Deprived Parental Care, approved by the order of the Minister of Education and Science of the Republic of Kazakhstan of June 18, 2013.

<sup>144</sup> The CMMF, part 4, ss 15-18; LRCRK, s 5.

<sup>145</sup> The Law of the Republic of Kazakhstan About family-type children's villages and youth homes 2000; The Standard Rules for the Activities of Institutions for Children Deprived Parental Care, approved by the order of the Minister of Education and Science of the Republic of Kazakhstan 2013 (regulate 8 types of institutions); The Standard for the provision of special social services to victims of domestic violence, approved by the Order of the Minister of Health and Social Development of the Republic of Kazakhstan of 2016; The Typical rules of activity by types of general education organizations (primary, basic secondary and general secondary education)-procedure of the organization of education for children with deviant behaviour, approved by the Order of the Minister of Education and Science of the Republic of Kazakhstan 2013; The Regulations on the activities of the health organization for orphans, children left without parental care from birth to three years old, with mental and physical development defects from birth to four years, carrying out psychological and pedagogical support for families with the risk of abandoning the child, approved by the order of the Minister of healthcare of Republic of Kazakhstan 2017; The Standards for the provision of special social services in the field of social protection of the population, approved by the Order of the Minister of Health and Social Development of the Republic of Kazakhstan 2015; The Rules for the Exercise of the Functions of the State for Guardianship and Trusteeship, approved by the Resolution of the Government of the Republic of Kazakhstan 2012.

<sup>146</sup> Hamilton and Watkins (n48) 6, 11, 26.

the child is placed temporarily in hospital, Adaptation Centres for Minors (or shelters for minors), or a Baby Home. The placement depends on age, medical needs, and the reasons for being in the system. After three months of being in Adaptation Centres for Minors or six months in the Shelter for Minors, if the staff of any of these institutions in collaboration with the authority of guardianship is unable to find a relative of the child who agrees to take the child, this child is moved to an orphanage or another institution for permanent placement.<sup>147</sup> The practice is different for children who have mental or physical disabilities, as they are placed separately in special institutions from the beginning, where they might be homed permanently or temporarily.<sup>148</sup>

**Table 4.2**

**List of the institutions for children deprived parental care, description of eligibility of children and main procedures for each institution**

Name of institution	Description of children eligible for placement in institution	Some features of procedures
1. The Baby Home	Orphaned children and children being left without custody of parents from their birth until three years. The special department shall be opened in the Baby home for temporary maintenance of children. <sup>149</sup>	Admission of children to the Baby Home and an extract from it is carried out as follows:  1) children from families, maternity hospitals and hospitals, adaptation centres for minors (hereinafter referred to as "ACM") are admitted to the Baby Home on the basis of the direction of local executive bodies.  2) the reception of children from maternity homes is carried out directly to the group, and from families, ACMs and hospitals - to the quarantine group or

<sup>147</sup> The Standard Rules for the Activities of Institutions for Children Deprived Parental Care, approved by the order of the Minister of Education and Science of the Republic of Kazakhstan 2013, Appendix 4. Standard Rules for the Activities of Shelters, para 22 and Appendix 6. Standard Rules for the Activities of Adaptation Centers for Minors, para 11.

<sup>148</sup> The Standard for the provision of special social services in the field of social protection of the population in a hospital approved by the Government Decree of Republic of Kazakhstan 2011, para 6.

<sup>149</sup> The Regulations on the activities of the health organization for orphans, children left without parental care from birth to three years old, with mental and physical development defects from birth to four years, carrying out psychological and pedagogical support for families with the risk of abandoning the child, approved by the order of the Minister health Republic of Kazakhstan 2017, para 2.

		<p>isolator, followed by transfer to the group.</p> <p>In the case of temporary placement of children with parents or legal representatives, the Health Department or, at their request, the administration of the Baby Home draws up an agreement on the length of the child's stay, the duties of the parents, the conditions for their participation in their maintenance and upbringing.<sup>150</sup></p>
2. The specialized children's homes	Children with psychological or physical development defects from birth to four years old	The same rules for placement as in the above institution
3. Boarding school organizations (orphanages)	Orphaned children and children being left without custody of parents, aged from three to eighteen years <sup>151</sup>	Children are placed in orphanages based on the decision of the local executive bodies to send them to the orphanage with the relevant documents, if such documents are available.
4. Education boarding school of general type	Orphaned children, children being left without custody of parents, as well as children from needy and large families aged from six to eighteen years that do not have medical needs for maintenance in specialist organizations <sup>152</sup>	The same framework for placement as in orphanages

<sup>150</sup> Ibid, Appendix 1, paras 2-6.

<sup>151</sup> The Standard rules for the activities of types of educational organizations for orphans and children left without parental care, approved by the order of the Minister of Education and science of the Republic of Kazakhstan 2013, Appendix 1. Standard rules for the activities of orphanages, paras 16 and 18. According to para 18 of the rules, orphanages can take children from birth to 18 years old, but according to practice children under 3 years old (in some cases 4 years old) are placed in the Baby's house.

<sup>152</sup> Ibid, Appendix 3. Standard rules for the activities of boarding schools for orphans and children without parental care, para 7.

5. Boarding house for children with learning disabilities	Children being in need of care, medical, personal care and social and educational / vocational training aged from four to eighteen years <sup>153</sup>	Children are placed in orphanages based on the decision of the local executive bodies to send them to the orphanage with the relevant documents
6. Children's village of family type	Orphaned children and children being left without custody of parents aged up to eighteen years	<p>The selection of children in the family of the children's village is carried out by the mother-educator with the participation of the representative of the administration of the children's village and on the basis of the direction of the guardianship and trusteeship authority.<sup>154</sup></p> <p>The maintenance, upbringing, and provision of primary, secondary, general secondary, technical and vocational, post-secondary, higher education for children shall be carried out in the family on the basis of a contract on the transfer of children concluded between the mother-educator, the administration of the children's village and the guardianship and trusteeship authority. A model agreement on the transfer of children to the family of a children's village is approved by the authorized body in the field of education.<sup>155</sup></p>
7. Youth houses	Orphaned children and children being left without custody of parents aged from	Children are placed in Youth houses based on the decision of the administration of a children's village, an orphanage, a boarding school for

<sup>153</sup> Ibid, Appendix 2. Standard rules for the activities of orphanages for children with special educational needs, para 20.

<sup>154</sup> The Law of the Republic of Kazakhstan About family-Type Children's Villages and Youth Homes 2000, art 15.

<sup>155</sup> The Law of the Republic of Kazakhstan About Family-Type Children's Villages and Youth Homes 2000, art 16.

	sixteen to twenty- three years <sup>156</sup>	orphans and children left without parental care <sup>157</sup>
8. Youth houses functioning as a separate legal entity on the basis of a decision by local executive bodies*	Foster children from children's villages and graduates of children's homes, boarding schools for orphaned children and children left without custody of parents aged from sixteen to twenty three , with the exception of persons having psychoneurological diseases	To be placed in this institutions the decision of local executive bodies is required <sup>158</sup>
9. Adaptation centres for minor children	The Centre accepts: 1) neglected and homeless children to identify their parents or other legal representatives; 2) children left without parental care, if they are not available in a timely manner, and also removed from their parents (or one of them) or other persons in the care of whom they were in immediate threat of their life and health; 3) minors sent to special educational organizations; 4) children in a difficult life situation, due to cruel treatment, which has led to	Depending on the grounds for placing juveniles in the Centre, a decision made by different decision-makers: 1) the court decision; 2) the decision of the guardianship authority. 3) the application of the person who brought the minor to the Centre.

<sup>156</sup> Ibid. The main goal of the Youth House is to help children from children's villages, graduates of orphanages, boarding schools for orphans and children left without parental care (persons undergoing social adaptation) to integrate into society according to their desire, in particular, in the labour market.

<sup>157</sup> Ibid, art 24.

<sup>158</sup> Ibid

	behavioural issues and social deprivation. <sup>159</sup>	
10. Organizations to provide assistance created in accordance with the Law of the Republic of Kazakhstan on preventive measures of domestic violence	Children being in a difficult life situation due to abusive treatment leading to behavioural issues and social deprivation <sup>160</sup>	<p>The reception of recipients of services responsible for the organization of temporary accommodation and residence where they are provided with specialist social services at the expense of budgetary funds shall be provided by:</p> <ul style="list-style-type: none"> <li>- based on the direction of district (city) authorized bodies of employment and social programs (hereinafter referred to as the authorized body), authorized bodies in the field of public health, internal affairs at the place of the actual location of the recipient of services;</li> <li>- on the personal application of the beneficiaries of the services who may apply directly to the temporary stay organization...</li> </ul> <p>If, at the time of the reception of a person, there are underage children for whom he or she is a legal representative, the admission to the temporary accommodation and residence is carried out with the children.<sup>161</sup></p>
11. Shelters	For orphans and children left without parental care, by organizing their temporary residence and further living arrangements. The period of stay of children in the shelter	Children are sent to shelters by bodies performing guardianship or trusteeship functions, with the documents confirming the absence of parents such as the document on the abandoned child or on the throwing, compiled by law

<sup>159</sup> The Standard rules for the activities of types of educational organizations for orphans and children left without parental care, approved by the order of the Minister of Education and science of the Republic of Kazakhstan 2013, Appendix 6. Standard Rules for the Activities of Adaptation Centers for Minors, para 8.

<sup>160</sup> The Standard for the provision of special social services victims of domestic violence, approved by the order of the Minister Health and Social Development of the Republic of Kazakhstan 2016, paras 26-27.

<sup>161</sup> The Standard for the provision of special social services victims of domestic violence, approved by the order of the Minister Health and Social Development of the Republic of Kazakhstan 2016, para 26.



	is not more than six months <sup>162</sup>	enforcement officers, the document of removal of the child from family
12. Orphanages of family type	For orphans and children left without parental care <sup>163</sup>	The procedures are same as for small foster family (patronage), but the number of children should as for big foster families
13. Center for supporting children in difficult life situations	<p>1) children from disadvantaged families;</p> <p>2) children who find themselves in unfavourable family conditions, threatening their health and development, children who have suffered from cruel treatment;</p> <p>3) orphans and children left without parental care.</p> <p>Aged from three to eighteen</p> <p>The length of stay of children in difficult life situations, indicated in paragraphs 1) and 2) is not more than six months.<sup>164</sup></p>	<p>1) direction of education management;</p> <p>2) the decision of the body exercising the functions of the state for guardianship and trusteeship;</p> <p>3) the application of the parent (legal representative) to be placed in the Centre, indicating the reason for being in a difficult life situation (in a provisional form).</p>

In cases where the child has some health issue that requires a different placement, the child is examined by a special medical commission that works in the social protection system. This commission provides recommendations to the particular organisation that is in the system of social protection.

The absence of the principle of the best interest of the child within the regulations that govern the procedures of children's placements is explained by the priority accorded to

<sup>162</sup> The Standard rules for the activities of types of educational organizations for orphans and children left without parental care, approved by the order of the Minister of Education and science of the Republic of Kazakhstan 2013, Appendix 4. Standard Rules for the Activities of Shelters, paras 14-18.

<sup>163</sup> Ibid, Appendix 5. Standard Rules for the Activities of Orphanages of Family type, para 17.

<sup>164</sup> The Standard rules for the activities of types of educational organizations for orphans and children left without parental care, approved by the order of the Minister of Education and science of the Republic of Kazakhstan 2013, Appendix 7. Standard Rules for the Activities of Centres for supporting children in difficult life situations, para 3.

the interests of agencies that supersedes often the interests of children. The legislation and practice reflect the existing resources of the state. Hence, the analysis of the legislation and procedures of a child's placement show that is inevitable for children deprived of parental care whose relatives do not take them, to avoid being placed in at least one institution. The same concern was raised by a respondent who was interviewed during the fieldwork:

Kazakhstan certainly pays great attention to this target group of children, namely children left without parental care, and now every effort is made to ensure that as few children as possible are in residential institutions. Unfortunately, however, institutionalization still remains one of the forms because of placement, because the long-standing legislation and the employees themselves have not yet learnt how to avoid the system of residential institutions before the child enters an alternative family... (Olga, NGO, 09 March 2018)

According to another interviewee, by offering children institutional placements, the state is fulfilling its obligation to protect children by providing them with a place to live, education, and healthcare:

everything is adult-oriented, and the child is actually at the mercy of the family, that is, the state thinks that a priori the family is responsible for this, and when the child finds himself in a situation outside the family, then the state provides a system of orphanages ... (TV, NGO, 16 March 2018)

However, both national and international scholars have already revealed that living in institutions is stressful for children, that it causes developmental delays and 'long-term health consequences'.<sup>165</sup> According to the studies of children living in institutions, including the survey conducted by the Kazakhstani scholar Nurgul Yelissinova, the quality of life of children in institutions is low in all areas, and this is reflected in their emotional, social and physiological functioning.<sup>166</sup> According to the report of UNICEF (2011), 'Violence against children in residential institutions in Kazakhstan: assessment of the situation' every second child in Kazakhstan's orphanages had suffered from violence.<sup>167</sup> This report by UNICEF and international experts uncovered shocking data about violence in Kazakh children's institutions, for instance:

Some young people also said that employees locked children in small rooms to isolate them from other children for several hours or even days. Children were locked in refrigerators and small rooms, where the light barely penetrated. They were brought little food, and sometimes they were not brought any at all. They were not given the opportunity to use the toilet (they

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<sup>165</sup> See Chapter 3 Section 2.3 above.

<sup>166</sup> See Chapter 3 Section 2.3 above; see also N Yelissinova, 'Scientific substantiation of measures to prevent social orphanhood and its consequences, taking into account age-specific features and quality of life of children' (DPhil thesis, Semey State Medical University (Kazakhstan) 2013) 61-62, 161, 176-177.

<sup>167</sup> Robin N Haar, *Violence against children in residential institutions in Kazakhstan: assessment of the situation* (UNICEF 2011).

had to cope with their needs in the room in which they were kept)...Such treatment is inhuman and psychologically cruel...<sup>168</sup>

Interviews with young people also showed that children from institutions were often sent to psychiatric hospitals for mentally ill people as a punishment for various reasons, including insubordination and fighting. Such children were not always truly mentally ill. They should never have been sent to mental hospitals or hospitals for several days, weeks, or even months, where they were kept until they obeyed. In fact, children were sent back to state institutions only if they were obedient.<sup>169</sup>

As discussed in Chapter 2, institutions do not work in children's long-term interests and well-being because of developmental delays.<sup>170</sup> In the Soviet Union, the institutional system for children had its own ideological grounds that was not motivated by the best interests of the child.<sup>171</sup> However, in that context, a child who had lived in an institution was at least prepared for being a member of the Soviet society, with its system of guaranteed education, a job, and a place to live.<sup>172</sup> Currently, on the other hand, children who grow up in institutions can barely integrate into society due to a lack of social skills, an inability to take care of themselves and to earn and save money, which is a direct result of spending their lives in an institution where they had everything provided. The practitioners interviewed for this research spoke of their awareness of the negative impact of institutionalization.<sup>173</sup> Here are few examples of what they told me:

A child who lives several years in a row in an orphanage, with such an institutionalised regime, becomes callous, loses some vital reference points, becomes disadapted, and is not socially adapted, not prepared, not independent in choosing a profession, in choosing friends.<sup>174</sup>

Everything is being planned for him (in the orphanage), sleeping all together, eating all together, going to school all together, and coming back from school all together. Unlike in a family, where the elder ones lead the way for the younger ones at home, the elder ones checks the homework.<sup>175</sup>

Orphanhood produces another orphanhood. Orphanhood syndrome is when not having experience in quality parent-child relationships, not having experiences of living in a family,

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<sup>168</sup> Ibid 81.

<sup>169</sup> Ibid 82.

<sup>170</sup> Hearst et al. (n23); Gabriela Walker, 'Postcommunist deinstitutionalization of children with disabilities in Romania: Human rights, adoption, and the ecology of disabilities in Romania' (2011) 22 *Journal of Disability Policy Studies* 150.

<sup>171</sup> See Chapter 3 Section 3.3 above.

<sup>172</sup> See Catriona Kelly, *Children's world: growing up in Russia, 1890-1991* (Yale University Press 2007) 260-263; Andrew B Stone, 'Growing Up Soviet? The Orphans of Stalin's Revolution and Understanding the Soviet Self' (Dphil thesis, University of Washington 2012) 36-44.

<sup>173</sup> Interviews with Nagima (NGO, ex- public worker) and Aigul (NGO) on 17 April 2018, and with Bakhyt (NGO) on 07 April 2018

<sup>174</sup> Interview with Nagima (NGO, ex- public worker) on 17 April 2018.

<sup>175</sup> Interview with Aigul (NGO) on 17 April 2018.

a girl unconsciously mother believes that 'I grew up my child will too', and she easily abandons (the child), this is the most challenging category of women.<sup>176</sup>

Difficulties in socialising was also identified by the Public Fund "Kaysar" that recently (2017) conducted research in Kazakhstan aimed at preventing human trafficking, on the implementation of the rights to work and housing of alumni of children's institutions:

The number of children in institutions remains high. And most of them are in a position of potential victims of trafficking. The reality, unfortunately, is also bleak: very few children who have lived in institutions and have lost the support of their relatives, will be able to, in the future, build their own family, get a good job and not go astray.<sup>177</sup>

According to Kaysar's monitoring, alumni of institutions are socially vulnerable due to the absence of stability in their social status, their lack of awareness of their rights in terms of work and housing, unemployment and violations of their rights, and their individual and material needs that make them vulnerable to job offers such as prostitution and other jobs that allow earning quick and easy money.<sup>178</sup> An awareness of such outcomes for children has been raised with the Government mostly by the activities of NGOs. In 2013, several NGOs and experts united into a social movement and organised a civil society forum under the slogan 'Children must live in a family'.<sup>179</sup> This forum was supported by almost all media and gained the attention of members of Parliament and civil volunteers. I argue that this Forum (2013) in addition to the afore-mentioned report by UNICEF on violence against children in residential institutions in Kazakhstan (2011), forced the Government to acknowledge the need to deinstitutionalise children. However, the deinstitutionalisation of children has not resulted in any evaluation report, the separate plan or policy. It took another three years for Government to take official steps to this appearing in the legal framework, namely in the "Concept of Family and Gender Policy of the Republic of Kazakhstan until 2030" (December 2016) and the Action Plan for the implementation of the Family and Gender Policy Concept in the Republic of Kazakhstan until 2030 (first phase 2017 - 2019). Meanwhile, the actions of the state regarding the deinstitutionalisation of children in these documents are vague, formal and limited by the

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<sup>176</sup> Interview with Bakhyt (NGO) on 07 April 2018.

<sup>177</sup> Public Fund Kaysar, *Monitoring of the implementation of the rights for work and house of alumnus of institutions for children left parental care and aimed to prevention of human trafficking* (2017) 4.

<sup>178</sup> Ibid 23-26.

<sup>179</sup> Evgeniya Bodrova, 'The child must live in the family! –The civil forum has started in Astana' *ktk.kz* (28 February 2013) <<https://www.ktk.kz/ru/news/video/2013/02/28/21529/>> accessed 5 September 2018.

existing resources and only for children from orphanages of the system of education who are the subject of the Action Plan.<sup>180</sup>

The deinstitutionalisation of children in Kazakhstan was therefore largely the result of initiatives by civil society with the support of UNICEF Kazakhstan. It openly discussed and revealed that institutions psychologically traumatise children, and that alumni of such institutions are not prepared for life beyond the walls of institutions. The forum also pointed out that institutions are a waste of public money, and that the orphanages have become the ‘feeder’ for the officials.<sup>181</sup> For example, it was argued that to keep a child in an institution costs the state 15 times more than in a family, namely 13,736 USD versus 896 USD per year.<sup>182</sup> According to my observation and analysis of empirical data, in contrast to the above – mentioned allocation for institutions, the Government of Kazakhstan is not considering redirecting that budget from closing institutions into new services, such as social services which would help prevent family separation. This does not correspond with what Kazakhstan was required to do by the UN Committee on the Rights of the Child in 2015.

In particular, the UN Committee required Kazakhstan to develop a preventive mechanism to minimise family separation and also to provide alternative family-based care or to reintegrate children with their families.<sup>183</sup> The response of the Kazakhstani government skipped the requirements totally on preventive mechanisms and limited their response to the following list:

- reduction in the number of children cared for in orphanages;
- increasing a child maintenance allowance for guardians and caregivers, foster carers and establishing a one-time cash payment for adoptive parents;
- establishing training for adoptive parents and family support services in the regions (the latter will be discussed in Chapter 7).<sup>184</sup>

Therefore, the response of the Kazakhstani government was restricted in what it would do, and even the list of activities presented was not fully implemented in practice, and not

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<sup>180</sup> See Chapter 3 Section 3.4 Subsection 3.4.1.

<sup>181</sup> Ibid; Anar Bazmuhambetova, ‘Each child cost to the state 2,1 mln tenge per year’ *Zakon.kz* (28 February 2013) <<https://www.zakon.kz/4544037-kazhdyjj-vospitannik-internata.html>> accessed 5 September 2018.

<sup>182</sup> Ibid; Dina Maratovna Aikenova, ‘Child Care Policy in Kazakhstan: A New Model’ (2014) 8 World Academy of Science, Engineering and Technology, International Journal of Social, Behavioral, Educational, Economic, Business and Industrial Engineering 494.

<sup>183</sup> The United Nations Committee on the Rights of the Child, ‘List of issues in relation to the fourth periodic report of Kazakhstan’ (10 March 2015) UN Doc UNCRC/C/Kaz/Q/4, para 10.

<sup>184</sup> The United Nations Committee on the Rights of the Child, ‘Replies of Kazakhstan to the list of issues’ (29 June 2015) UN Doc UNCRC/C/Kaz/Q/4/Add.1, paras 95-110.

all of the above represents the child-centred approach or constitutes preventive measures. In relation to the interests of the child in family-based placements, there is no mechanism that allows for children to be placed straight into foster families or adoptive families and as discussed earlier there are no human or financial resources to provide preventive social services to help avoid family separation.. Thus, although the answer of the state to the UN Committee on the Rights of the Child exists on paper, in practice the state's approach and understanding of children's needs have not changed, and nor has the system changed much. The state's main objective is to report that the number of children in institutions has decreased.

However, the urgent task of the state to reduce the number of children in institutions and place them in alternative families is considered by practitioners as unsuccessful and referred to as simply 'campaigning'.<sup>185</sup> Namely, 19-26% of children were returned to the institutions in 2015-2016 by ill-prepared families.<sup>186</sup> In his 2017 report, the Human Rights Ombudsman expressed his concern about the hasty implementation of the goals of the Ministry of Education and Science in the reduction of the number of children in institutions and emphasised similar issues to those provided by respondents in this research. Namely he highlighted the following problems in his report:

At the same time, the lack of a realistic assessment of the motivation of foster carers and guardians, and ignorance of the age characteristics of children, has led to the return of children to orphanages. According to statistics, in Kazakhstan, out of 1107 children transferred to care and patronage (small foster families) in 2015, 211 (19%) were returned to institutions. In 2016, 188 (26%) of the 734 children transferred were returned to institutions. Almost every fourth child is experiencing secondary orphanhood.<sup>187</sup>

Different stories of children being returned, or willingness to return one of the siblings (in the case of taking several siblings),<sup>188</sup> were recounted in the interviews by different practitioners, both NGO employees and officials.<sup>189</sup> In such cases, I would suggest that the child is better off staying in the institution than experiencing another trauma.

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<sup>185</sup> Interview with Mira (NGO) on 13 of March 2018, with TV (NGO) on 16 of March 2018, and with Dulat (NGO) on 21 of April 2018. By 'campaigning' mentioned activities of politicians to report and to inform people through the media that they are doing something, but in fact after a while these activities will remain in the papers such as protocols of different commissions, draft of documents and amendments in law.

<sup>186</sup> The Commissioner for Human Rights in Kazakhstan, *Report on the activities of the Commissioner for Human Rights in the Republic of Kazakhstan for 2017* (Astana 2018) 77.

<sup>187</sup> Ibid.

<sup>188</sup> In general, in children's placements in Kazakhstan, siblings are not allowed to be placed in different families. The most common grounds for exception from this rule are when children do not know about their kinship, have not lived and grown up together (for example, the younger sibling lived in the Baby Home).

<sup>189</sup> Interview with Irina (NGO) on 17 of March 2018, with Elena on 09 of April 2018, and with Darya (public worker) on 09 of April 2018.

Moreover, being in wrongly motivated or ill-prepared families can inflict further harm on the child's developmental process. At the same time, a family is a more private environment, and intervening, monitoring, and controlling require a different kind of regulation. The child's psychological well-being and their quality of life are lacking in both scenarios, both when the child is initially placed in an institution and when the child is placed within a family that does not have any prior training and psychological and social follow-up support. In essence, while changes were announced, the financial and human resources needed to implement them were missing. A similar concern is present in relation to the new project "Bahytty Otbasý" (Happy Family) initiated by the main political party "Nur-Otan" mentioned earlier, although suggestions to implement additional social services and training for alternative families are in the draft of new amendments in the legislation of the Government that is currently in the ongoing discussion process.

Overall, an analysis of the reports of the Committee for the Protection of Children's Rights shows<sup>190</sup> that Kazakhstan is keen to report a reduction in the numbers of children in institutions in the same way as Russia,<sup>191</sup> but it is only now that the Government is questioning how to make this process sustainable and how to close all the institutions.<sup>192</sup> As practice shows, when an institution closes, not all the children are placed in families; they are usually merely moved to other children's institutions within the region.<sup>193</sup> In the official report, the Committee for the Protection of Children's Rights does not provide details of where children were transferred to from the closed institutions, but the data from the fieldwork and the media demonstrates the above trend, namely that some children are placed in families while the rest are moved to other institutions.<sup>194</sup> At the same time, by solving one problem the state is creating other issues such as the

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<sup>190</sup> The Committee for the Protection of Children's Rights (n92).

<sup>191</sup> Guseliya Sagidullovna Belolipetskaya, 'Implementation of the state policy in the field of protection of orphans and children left without parental care: trends and prospects' (2017) 2 *Socium and power* 53.

<sup>192</sup> Oksana Akulova, 'Do not offend an orphan!' *Social and political newspaper Time* (10 December 2018) <<http://www.time.kz/articles/territory/2018/12/10/63891-ne-obizhajte-sirotu>> accessed 10 December 2018, Comments of Acting Chairman of the Committee for the Protection of Children's Rights, Erzhan Ersainov:

- 'At the moment we are deciding what the mechanism for closing orphanages will be. We understand that it will be not possible to close them right now (there are adolescents, children with special needs, who are difficult to place in family)...very soon an interdisciplinary working group will start developing an action plan, and then it will be possible to say how we will achieve this aim'

<sup>193</sup> Interviews with Mari on 13 March 2018 and with Arman on 05 of April 2018; see also *Zakon.kz*, 'The orphanage is closing in Petropavlovsk. The reason is the reduction in the number of children, which, according to experts, indicates a fairly good trend' (30 March 2018) <<https://www.zakon.kz/4910942-detskiy-dom-zakryvayut-v-petropavlovsk.html>> accessed 29 November 2018.

<sup>194</sup> *Ibid*.

unemployment of the staff and the trauma for children of being returned to institutions. These negative outcomes are explained by the current inadequate approach to deinstitutionalization, one which features no convincing implementation plan and no resources for new social services and the procedures of deinstitutionalization itself such as for example, the training of foster families or the training of personnel for other social services.

To sum up, the current practice of institutionalised placement only works as a short-term solution for the child and has significantly adverse long-term outcomes which do not correspond with the best interest of the child.<sup>195</sup> The main argument in regards to the legislation and procedures of decision-making in Kazakhstan is that children and their interests are made to fit in with existing systems and resources while it should be vice versa; the system and resources should ensure the best interests of the child. The Soviet Union practice of the ‘empowerment of women’ and the institutionalization of children, imposed on Kazakhstani society due to the state’s need for women as a source of labour for the state’s economy<sup>196</sup> demonstrated how the authority of the state might intervene in every household when there is strong political will. Because of the lack of such strong political will to change the situation,<sup>197</sup> the social issues and resistance of the main stakeholders continue to support the old system. The latter will be discussed in the next chapter.

## 4.6 Conclusion

This chapter explored the research problems from the legal and practical perspectives and demonstrates that the existing child care system does not meet the best interests of the child in regards to a family upbringing. In spite of the evidence provided by national and international NGOs that institutions are a place where children are abused and where children’s interests are the last priority, the government has not done anything effective to change the situation. The child interests are not prioritised since the legislation and practice reflects the resources that were inherited from the practice of the Soviet Union era. At the stage of writing this chapter (December 2019), the legislation mostly remains

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<sup>195</sup> See for example, Alimbayeva et al. (n23); Public Fund Kaysar (n177).

<sup>196</sup> See Chapter 3 Section 3.3 above.

<sup>197</sup> Nigel Cantwell, ‘The human rights of children in the context of formal alternative care’ in Wouter Vandenhoele, Ellen Desmet, Didier Reynaert, Sara Lembrechts (eds), *Routledge international handbook of children’s rights studies* (Routledge 2015).



formal and declarative reflecting the system that remains anchored to the old Soviet practices of the institutionalisation of children. The ongoing reforms and the state policy to transform the system and reduce the number of children in institutions has demonstrated contradictory results such as the return of about 20% of children to the institutions and psychological damage. The merely declarative nature of the new policy is underlined by the fact that it is not backed up by any new resources and relies on existing resources.

A review of the relevant literature, qualitative interviews with 20 practitioners from the different regions of Kazakhstan and thematic analysis of the legislation and policy, indicate the absence of understanding on the part of the state on how to reduce the number of children in institutions for children deprived of parental care. It shows that there is the range of issues that need to be addressed in the laws and practice in order to further the implementation of the concept of the best interests of the child in a family environment. The latter can be achieved only with a strong political will and the allocation of human and financial resources. In spite of Kazakhstan's claim to be a democratic state, it remains authoritarian where changes depend on command from the top down.<sup>198</sup>

At the moment, Kazakhstan is in the midst of an ongoing reform process that offers the possibility of better implementation of the UNCRC with regards to children deprived of parental care. However, there also exist the cultural aspects of the institutionalisation of children, negative social norms towards children deprived of parental care and the reluctance of the main stakeholders for any change to the existing practice whereas, in order for the changes to happen, the latter issues need to be overcome. The next chapter echoes Chapter 3 and provides a discussion of the cultural and social aspects of the issue. In particular, it considers what exactly contributes to the practice of the institutionalisation of children and what is preventing the transformation of the old system within the society. This discussion is also based on the original data from the fieldwork conducted for this research.

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<sup>198</sup> Interview with Arman (an expert in education, inclusion and child care, ex- public worker) on 05 of April 2018; see also Erica Marat, 'Post-violence regime survival and expansion in Kazakhstan and Tajikistan' (2016) 35 Central Asian Survey 531; David Lewis, 'Blogging Zhanaozen: hegemonic discourse and authoritarian resilience in Kazakhstan' (2016) 35 Central Asian Survey 421.

## Chapter 5

### Kazakh society and children deprived of parental care

#### 5.1 Introduction

The socio-legal approach that is applied (alongside others) in this thesis implies that the social and cultural context of the research issue must be investigated.<sup>1</sup> This chapter examines some of the original qualitative data from the interviews conducted for this research. This data supports the argument made in Chapter 3 and Chapter 4 that the research problem emerged and persists as a result of Kazakhstan's history, culture, politics and economic situation. This chapter summarises complementary data and enables us to address the following research sub-questions:

- 1) How does the existing child care system in Kazakhstan reflect social, family values and traditions?
- 2) Why does institutionalisation remain as the main solution in Kazakhstan for the accommodation of children deprived of parental care?
- 3) How does the historical background of Kazakhstan influence contemporary legislation and practice in the realm of a child care?

Overall, this chapter helps to complete the analysis of the research problem. There are two sections. The first section discusses the issues in the culture and the society of Kazakhstan that contribute to the continuing existence of the Soviet-influenced system of child care. It also provides a comparative analysis of the statistics in the context of different kinds of child placement and explains some of the reasons for the abandonment of children and the variation from region to region in Kazakhstan. There are five maps that show territorial features in regards to children's placements. The analysis of the statistics and regional patterns on providing care for children deprived of parental care covers the ethnic differences in the number of children in residential care (the ethnic make-up of children in institutions) and the willingness of the candidates to take the child from the institutions to their families. Noticeably, the available information on the ethnic differences in the number of children and the candidates is limited. The annual reports of the Ministry of Education and Science of Kazakhstan does not consist of such

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<sup>1</sup> Fiona Cownie, *Legal Academics: cultures and identities* (Hart Publishing 2004) 51-54.

information. Therefore, the discussion is limited by the found information and some original data gathered from the fieldwork.

The next section demonstrates the variations between the three systems (education, health and social protection), that accommodate children deprived of parental care, with regard to resistance to changes in child care in Kazakhstan. It also provides a comparative analysis supported by the data from the fieldwork.

## 5.2 The cultural and societal issues of Kazakhstan that contribute to the institutionalisation of children

The common practice amongst those of Kazakh heritage is similar to that of the Pre-Soviet culture when the majority of children deprived of parental care remained within the extended family. As of 1 July 2018, out of 20,342 children deprived of parental care placed in a family environment, 90% are under guardianship.<sup>2</sup> The number of children placed in institutions is in proportion to the number of institutions in the region. Territorially and historically, the largest number of institutions for children deprived of parental care is in the North, the East (including South East where the ex-capital of Kazakhstan –Almaty is located) and the Central parts of Kazakhstan, as indicated in the map provided below. Geographical use of institutionalisation and other types of child care are presented on the maps 5.1 – 5.5. This is followed by the discussion below explaining the differences in the geographical rates of institutionalisation and regional pattern of each type of child's placement in Kazakhstan.

### **Map 5.1 -The number of children placed in institutions by region 2017 <sup>3</sup>**

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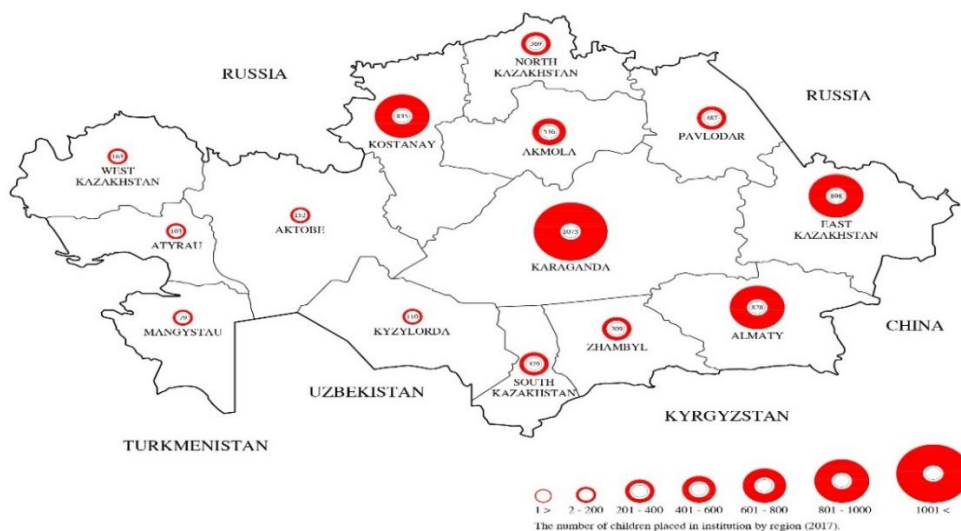
<sup>2</sup> The Committee for the Protection of Children's Rights, *Main results in the field of children's rights protection for the first half of 2018 and priorities for activities before the end of 2018* (Ministry of Education and Science of the Republic of Kazakhstan 2018).

<sup>3</sup> The Committee for the Protection of Children's Rights of Ministry of Education and Science of the Republic of Kazakhstan, 'Information on orphans and children left without parental care for 2017', <<http://www.bala-kkk.kz/ru/node/15756>> accessed 10 February 2018. To note: 1) the data was analysed and transferred to the map from the available information of the Committee for the Protection of Children's Rights of Kazakhstan; 2) on 19 June 2018 the South Kazakhstan oblast was renamed as the Turkestan oblast according to the Decree of the President of the Republic of Kazakhstan: On some issues of the administrative-territorial structure of the Republic of Kazakhstan.



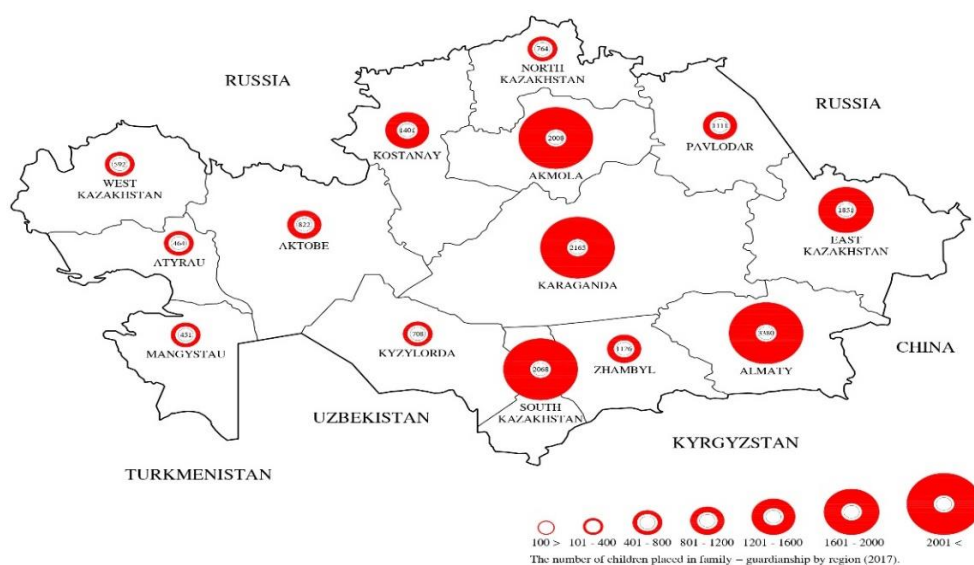
Information about children's placements, by region (2017)<sup>4</sup>

Map 5.2 Information about children placed in institution

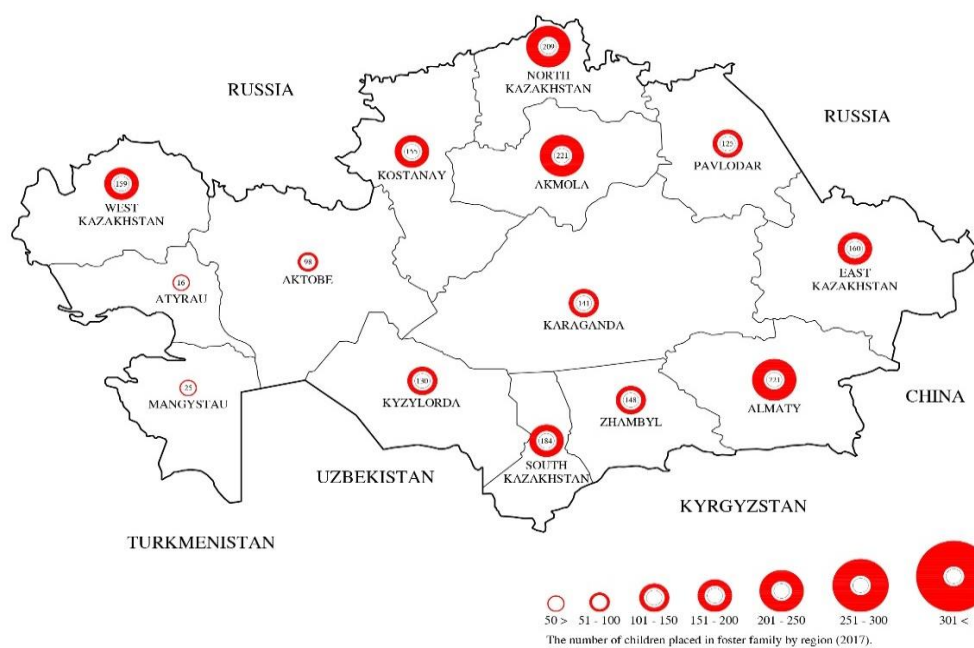


Map 5.3 Information about children placed in family – guardianship

<sup>4</sup> The Committee for the Protection of Children's Rights of Ministry of Education and Science of the Republic of Kazakhstan, 'Information on orphans and children left without parental care for 2017', <<http://www.bala-kkk.kz/ru/node/15756>> accessed 10 February 2018.



**Map 5.4 - Information about children placed in foster families**



**Map 5.5 - Information about children placed in family type orphanage**

The analysis of data in maps 5.2 -5.5 show that the majority of children deprived of parental care in the conservative South and West regions are placed in families (guardianship and foster families). At the same time, the total number of newborn children according to a 2017 report provided on the official website of the Committee on the Rights of Children in Kazakhstan, is higher in the South and the West of Kazakhstan than in the East and North of Kazakhstan where the number of children in institutions is higher. This shows that in the South and the West of Kazakhstan there are fewer orphans and fewer families that give up their parental responsibility. Such a pattern among Kazakh families was supported by one of the respondents from the region with a high number of children in institutions:

In the orphanages, the number of children of Kazakh nationality is much smaller, at least in our city, than Russians..., I have noticed mainly if a child of Kazakh nationality is left without care, immediately relatives appear and take him into the family. Here, the mentality instantly works.<sup>5</sup>

As was discussed in Chapter 3, this practice coincides with the wider cultural practices of Kazakh national practice rooted in the customary law of pre- Soviet Kazakhstan.<sup>6</sup>

<sup>5</sup> Interview with Darya (public worker) on 9 April 2018.

<sup>6</sup> See Chapter 3 Section 3.2 above.

A rough comparison of the statistics of the ethnicity of the population<sup>7</sup> shows that in spite of the high emigration of people of non-Kazakh origin since the collapse of the Soviet Union, the second largest group of people in the North, the West and the Central parts of Kazakhstan, is Russian, which accounts for the majority of children being of Russian heritage in the institutions in these regions. Namely, out of a total number of 18,157,337 people in Kazakhstan (2018), there are 12,250,305 (or 67,5%) Kazakhs, 3,588,686 (or 19,7%) Russians, and the rest 2,318,346 (12,7%) is the mixture of the remaining 123 ethnic groups.<sup>8</sup>

The cultural and racial mixture in the population of Kazakhstan (where people of Kazakh and Russian nations represent two biggest ethnic groups) apparently has opposite impact on the ethnic make-up of children in institutions. Although, it is not clear from the found data is there more willingness amongst Russian families to take foster children or to place children in an institution. What is clear is that there is mismatch on children of different nations with potential candidates of foster families and adoptive parents.

According to the data provided by the Committee for the Protection of Children's Rights, the percentage of children of Kazakh nationality living in institutions (listed in the Republic's database of children deprived of parental care) is 24,28 % (1,225), of Russian nationality is 57,63 % (2,907) and the rest 18,08 % (912) are a mix of other nations.<sup>9</sup> In terms of registered potential candidates to become a foster, patronage or adoptive families those of Kazakh nationality account for 77,3 %, of Russian nationality 17,8 %, and the remaining 4,8% are of other nationalities.<sup>10</sup> Thus, there is visible mismatch in the heritage

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<sup>7</sup> The Statistics Agency of Ministry of National Economy of the Republic of Kazakhstan, 'Population of the Republic of Kazakhstan in the context of ethnic groups at the beginning of 2018', <[http://stat.gov.kz/faces/wcnav\\_externalId/homeNumbersPopulation?\\_afzLoop=3971787338708600#%40%3F\\_afzLoop%3D3971787338708600%26\\_adf.ctrl-state%3Dhjqrh0bt\\_104](http://stat.gov.kz/faces/wcnav_externalId/homeNumbersPopulation?_afzLoop=3971787338708600#%40%3F_afzLoop%3D3971787338708600%26_adf.ctrl-state%3Dhjqrh0bt_104)> accessed 10 June 2018..

<sup>8</sup> Ibid; A A Smailova, A Zh Ashuev, G Zh Kukanova, E N Musabek, Yu K Shokamanov, N E Alkuatova, N A Mukhtarova, E Zh Alykpasheva, S S Abdukarimov, S T Nukutov, A R Ikambaeva, Sh A Iskakova, and L N Sergazieva, *Analytical report. "Results of the National Population Census of the Republic of Kazakhstan 2009"* (Agency of the Republic of Kazakhstan on Statistics, LLP Investment and Industrial Corporation "AstanaBlankIzdat" 2011) 20; Zhanat Tukpiev, '125 nations in one: what makes the Kazakhstani model of social harmony unique' *Kazpravda.kz* (01 May 2018) <<https://www.kazpravda.kz/news/obshchestvo/125-v-odnoi--v-chem-unikalnost-kazahstanskoi-natsii>> accessed 20 July 2018.

<sup>9</sup> The Committee for the Protection of Children's Rights of Ministry of Education and Science of the Republic of Kazakhstan, 'Information on orphans and children left without parental care, 2019' <<http://bala.edu.gov.kz/reference-material/>> accessed 15 February 2019.

<sup>10</sup> The Committee for the Protection of Children's Rights of Ministry of Education and Science of the Republic of Kazakhstan, 'Information on orphans and children left without parental care for 2017', <<http://www.bala-kkk.kz/ru/node/15756>> accessed 10 February 2018.

identities of children in institutions and the potential alternative families that might accommodate such children. This mismatch hinders the placing of children in family settings. Therefore, additional social services providing, for example, the training of foster families might be helpful to alter this balance in a way which would facilitate more family-based placements for all children in institutions whatever their historical or national origins. This training for foster families could help in selecting only those families that have the right motivation for taking on a child, namely the motivation being the benefits for a child in a family upbringing comes ahead of the interest of the foster families in having the child or financial benefits or both. However, there is a recommendation derived from Article 118 of the Code on Marriage (Matrimony) and Family 2011 and Article 20 of the UNCRC that when considering a child's placement options, the child is better placed in an environment that ensures continuity of the upbringing of the child and his ethnic origin, religious and cultural affiliation, native language and continuity in education and training. Therefore, placing children of Russian origin in a Kazakh-speaking environment (family or institutions) is a controversial topic that was raised during the interviews for this research.<sup>11</sup>

Practitioners also pointed to the mixed contingent of children, including Kazakh, Russian and other nationalities, currently present in the institutions and to the changing mindset amongst Kazakhs that corresponds to the transition period of Kazakhstan's politics and economics from socialism to capitalism. This trend was emphasised by Arman, who used to work for the state in the sphere of child care and studied politics:

The atomization of society is an external manifestation of capitalism and its market essence, it is individualisation, it is natural, its individual beginning ... as part of the formation of a market economy, we are still at the initial stage of it when this individualism still in most cases has its extreme form of egoism in the form of egocentrism.<sup>12</sup>

Though some cultural patterns pertain across the whole country, Kazakhstan is territorially very big (in terms of the size of its territory it is the ninth largest country in the world) and different regions have different mentalities, and different cultural reasons for abandoning a child or for the underdevelopment of alternative family-based placements for children. There are particular reasons why the practice of guardianship does not always operate effectively. In some measure this can be explained by the conservatism of some parts of the society that goes along with western media and the lack

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<sup>11</sup> Interview with Mira (NGO) on 13 March 2018.

<sup>12</sup> Interview with Arman (an expert in education, inclusion and child care, ex- public worker) on 5 April 2018.



of sex education in families and at school. For example, it is considered '*Уят. Жұрт не дейді*' (Shame. What will people say) for some Kazakh families, predominantly in the conservative Southern society, to have a disabled child, a child conceived outside of marriage, or to adopt a child who is not related to the family. The story which follows of a family from the South with a child who had the Van der Woude syndrome was related by the ex-worker of an orphanage.<sup>13</sup> The family abandoned the child in the maternity hospital, because of the shame they felt due to the facial defects of the child. The child grew up in orphanages moving from the Baby Home to the orphanage for older children. He had several surgeries and symptoms were significantly reduced with just a small defect in the pronunciation of words. When the campaign of reducing the numbers of children in institutions started in Kazakhstan, the child was taken by the personnel of the orphanage to the birth family to discuss re-union. The child was not told about the true purpose of the visit; he thought they were visiting relatives of the personnel of the orphanage. The child was playing with his siblings outside the house while the parents were asked to take the child back. In spite of the emotions of the parents, the decision was made by the mother –in- the law from the father's side and the decision was negative. There are at least two problems that emerge from this story: the first is that children with health issues and from institutions are not welcome in society, and the second is that the Kazakh tradition of looking after one's children sometimes contradicts the social norms of the Kazakh such as '*Уят. Жұрт не дейді*' (Shame. What will people say).

Consequently, as practice shows, because of such shame, parents often reject disabled children at the maternity hospital or, in cases when the mother decides to keep the child with a disability, the husband and father of the child will most likely choose to leave the family in order not to be linked with a disabled child.

In terms of children born outside marriage, it is usually young girls, mainly students, who give birth and then abandon their new-born babies in the street.<sup>14</sup> In terms of adoption, adoptive parents prefer newborns to older children, to the extent that they are willing to

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<sup>13</sup> Interview with Dinara (public worker, ex-teacher of orphanage) on 15 March 2018.

<sup>14</sup> Katherina Klemenkova, 'Year of unwanted babies: officials do not notice children's tragedies' *360 INFO.kz* (26 January 2016) <<https://365info.kz/2016/01/god-nenuzhnyh-mladentsev/>> accessed 5 October 2018; Ruslan Medelbek, 'Infants in the trash. There are more of them' *Radio Azattyk* (17 September 2013) <<https://rus.azattyq.org/a/kazakhstan-broshenniye-mladentsy/25108168.html>> accessed 5 October 2018; Nikolay Ivaschenko, 'Newborn baby found in toilet pit in Almaty region' *360 INFO.kz* (5 July 2016) <<https://365info.kz/2016/07/novorozhdennuyu-nashli-v-yame-tualeta-v-almatinskoj-oblasti/>> accessed 5 October 2018; Zakon.kz, 'Baby in Almaty trash: Prime Minister asked to tackle the problem of discarded children' (13 March 2017) <<https://www.zakon.kz/4848411-mladenec-v-almatinskojj-musorke-premer.html>> accessed 5 October 2018.

pay money to adopt a newborn child whom they will be able to introduce as their own, without disclosing that the child is adopted.

The next two extracts from the interviews undertaken for this research underline the regional and social features that contribute to the institutionalization of children in Kazakhstan.

The regional peculiarity is our southern mentality, for example, let's say that a girl gives birth without being married, for example, it is not known from whom, usually they are students ... this is already bad, this is nonsense, this is in any family ... In the south they hide it (pregnancy) until it grows into a large-scale everything, but in the north they can just come and say ... they have their northern mentality, "Mum, I'm pregnant ..." like the Russians, this is a different mentality ... and there is a problem here, but the problem is not big yet snowball ..., in the south we have first of all "Уят" (Shame) ..., but if you have an abortion then you may not have children (in the late stage of pregnancy), but if it happens and there is be a lethal outcome, everybody will say she was sick and died, that is all. You know, 'Уят болады -Журт не дейди' (Shame. What people will say) - this is "Журт не дейди" (What people will say) in the first place in the South. We begin to think what people will think about us, what they will say, we do not think, never say that people will not live for you, this is their life, and this is your life, and you know how many people change their mind in the end...<sup>15</sup>

Relatives say that we don't need strangers, these are genes, these are bad genes, it interferes with our tribe, it is a shame that we cannot give birth ..., we must take a little one, make you look pregnant and then you gave birth, it is a shame, fear, prejudice, stigma ... Of course, if a young family comes for sure, they will want a small one, but if it goes a conscious step not to fill some absence of children, and if it goes a conscious step as an act of help, then they can go to teenagers ... if we talk about "shame", it is necessary to make a remark 'in Kazakh young families'...<sup>16</sup>

Another custom developed during the Soviet Union era is that parents or relatives themselves sometimes rely on institutions saying that they can provide a better environment and there their children have everything that parents are not able to provide.<sup>17</sup> The study in this field shows that 81,5 % of children from orphanages who participated in questionnaires are still in fact in touch with their relatives.<sup>18</sup> This phenomenon was characterised by one of the respondents of my research with a psychological practice background as underdevelopment or low awareness by the parents

<sup>15</sup> Interview with Aygul (NGO) on 17 April 2018.

<sup>16</sup> Interview with Dulat (NGO) on 21 April 2018.

<sup>17</sup> Interview with Mira (NGO) on 13 of March 2013; see also Leyla Ismayilova, Fred Ssewamala, and Aytakin Huseynli, 'Reforming child institutional care in the Post-Soviet bloc: The potential role of family-based empowerment strategies' (2014) 47 Children and Youth Services Review 136.

<sup>18</sup> N Yelissinova, 'Scientific substantiation of measures to prevent social orphanhood and its consequences, taking into account age-specific features and quality of life of children' (DPhil thesis, Semey State Medical University (Kazakhstan) 2013) 164-165.

of their responsibility and their child's needs that are explained by the attachment theory.<sup>19</sup> This also requires the state attention and improvement.

In light of the rapid decline in the number of children in institutions, during the interviews, the practitioners were asked for the reasons for the remaining children staying in institutions (23%).<sup>20</sup> In addition to the agency's interest, that has been discussed throughout this chapter, the majority of respondents interviewed during this research identified four main reasons or characteristics of the children that contribute to them remaining in institutions:

- parents are in prison,
- disability of the child,
- the big number of siblings and the prohibition of their separation,
- children older than 6 years and mainly from low-income families, or families where parents are taking drugs or alcohol or are homeless.<sup>21</sup>

These reasons for child neglect or abandonment are widespread, and due to these well-known reasons children in institutions are stigmatised as children 'with bad origins' so that they are not welcome in society.<sup>22</sup> At the same time, as Legrand suggests, the system does not provide social services to help families undergoing challenging life difficulties.<sup>23</sup> The only exception is temporary placement in the Baby home that is allowed only for children below 4 years old and enables parents, mainly single mothers, to overcome her life difficulties, although there is no assistance for such mothers and no monitoring - nobody knows how many mothers return to collect their children.<sup>24</sup> However, in every region of the fieldwork there were exceptions and some examples of outstanding families that took children from institutions on different legal bases including patronage, adoption, guardianship and fostering, including big 'adoptive-foster-patronage' families with disabled children only. One example of such a family is that of Marat Kabylbayev, who

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<sup>19</sup> Ibid.

<sup>20</sup> See Chapter 4 Section 4.4 above. According to the state's statistics, as of 1 July 2018, 77,45% of children deprived of parental care in Kazakhstan had been placed in family environments.

<sup>21</sup> Interviews with Mira (NGO) on 13 March 2018, with Gulnara on 16 March 2018, with Umyt (NGO) on 16 March 2018, with TV (NGO) on 16 March 2018, with Darya (public worker) on 9 April 2018, and with Dulat (NGO) on 21 April 2018.

<sup>22</sup> Jean-Claude Legrand, 'Child care system reforms in Eastern and Central Europe and Central Asia: Why there is a need to focus on children below three years' (2015) 15 *Irish Journal of Applied Social Studies* 2; Ismayilova, Ssewamala, and Huseynli (n17); Mary O Hearst, John H Himes, Spoon Foundation, Dana E Johnson, Maria Kroupina, Aigul Syzdykova, Musa Aidjanov, and T Sharmonov, 'Growth, nutritional, and developmental status of young children living in orphanages in Kazakhstan' (2014) 35 *Infant mental health journal* 94.

<sup>23</sup> Ibid.

<sup>24</sup> Interviews with Mira (NGO) on 13 March 2018.

took more than ten children from institutions and published his diary as the father.<sup>25</sup> This book consists of his stories of how different children joined his family, what kind of social and psychological obstacles his family had to face, including the hostility of the society that actively discouraged him from taking a child with ‘bad origins’. It also tells the readers about the process of the children’s adaptation, the importance of taking siblings together, and the resistance on the part of the institutions’ staff to let the children go to families. Drawing on his experience, he currently helps candidates of alternative families and families who have already taken on a child from an orphanage to deal with the children, their traumas and their past:

The example of his family will help to debunk all existing negative stereotypes regarding orphans. All the stories in his book show and prove that with love, attention and care you can “return” a child to a happy life and give him a safe childhood. And that there is no such thing as “bad heredity”, there are concepts of “pedagogical neglect” and “developmental delay”, but they also exist due to the lack of individual attention, care, and love.<sup>26</sup>

Thus, it might be concluded that in spite of the existence of the stigmatisation of children deprived of parental care, the mentality of society members is in the slow process of positive change and examples of families like the one of Marat Kabylbayev is the evidence for that. These changes in society are partially due to the efforts of NGOs and the media that in collaboration with each other have raised awareness of the negative impact of institutions on child development and their long-term outcomes and have had an indirect influence on the increasing number of children placed or remaining in families.

### 5.3 The resistance of the system and staff to new practice and de-institutionalisation

In contrast to the aforementioned activities of NGOs, there is resistance on the part of the system and personnel of institutions to the transformation and de-institutionalisation of children. This is explained in part by fear of unemployment and the lack of understanding of how such transformation can happen. This is what was said by the official in one region of Kazakhstan:

We did not see it (the transformation of orphanage into the family or child support center) as an example, as it will be, we do not know.<sup>27</sup>

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<sup>25</sup> Marat Kabylbayev, *Show Me The Sky. The Diary of The Father* (1st edn, Print house Gerona 2015).

<sup>26</sup> Sholpan Baibolova in the afterword of Marat Kabylbayev, *Show Me The Sky. The Diary of The Father* (1st edn, Print house Gerona 2015) 93-94.

<sup>27</sup> Interview with Darya (public worker) on 9 April 2018.

Moreover, staff are not motivated to be trained, and do not believe that it is better for children to be placed in a family-based environment and so are reluctant to do so until they are forced by the decision of a local authority to close an orphanage. The next extract from the interview with Dulat (NGO) demonstrates this approach.

The main obstacle is the process of the selection of a child - the database is not entirely understandable for users in terms of how it works ... so they (candidates) come to the orphanage, they start to be frightened, the staff tells them what diagnoses the child has, what origins the child has, and what hereditary consequences there might be. If you (as a candidate) have overcome this stage ..., they (staff) start working with children, telling them that they (staff) are their family, that they (staff) have given them their whole life... It's their job, it's their salary, they will be unemployed ... when we talk about the transformation of orphanages, I always think about two large orphanages in X district, there are 150-200 children there. These are town-forming enterprises for this district ... if they are closed, what would happen, where will these people go, what will they do,.. you can't establish the Child Support Centres there for prevention, there are a couple of cases at most, children are brought there from A and B cities, how to deal with them ... if we solve this problem, we can give rise to another social problem in their families.<sup>28</sup>

Institutions for children deprived of parental care exist under the auspices of the systems of education, healthcare and social protection. As of July 1, 2018, there were 98 institutions in the educational system, 22 in the healthcare system, and 18 in the social protection system.<sup>29</sup> The level of resistance varies from system to system for a variety of different reasons.

The analysis of data gathered from the interviews demonstrates that the most resistant system is that of health care.<sup>30</sup> The reason is that healthy children under four years old who are in health care institutions are in 'high demand' for adoption purposes.<sup>31</sup> In contrast, these institutions exist only if there are children. Therefore these institutions provide services for the temporary accommodation of children whose mothers can leave them there.<sup>32</sup> From 2017 to 2018 only one such institution was closed in contrast to 18 institutions managed by the education system.<sup>33</sup> According to the comments of

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<sup>28</sup> Interview with Dulat (NGO) on 21 April 2018.

<sup>29</sup> The Committee for the Protection of Children's Rights of Ministry of Education and Science of the Republic of Kazakhstan, 'Information on orphans and children left without parental care for 2017 (according to local executive bodies)', <<http://www.bala-kkk.kz/ru/node/15756>> accessed 16 August 2018.

<sup>30</sup> Interview with Mira (NGO) on 13 March 2018, with Bahyt (NGO) on 7 April 2018, and with Aigul (NGO) and Nagima (NGO) on 17 April 2018.

<sup>31</sup> Ibid.

<sup>32</sup> The Regulations on the activities of the health organization for orphans, children left without parental care from birth to three years old, with mental and physical development defects from birth to four years, carrying out psychological and pedagogical support for families at risk of abandoning a child, approved by the Order of the Minister of Healthcare of the Republic of Kazakhstan 2017.

<sup>33</sup> The Committee for the Protection of Children's Rights, *Main results in the field of children's rights protection for 2017 and priorities for activities for 2018* (Ministry of Education and Science of the Republic of Kazakhstan 2018) 15.

practitioners who work at Baby Homes, interviewed for this research, there are no children who might be adopted from these institutions.<sup>34</sup> This is what they said:

The Baby Home of X city, for example, if you take that..., there are 65 children now ..., two-thirds of them are children with different developmental delays. The proportion is getting higher because healthy babies are taken right away. There are only healthy babies on the temporary list of those who have a mother or relatives but have not yet been taken away. There are no healthy children in the Baby Home X, who might be taken now, they are practically non-existent..., and in terms of children with developmental disabilities, no one takes them, the adoptive parents do not want these children.<sup>35</sup>

Each year, fewer children (age 0-4) live in the Baby Home..., most of these children who live in the Baby Home do not even appear in the database, as they are in the Baby Home temporarily, 50% of children are temporary... that is, the system of these institutions exists now only due to temporary failures... The mother will come for them or she will not, that is an open question because the system does not work with her. At first, she may come and visit... and then less and less, because in time the psycho-emotional connection breaks off, the institution supports the child for as many years as is needed, because the institution itself exists at the expense of these children...<sup>36</sup>

The corrupting mechanisms in the healthcare system remain high because of demand for the babies who could be introduced as the new-born child in a family. The price of children varies from 2,000 to 25,000 US dollars.<sup>37</sup> One of the well-known corrupt systems that was mentioned during the empirical research is the ‘fake adoption’; the authority of maternity hospitals give the name of the potential adoptive man as the father so that the family legally can take the child from the biological mother who is also involved in the scheme.<sup>38</sup>

There are many pilot projects which are currently taking place in the country, and each of them has negative and positive outcomes. An example of a pilot project with negative outcomes relating to the health care system was identified by two different interviewees during the fieldwork.<sup>39</sup> In this pilot project, according to an agreement between the Ombudsman for children, the local prosecutor, and the local Health Department, newborn children who are abandoned by their mothers are given to adoptive parents directly from the hospital where they were born, thus avoiding the Baby Home and registration on the republic’s database. The staff of the hospital were interested in fulfilling a request for adoption and started looking for a potential mother-to-be. One such mother was a young

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<sup>34</sup> Interview with Mira (NGO) on 13 March 2018 and with Bahyt (NGO) on 7 April 2018.

<sup>35</sup> Interview with Mira (NGO) on 13 March 2018

<sup>36</sup> Interview with Bahyt (NGO) on 7 April 2018.

<sup>37</sup> Interview with Irina (NGO) on 17 March 2018.

<sup>38</sup> Interview with Olga (NGO) on 09 March 2018.

<sup>39</sup> Interview with TV (NGO) on 16 March 2018 and with Bahyt (NGO) on 07 April 2018.

girl from an orphanage, whose story was recounted by one of the NGOs.<sup>40</sup> In the maternity hospital this girl was asked by the staff if she wanted to give up her child as is common amongst girls who are brought up in orphanages. However, the girl did not want to give up her child, so she called on the NGO for support.<sup>41</sup> After interventions by NGOs, this pilot project was adjusted by allowing a long enough period for mothers who want to give up their children to change their minds, but there is no data on whether the process of adoption as formulated in subordinate legislation is being followed. This is a comment, given by the NGOs in regard to the staff of the maternity hospitals dealing with mothers who want to give up their child:

Doctors do not have assessment tools in maternity homes, and even psychologists in maternity hospitals do not have assessment tools or a clear algorithm.., when a woman shows up in a maternity home, when she has already said, “I will not take this baby”, a bunch of individual questions start coming her way, everything is at the mercy of human error because there is no exact procedure in place. Who should be speaking to the woman, who should enter her room first, who should discuss this issue with her, everything is left to the individual who ends up asking the questions.<sup>42</sup>

The education system is similarly reluctant to embrace reforms. In particular, the staff of orphanages that are meant to be closing down or transforming into Child/Family Support Centres according to the implementation plan of the Gender and Family Policy are resistant to change.<sup>43</sup> Their resistance is supported by others because there are no trained families to place children with, and there is no available training for specialists to work with those families. In addition, the staff were not offered any other job and their resistance is explained by their fear of being unemployed. Therefore, there is no holistic approach by the state to change the system, to put in place social workers, and to work with families in need. Consequently, there is no proper understanding and there is fear among the staff.<sup>44</sup>

As discussed earlier, the state policy needs to be revised to address these issues taking into account all stakeholders. Practitioners also recommend that the state takes a holistic approach to changing the system of providing social services in education. Namely, they

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<sup>40</sup> Interview with TV (NGO) on 16 March 2018.

<sup>41</sup> Ibid.

<sup>42</sup> Interview with Mira (NGO) on 13 March 2018

<sup>43</sup> The Action Plan for the implementation of the Family and Gender Policy Concept in the Republic of Kazakhstan until 2030 (first phase 2017 - 2019), approved by Resolution of the Government of the Republic of Kazakhstan 2017.

<sup>44</sup> Interviews with Olga (NGO) on 9 March 2018, with Mira (NGO) on 13 March 2018, with Gulnara (public worker) on 16 March 2018, with Umyt (NGO) on 16 March 2018, with TV (NGO) on 16 March 2018, with Irina (NGO) on 17 March 2018, with Elena (public worker) on 9 of April 2018, and with Dulat (NGO) on 21 of April 2018.

mentioned the need for staff to have practical tools to be able to change the decision-making process for child placements such as additional social services, social workers and trained families who are ready to take children in emergency situations, the necessity of supervision and assessment tools, and additional services for preventive mechanisms to intervene in situations where the child might be better off staying with their family.

The third system under consideration here is the social protection system that is responsible for children deprived of parental care with health issues. This system works somewhat better than the previous two. It is governed by the LSSS and the relevant standards.<sup>45</sup> This system has social workers within it, and there currently is no demand for the disabled children they take care of, so there is no real concern around closing off their institutions in the near future. However, the comments of the representatives of this system were similar to those of the staff of the other services. Social protection workers are not interested in the changes and do not believe in the feasibility of socialisation of the children with a medical diagnosis such as the ones they have under their care. However, the policy of breaking up the big institutions into smaller family type units of has pushed the system of social protection to try to allocate some potential children into smaller groups. According to the feedback from interviewees, the Department of Social Protection conducted a pilot project to break up the big institutions into smaller family type units.<sup>46</sup> However, this project was not wholly successful due to:

- the lack of belief of the staff that the policy of breaking up the big institutions into smaller family type units of might work
- the reluctance of society to accept disabled children

On the positive side, the project demonstrated that

- children who have minor mental issues often have the potential to learn and socialise, including children who were rejected by the education system due to their developmental delays in studying. In other words, these children have chance for more or less normal life outside of institutions in their adulthood instead continuing life in the institutions for adults with mental issues.<sup>47</sup>

This pilot project indicates that Kazakhstan society is not yet inclusive and that the personnel of the institutions themselves do not believe in the potential of children from

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<sup>45</sup> The Standard for the provision of special social services in the field of social protection of the population in a hospital approved by Government Decree Republic of Kazakhstan 2011.

<sup>46</sup> Interview with Aisulu (public worker) on 19 March 2018.

<sup>47</sup> Interview with Aisulu (public worker) on 19 March 2018.



the institution to be socialised and enabled to live in families or family-type environments. It is possible that the staff have not received sufficient training related to the socialisation of disabled children and the best interests of the child. Therefore, the findings of this pilot project indicated that children deprived of parental care in the social protection system who have minor developmental delays, even though they may have the potential to integrate and socialise, may never leave the institutions.<sup>48</sup> Among the latter group of children, some of them might be the victims of the abusive approach of the personnel of the institutions of the education system. There are instances of children being sent to the institutions of social protection for children with health issues as a punishment tool.<sup>49</sup> Overall, it might be concluded that the best interest of the child is the last priority in Kazakhstan. Based on the analysis of the data from my interviews, I also might infer that the continued existence of institutional care owes more to the need to maintain the institutions to ensure the employment of their staff and to enable the state to pay lip service to upholding its obligations with regard to the care and protection of vulnerable children.

Another of the conclusions that I came to is that, due to the fragmented character of the child protection system, which is divided up between the health, education, and social protection sectors, there is no one policy implementer. According to the Action Plan for the implementation of the Family and Gender Policy Concept in the Republic of Kazakhstan until 2030 (first phase 2017 - 2019), orphanages should be transformed into Family and Children Support Centres. The responsible body for this was the Ministry of Education and Science of Kazakhstan. However, as noted in Chapter 4, the state did not allocate resources for the implementation of its plan.<sup>50</sup> Reliance was instead placed on existing resources<sup>51</sup> and personnel who remained resistant to any changes as was discussed above in this section. Therefore, change may not occur without strong political will or pressure is applied by an external organisation, like the European Union or OECD, to meet certain conditions before access is granted to, for instance, an international contract deemed highly important for the state economy or politics.

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<sup>48</sup> Interview with Aisulu (public worker) on 19 March 2018.

<sup>49</sup> See Chapter 4 Section 4.5 above; see also Robin N. Haar, *Violence against children in residential institutions in Kazakhstan: assessment of the situation* (UNICEF 2011) 82.

<sup>50</sup> See Chapter 4 Section 4.5.

<sup>51</sup> Ibid.

## 5.4 Conclusion

This chapter demonstrates the differences in cultural patterns for the abandonment or relinquishing of children and care provision across the country and within the different regions of Kazakhstan. There is clear mismatch in the ethnic proportion of the children in residential care and potential family provider candidates (foster families, adoptive parents and guardians). I argue that this ethnic imbalance should be noted and sorted by the state by taking special measures that will meet child's right to preserve his or her ethnic identity, but also the right to be raised in the family although the family members are from different ethnic group than the child.

The stigmatisation of children and the social approaches to children deprived of parental care inherited from the Soviet practice have not yet changed substantially in a society which still is characterized by features of its historical background, which are demonstrated, amongst other spheres, in its child care system. There is not enough awareness and knowledge in the society or among the main stakeholders about the best interests of the child. The level of resistance of the staff in different systems involved in the care of vulnerable children shows the same tendency to be reluctant to change, and efforts to reform the approaches and provide more family-based care are hampered by negative attitudes to children with health issues and older children from the institutions, which regard such children as sources of shame and the result of 'bad heredity'.

Therefore, the existing legislation and amendments to it are not enough since the law does not exist in isolation and without changes in the mentality of society and the main stakeholders, the efficiency of changes in law are questionable. Hence, in order to reform the child care system in Kazakhstan, the government needs to improve understanding and awareness of best interests of the child amongst the public and the main stakeholders through such remedies as training and media, and the kinds of provision needed to meet children's needs. Additionally, work should be done to decrease the level of stigmatisation of children deprived of parental care and to change society's attitudes to such children. In terms of staff, the suggestion was always the same: beside increasing available training in order for staff to learn about the concept of the best interest of the child, the government should increase the payment of social services personnel; recruit more staff and develop more social services for children in need.

The next two chapters of the thesis are an attempt to shed light on possible improvements. Kazakhstani practice in the elaboration of new legislation and amendments to it draws

upon an overview of the international practice of more developed states, in particular the United States and the United Kingdom. Therefore, the next chapter will explore the relevant historical background, legislation, and practice of England to seek lessons and good practice. The discussion on what Kazakhstan might borrow from the experience of England will be developed in the Discussion Chapter of the thesis.

## Chapter 6

### The cultural background of the treatment of children and the decision-making process in child protection in England

#### 6.1 Introduction

This chapter aims to address the second question of this thesis which is: what lessons might be learnt by Kazakhstan from England? It is a contextual study of relevant English law and practice some elements of which may provide models from which Kazakhstan might learn. This chapter starts by exploring the historical and cultural background of children's treatment in English society and the evolution of the state's approach to children's best interests, including the importance of the family in the child's development process. Exploring the English background of the children treatment is significant for this research because attitudes towards children potentially reflect the time they live in and are the productions of history, culture, politics, economics, and the contemporary society.<sup>1</sup> Chapter 3 of this thesis also shows this approach when examining how attitudes to children reflected the culture, politics and economics and society in pre-Soviet, Soviet and post-Soviet Kazakhstan. Overall, examining the background in the two states is useful for the discussion of the possible transplantation of laws and practice in the next chapter since such transplantation should take into account the culture and the local conditions of the country from which the laws are transplanted.<sup>2</sup>

Section 6.3 of this chapter focuses particularly on the decision-making process in child protection in England, including the legal framework of social work practice with regards to children, including the main principles and the role and responsibilities of social workers with regards to children. There follows an elaboration of the contemporary child-protection system in England and how it came to be developed by the state through a series of mistakes and improvements in social policy, law, and practice. A literature review and in addition the data from the interviews conducted for this thesis were applied as the methods. In particular, the latter data provided some opinions on existing issues in

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<sup>1</sup> Nigel Thomas, 'Children, young people and politics in the UK' in Heather Montgomery and Mary Kellett (eds) *Children and young people's worlds: developing frameworks for integrated practice* (Policy Press 2009); Norman K Denzin, *Childhood socialization* (Transaction Publishers 1977) 2.

<sup>2</sup> Philip M Nichols, 'Viability of Transplanted Law: Kazakhstani Reception of a Transplanted Foreign Investment Code' (1997) 18 *University of Pennsylvania Journal of International Law* 1235.

contemporary practice in child care in England and reflection on the changes that contribute to constant improvements of the system. Each section of this chapter links to the Kazakhstani context in order to demonstrate the lessons and/or better practice that should be considered by Kazakhstani policy and law makers.

Due to the aim of this chapter that is limited to looking for instances of better practice and lessons to learn from, there is no detailed doctrinal analysis of the English law. Therefore, in spite of the existence of critics of the present legislation, social policy, law and practice in England, this chapter tends to lay most emphasis on the positive lessons that were learnt from negative events such as the abuse and deaths of children. The practice in England that is discussed throughout this chapter is also related back to and examined in the light of the provisions of the UNCRC that had a noticeable impact on the development of the legal framework relating to children in England. Thus, this chapter argues that the contemporary decision-making process in child protection in England is the outcome of the gradual processes of a maturing civil society and of becoming a developed democratic state that is open to self-reflection, self-criticism, mutual engagement and the constant re-evaluation of social policy and practice. This chapter exemplifies this by pointing out some criticism of the existing child care system and new challenges such as, for example, the acculturation of minorities, that are faced by practitioners and are on the agenda of contemporary discussions.

## 6.2 The historical and cultural background to the treatment of children in England

Amongst a variety of studies of children, histories of childhood and studies of the cultural changes regarding children in Western countries, Eekelaar, Jenks and De Mause present relatively similar accounts of the changes that have occurred over time and that have led to the contemporary status of children in society and in the family.<sup>3</sup> De Mause, for example, argues that it was a long journey of child and parent ‘closer approaches’ from antiquity to the beginning and mid-twentieth century.<sup>4</sup> Jenks in agreement with De Mause points at the period of Enlightenment as the time when ‘the child had moved through time from obscurity to the centre stage’ in public policy sphere and as with regards to their

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<sup>3</sup> John Eekelaar, *Family law and personal life* (Oxford University Press 2017); Chris Jenks, *Childhood (Key Ideas)* (Routledge New York 1996); Lloyd DeMause, *The history of childhood* (Psychohistory Press 1974).

<sup>4</sup> DeMause (n3) 51-52.

place in the family.<sup>5</sup> Eekelaar in his Welfarism thesis states that in pre-Enlightenment times, there were no legal constraints on the power of king and father.<sup>6</sup> Radical thinkers, such as the Enlightenment writers, argued that a king should not exercise his power unless it worked for the interests of the people, and the same concept was subsequently related to the power of parents as well.<sup>7</sup> Moral restrictions were replaced with limitations that were enshrined in law.<sup>8</sup> Therefore, the situation of children in England changed substantially in the late nineteenth century. Ideas around child protection were not always directly about children's welfare but grew out of other ideas about the operation of power. The central theory on which the changes were founded is the individualisation theory. The way to individualisation in English society might be divided by the three social structures and time periods and were underpinned by law and power.<sup>9</sup> The first period was characterised by religious norms and paternalism, the second by welfarism and protection of vulnerable family members, and then the time of the human rights activities that is associated with the interests and power of individuals.<sup>10</sup> A significant area of legislation was the marriage law of the Church and the power that was exercised via its ideology.<sup>11</sup> Under this institutional control of marriage, according to Lawrence Stone 'the husband and father for a time became the family despot, benevolent or malign according to temperament or inclination'.<sup>12</sup> The power of the father remained in place until the nineteenth century: according to the terms of the above law the power granted to fathers was backed up by financial regulations regarding for instance, land properties, including the wife's property, that allowed him to determine the choice of marriage partners and the terms of the marriage of his children, especially his daughters.<sup>13</sup> In contrast, two laws, the Custody of Children Act 1839 and The Poor Law Amendment Act 1844 and 1889, placed 'duties on public authorities to protect the welfare of children' and abolished 'a

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<sup>5</sup> Jenks (n3) 65-67.

<sup>6</sup> Eekelaar (n3) 11.

<sup>7</sup> Jonathan Israel, *A revolution of the mind: Radical enlightenment and the intellectual origins of modern democracy* (Princeton University Press 2009) 90.

<sup>8</sup> Ibid 11-13.

<sup>9</sup> Eekelaar (n3); Lawrence Stone, *The family, sex and marriage in England 1500-1800* vol 43 (Citeseer 1979); James A Brundage, *Medieval canon law* (Routledge 2014); Rebecca Probert, 'Control over marriage in England and Wales, 1753-1823: the Clandestine Marriages Act of 1753 in context' (2009) 27 *Law and History Review* 413; Frederik Pedersen, *Marriage disputes in medieval England* (A&C Black 2000)

<sup>10</sup> Ibid.

<sup>11</sup> Brundage (n9) 13, 72-75; Michael Mann, *The sources of social power: volume 1, a history of power from the beginning to AD 1760*. Vol 1 (Cambridge university press 2012) 301-338, 363-364.

<sup>12</sup> Stone (n9) 158.

<sup>13</sup> Probert (n9).

father's right to custody of his children if he harmed their interests'.<sup>14</sup> These changes laid the foundation for further development of the child protection system in England. It could be argued that the child protection movement in Britain and Western countries made it possible for authorities and courts to decide what was best for the interest of the child and also extended this approach to other dependent and vulnerable members of a family. Eekelaar calls the time from 1945 to 1975 as 'golden age of the welfare state'.<sup>15</sup> The approach of the state to the parent-child relationship changed significantly between 1946 and 1985, a period that coincides with the present English law. In particular, while the Committee on the Care of Children (Curtis Committee) of 1946 emphasised the role of social services in assisting children,<sup>16</sup> a government Consultative Document of 1985 pointed out the 'natural and legal responsibility' of parents and assisting parents to exercise their responsibility.<sup>17</sup> Eekelaar points at both sides of the welfare state, the positive 'humanitarian benefits' and the negative 'power to decide what those interests were'.<sup>18</sup> The latter led to the separation of about 100,000 children from their parents and their transfer to Canada and Australia'.<sup>19</sup> Thus, the British authorities failed in their dealings with these children and their parents, with damaging effects on the notion of the welfare state, and as a result, since the 1980s, individuals have come to the fore and people tend to have more 'power' to decide what is in their interests and not 'designated persons, whether family members or institutional authorities'.<sup>20</sup> In addition to this, the radical social work theory argued that 'instead of trying to adapt people to 'the system', the system should address the requirements of people'.<sup>21</sup> This shift in emphasis means a lot since it has replaced the system's interests with the interests of people to some extent while this has not happened in Kazakhstan yet where children are allocated according to their eligibility to the placements that are available in the system.

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<sup>14</sup> Eekelaar (n3) 11-12

<sup>15</sup> Eekelaar (n3) 13.

<sup>16</sup> Committee on the Care of Children (Curtis Committee), *Report of the Care of Children Committee (Training in child Care)* (Cmd 6922, 1946).

<sup>17</sup> Consultative Document, *Review of Child Care Law: Report to Minister of an Interdepartmental Working Party* (1985) para 2.8.

<sup>18</sup> Eekelaar (n3) 13.

<sup>19</sup> Ibid 14.

<sup>20</sup> Ibid 15; see also Jean Packman, Nicola Jacques, and John Randall, *Who Needs Care?: Social Work Decisions about Children* (B. Blackwell 1986); Spencer Millham, *Lost in care: The problems of maintaining links between children in care and their families* (Gower 1986). It was time of increase of 'rights' movements during 70s of twentieth century, including Family Rights Group, the Children's Legal Centre, the Campaign for Justice in Divorce.

<sup>21</sup> Ibid.

Eekelaar argues that from the 1970s and 1980s, there are significantly fewer people who accept being dictated to by social institutions regarding their behavior in their personal lives.<sup>22</sup> The legislation and the approach of the state have changed since 1985 as a reflection and response to instances of state intervention bad practice. Too much intervention in the Cleveland affair and failures to intervene in the case of the death of Kimberley Carlile are examples of shortcomings in both directions.<sup>23</sup> It seems that the practice of social workers at the time of these two cases was based on the beliefs either doctors or social workers rather than on the rights and best interests of the children. As the consequences of inadequacies in the practice and unnecessary interventions on the part of the welfare institutions, the Children Act 1989 (CA) decreased the power of local authorities and the act listed the exact situations in which the court might allow an intervention.<sup>24</sup> The above two cases in England were followed by the research and reports that brought about structural changes in the system of child protection.<sup>25</sup> Namely, according to the CA 2004, any person who works with children shares responsibility for safeguarding and promoting the child's welfare.<sup>26</sup> The legislation was added with relevant guidance on inter-agency cooperation and special provisions that govern the cooperation of the authority and its relevant bodies and personnel, including health, education, police and probation.<sup>27</sup> In other words, the UK government learned from its bad practice and improved its approach and legislation by sharing responsibility and the duty for ensuring the well-being of children between parents and all members of society who work with children.<sup>28</sup> Moreover, in Western states, including England, there is constant research on how social work might improve, and there is an acknowledgement of the complexity of

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<sup>22</sup> Eekelaar (n3) 25

<sup>23</sup> See Secretary of State for Social Services, *Report of the Inquiry into Child Abuse in Cleveland* (Cmnd 412, 1988); London Borough of Greenwich, *A Child in Mind: Protection of Children in a Responsible Society: Report of the Commission of Inquiry into the Circumstances Surrounding the Death of Kimberley Carlile* (1987).

<sup>24</sup> Eekelaar (n3) 15-17.

<sup>25</sup> Secretary of State for Social Services, *Report of the Inquiry into Child Abuse in Cleveland* (Cmnd 412, 1988); London Borough of Greenwich, *A Child in Mind: Protection of Children in a Responsible Society: Report of the Commission of Inquiry into the Circumstances Surrounding the Death of Kimberley Carlile* (1987).

<sup>26</sup> The CA 2004, Appendix 1: Links to relevant legislation, para 1.1.

<sup>27</sup> The CA 1989, s 10; HM Government, *Working Together to Safeguard Children: A Guide to Inter-Agency Working to Safeguard and Promote the Welfare of Children* (HM Government, March 2013); Department of Health, *Framework for the Assessment of Children in Need and Their Families* (London: HMSO 2000).

<sup>28</sup> Secretary of State for Social Services, *Report of the Inquiry into Child Abuse in Cleveland* (Cmnd 412, 1988); London Borough of Greenwich, *A Child in Mind: Protection of Children in a Responsible Society: Report of the Commission of Inquiry into the Circumstances Surrounding the Death of Kimberley Carlile* (1987).



social work because it draws on ethics, values, human rights, social changes, social cohesion, and the evidence of better practice that are recommended by the research.<sup>29</sup> For example, there is one area in social work in Britain that needs further development, namely the state's and societal approaches when the parent's vision of what constitutes the child's interests clashes with the state's for cultural reasons. Britain is an attractive destination for immigrants from all over the world.<sup>30</sup> The society of Britain is multi-ethnic and multicultural.<sup>31</sup> It is made up of a mixture of very different cultures such as African, African-Caribbean, Bangladeshi, Chinese, Indian, Pakistani and Irish.<sup>32</sup> According to the official statistics of the population of England and Wales, the number of White British (the majority) people decreased from 87.4 % in 2001 to 80.5% in 2011 while the percentage of other ethnic groups (minority) increased during those ten years.<sup>33</sup> Cultural differences in relation to religion, family values, and traditions are often associated with particular ethnic groups. Cultural relativists argue that due to the radical differences in the values of each culture, different cultures should be dealt with in accordance with their own terms.<sup>34</sup> Although this approach might be controversial in the English context, some studies highlight cultural norms and values that influence the way parents raise their children.<sup>35</sup> Hinde, for example, states that children first grow up in smaller groups, such as family and community, and then join bigger groups such as society.<sup>36</sup> Such issues particularly emerged from the literature regarding family matters: different approaches to

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<sup>29</sup> Tor-Johan Ekeland, Randi Bergem, and Vidar Myklebust, 'Evidence-based practice in social work: Perceptions and attitudes among Norwegian social workers' (2019) 22 *European Journal of Social Work* 611; Madeleine Stevens, Kristin Liabo, Sharon Witherspoon, and Helen Robert, 'What do practitioners want from research, what do funders fund and what needs to be done to know more about what works in the new world of children's services?' (2009) 5 *Evidence & Policy: A Journal of Research, Debate and Practice* 281.

<sup>30</sup> Brown Rupert, Hanna Zagefka, and Linda Tip, 'Acculturation in the United Kingdom' in Sam L David and John W Berry, *The Cambridge handbook of acculturation psychology* (Cambridge University Press, 2006).

<sup>31</sup> Bhikhu C Parekh, *The future of multi-ethnic Britain: Report of the commission on the future of multi-ethnic Britain* (Profile Books 2000) 374.

<sup>32</sup> *Ibid.*

<sup>33</sup> Office for National Statistics, 'Population of England and Wales (Ethnicity facts and figures. British population, 1 August 2018)', <<https://www.ethnicity-facts-figures.service.gov.uk/british-population/national-and-regional-populations/population-of-england-and-wales/latest>> accessed 25 October 2018.

<sup>34</sup> Heather Montgomery, 'Childhood: an anthropological approach' in Mary Jane Kehily (ed) *Understanding childhood: A cross disciplinary approach* (Policy Press 2013).

<sup>35</sup> Beate Schwarz, Esther Schäfermeier, and Gisela Trommsdorff, 'Relations between value orientation, child-rearing goals, and parenting: A comparison of German and South Korean mothers' in Wolfgang Friedlmeier, Pradeep Chakkarath, and Beate Schwarz (eds), *Culture and human development: The importance of cross-cultural research for the social sciences* (Psychology Press 2005).

<sup>36</sup> Robert A Hinde, 'Developmental psychology in the context of other behavioral sciences' (1992) 28 *Developmental Psychology* 1018.

physical punishment in different cultures, circumcision among Jewish people, using hot chilli on the mother's breasts to stop the child breast-feeding among South African people, and marriages among Muslims and other ethnic group members.<sup>37</sup> Another notable study shows the cultural aspect of the Victoria Climbié case.<sup>38</sup> In particular, it reveals transnational fosterage showing that Western understanding of the responsibilities of the parents and the best interests of the child is different compared with that in West Africa. Victoria was sent by her parents to the UK with a member of the family because they believed that it could be the opportunity for Victoria to have a better life and possibly to help her siblings in the future to move to the UK.<sup>39</sup> This study shows that children escaping poverty from African countries can be sent to the UK with family members who are almost strangers to them. Therefore, the cultural relativity and differences in what is normal from a Western understanding should be taken in account in the state's intervention because transnational fosterage could imply both benefits and risks for the child.<sup>40</sup> The issue of cultural distinctiveness in family matters was also raised and discussed with practitioners in England who were interviewed during the fieldwork in England for this thesis. They noticed that there is a different understanding of child abuse in the culture of some immigrants or other ethnic groups where physical punishment of children is in regular use and where domestic violence is normalised and considered a private issue. For example, the social worker Phoebe said that

... cross-cultural challenges is around the parents' rights sort, the sense of the child belongs to the parents in some cultures and what the parent does to the child including hitting it is ok because it comes from 'my love' and parents trying to help that child and guide that child. In British culture although lots of parents still do hit their children but there is a growing sense that it is not ok.<sup>41</sup>

In the context of different cultural systems, Phillips suggests we consider cultural differences in the same way as gender and class differences.<sup>42</sup> Eekelaar supports such an approach and recommends the state interacts with families of different cultures in order to provide better guidance and policy.<sup>43</sup> However, Eekelaar's later arguments about

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<sup>37</sup> Montgomery (n34).

<sup>38</sup> Heather Montgomery, 'Children and families in an international context' in Heather Montgomery and Mary Kellett (eds) *Children and young people's worlds: developing frameworks for integrated practice* (Policy Press 2009).

<sup>39</sup> Montgomery (n38).

<sup>40</sup> Ibid.

<sup>41</sup> Interview with social worker in England – Phoebe on 26 February 2018.

<sup>42</sup> Anne Phillips, *Multiculturalism without culture* vol 8 (Princeton, NJ: Princeton University Press 2007) 8, 9, 132.

<sup>43</sup> John Eekelaar, 'From Multiculturalism to Cultural Voluntarism: A Family-based Approach' (2010) 81 *The Political Quarterly* 344.

cultural voluntarism deserve special attention since it addresses the extent to which minority families are limited in practicing their culture and religion with regards to family matters in England.<sup>44</sup> In short, the practices of communities related to family issues are not limited or prohibited ‘insofar as they are consistent with the principles of state law’.<sup>45</sup> In other words, this approach implies that minority groups maintain their cultural adaptation in public, but continue practicing their cultural family traditions in private to the extent that is legally appropriate. However, taking into account the comments of practitioners, they need guidance in dealing with cases with families of a different culture. This discussion about the acculturation of immigrants in England shows the contemporary challenges of the system in regard to family matters, and also demonstrates the evolutionary nature of social work since it is already a topic of discussion among scholars and an issue raised by practitioners.

However, the main lesson from this section is that developments in England in regard to children and family matters is founded on theory and reflected in legislation. The focus of social work in England shifted in the direction of the interests of their residents. This happened by acknowledging the problems, conducting research that sought to develop better practice and by improvements to the legislation in the light of their own lessons. In contrast, Kazakhstani policy makers are trying to adapt people and children to the existing system since their approach is focused on the agency interests rather than the individual child or human-being.

### 6.3 Child protection decision-making in England

The changes that have happened in social work and social policy towards children during the last century and the first decades of the current century demonstrate the changes in the approach of English society and the state in regard to children. A significant shift happened with regards to providing social services to the family and the child in need: from the charitable approach of the 19th century<sup>46</sup> to the excessive state intervention in the middle of last century and the supportive and child-centred approach from the beginning of this century. This ever- evolving process has raised the level of engagement with each member of society whose activity relates to children, in order to promote

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<sup>44</sup> Eekelaar (n3) 176.

<sup>45</sup> Ibid.

<sup>46</sup> Heather Montgomery, ‘Interventions and ideologies’ in Heather Montgomery (ed) *Local childhood, global issues* (2nd edn, Policy Press 2013).

children's welfare and to safeguard them. Therefore, a clear understanding on the part of everyone about when they should make a referral related to children, the sharing of information about children in need and co-operation between agencies and organisations became necessary.<sup>47</sup> These issues were highlighted in the Lord Laming Report<sup>48</sup> following the case of Victoria Climbié and the Every Child Matters policy document issued by the Government:

Effective sharing of information between practitioners and local organisations and agencies is essential for early identification of need, assessment and service provision to keep children safe...Practitioners should be proactive in sharing information as early as possible to help identify, assess and respond to risks or concerns about the safety and welfare of children, whether this is when problems are first emerging, or where a child is already known to local authority children's social care (e.g. they are being supported as a child in need or have a child protection plan).<sup>49</sup>

Prevention work, collaboration, and the role of other agencies have come to the fore. The review of serious cases that was recommended by the Laming report is also the way to learn and improve.<sup>50</sup> The Laming report was prepared by the request of the Secretary of State, which demonstrates the openness of England to self-criticism unlike Kazakhstan that reports on positive achievements with no analysis of negative issues. The Laming report is one analysis among several others, including the Munro reviews that led to a more child-centred system.<sup>51</sup> In particular, this report contains fifteen recommendations covering four themes, including appreciation of professionalism more than compliance with the numerous rules and regulations; sharing information at an early stage; supporting efficient social work practice and developing the expertise of social workers, and updating the responsibilities and accountability of all professionals involved.<sup>52</sup> The discussion throughout this chapter and the quotes from the interviews conducted for this thesis, shows that the recommendations of Munro were implemented in practice.

The contemporary practice of intervention into the family is based on the principles to ensure the best interests of the child who should be treated as the subject of the case.

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<sup>47</sup> The Secretary of State, *The Victoria Climbié Inquiry*: report of an inquiry by Lord Laming (Cm 5730, 2003); The Chief Secretary to the Treasury, *Every child matters* (Cm 5860, 2003).

<sup>48</sup> Ibid, 361-362, 365.

<sup>49</sup> HM Government, *Working Together to Safeguard Children A guide to inter-agency working to safeguard and promote the welfare of children* (London, July 2018), paras 23 and 24.

<sup>50</sup> The Secretary of State (n95), parts five and six.

<sup>51</sup> Ibid; Munro Eileen, *The Munro review of child protection: final report - a child-centred system* (Department for Education, Cm 8062, 2011).

<sup>52</sup> Department of Education, *A child-centred system: the government's response to the Munro review of child protection* (Ref: DFE-00064-2011, 2011) paras 9-30.

There are three main principles that appear in Section 1 of the CA 1989 and are compulsory for the Court. Section 1 of the CA states three principles that are mandatory for the Court when it makes its decision concerning a child: the welfare principle, the non-delay principle, and the ‘no-order’ principle.<sup>53</sup> The welfare principle states that ‘the child’s welfare shall be the court’s paramount consideration’. It is a key principle whenever the Court considers cases related to the child’s upbringing.<sup>54</sup> This principle reduced the power of local authorities in family interventions and strengthened the role of the Court in the authorisation of such interventions.<sup>55</sup> The Children’s rights movement of the last three decades changed the approach to promoting the welfare and children rights.<sup>56</sup>

In terms of the remaining two compulsory principles for the court, those require attention to be paid to additional points to ensure the interest of the child and what is best for the child. In particular, in regards to the non-delay principle, the law is saying that ‘any delay in determining the question is likely to prejudice the welfare of the child’, while the ‘no-order’ principle affirms that the Court ‘shall not make the order or any of the orders unless it considers that doing so would be better for the child’.<sup>57</sup> Therefore, overall it might be concluded that the overarching principle of the court is to make sure that, with regard to a child’s upbringing, the child’s welfare or interest should be paramount even where the court decides to make no order (no order principle).

With regard to this research, the next principle of English law is crucial because it guides a local authority on how to provide their services. Namely,

A key principle of the 1989 Act is that children are best looked after within their families, with their parents playing a full part in their lives, unless compulsory intervention in family life is necessary.<sup>58</sup>

To assist with good practice in the implementation of this principle, the guidance includes other principles and concepts that guide social workers in their work in more detail.<sup>59</sup> For example, it clearly states that the local authority should commit ‘to endeavour to promote contact between a looked after child and his or her parents or others’, or that ‘a change of

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<sup>53</sup> Ibid, 158; CA 1989, s 1 (1, 2, 5).

<sup>54</sup> The CA 1989, s 1(1)(a).

<sup>55</sup> Eekelaar (n3) 17.

<sup>56</sup> Michael Freeman, ‘The sociology of childhood and children's rights’ (1998) 6 *The International Journal of Children's Rights* 433.

<sup>57</sup> The CA 1989, s 1(2, 5).

<sup>58</sup> The CA 1989, guidance and regulations Volume 2: care planning, placement and case review, para. 1.5.

<sup>59</sup> Ibid, para 1.5., 1.6.

home, carer, social worker or school almost always carries some risk to a child's development and welfare' and that 'time is a crucial element in work with children' as is stated for the Court in Section 1 of CA. Hence, these principles reflect the overall approach of the CA 1989 that is stated in paragraph 1.7 of the guidance:

parents should be encouraged to exercise their responsibility for their child's welfare in a constructive way and that where compulsory intervention in the family is necessary it should, where possible, support rather than undermine the parental role.<sup>60</sup>

This approach was also apparent from the interviews with practitioners. According to them, these principles do work and they provide a lot of services with guidance on how to support families rather than remove the child. Namely, Sarah said that,

they (the principles) do work in practice because everything that we do here right from assessment to any kind of intervention we try and support the family in every stage and enable them to look after their children properly, to be able to kind of meet the child's needs and protect them from any kind of harm. That is of course depending on the kind of harm the child is experiencing. If there are situations that we have to remove the child from the family home we still need to continue to kind of work with family to support them and even if there are cases when the children do not return to the family to ensure that they are safe and they need some med, the families are still supported after that... I do agree that principle has been operationalised and has been followed quite strictly by all the local authorities here.<sup>61</sup>

As Brayne et al. noted, there should not be any state intervention in the child's life unless the statutory threshold criteria are met.<sup>62</sup> Those criteria are established in Section 31 of the CA 1989 and might be the grounds for care or supervision orders. The key differences between these two orders is that in the former the local authority acquires parental responsibilities while in the latter the local authority does not obtain them.<sup>63</sup> Decisions that are made by court are based on the welfare principle and welfare checklist, which include evaluation of the risk of future harm to the child, the child's educational, emotional and physical needs and also the capabilities of parents to meet such needs of the child.<sup>64</sup> Hence, the court is given the guidance that helps to make decisions that favour the child's best interests, which is also a sign of better practice than in Kazakhstan and might be helpful for the future consideration of policy- and lawmakers in Kazakhstan.

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<sup>60</sup> Ibid, para 1.7.

<sup>61</sup> Interview with social worker in England – Sarah on 28 February 2018.

<sup>62</sup> The CA 1989, s 31 (2), Hugh Brayne, Helen Carr, and David Goosey, *Law for social workers* (Oxford University Press, USA, 2015) 152.

<sup>63</sup> The CA 1989, s 33 (3)(a), s 35.

<sup>64</sup> Judy Dunn and Richard Layard, *A good childhood: Searching for values in a competitive age* (Penguin UK 2009) 218-227.

The general duty of the local authority is ‘to safeguard and promote the welfare of children within their area who are in need’<sup>65</sup> and where it is applicable ‘to promote the upbringing of such children by their families’.<sup>66</sup> There is a wide spectrum of services that local authorities provide for children and families.<sup>67</sup> According to a practitioner who has experience of working in the post-Soviet child care systems, the services overall in England include more services than in a post-Soviet system. In particular, Anna listed the following services that do not exist in Kazakhstan:

the Front Door for Families, they deal with all the new referrals, all the new phone calls, Front Door for Families, they are just office based and that is multi-agency, they have police, social work, probation, housing, education, health, all in one office, and then we got underneath all of our teams, we’ve got specialist teams: you got adoption team, foster and adoption team fostering team, the family and friends team who deals with just family and friends placement.<sup>68</sup>

Brayne et al. provide a brief summary of the duties of local authorities, that includes preventive duty, day care, direct payments, accommodation for children in need, assistance, visits and contact with children looked after by them, and the maintenance of children looked after in England.<sup>69</sup> Local services in England are expected to provide a variety of practical services such as day care, accommodation, assistance, and training. According to Brayne et al., these services have a number of limitations, for example in the case of providing accommodation.<sup>70</sup> Petrie, et al. argue that although the family setting is the preferred option for children in care, there is not a sufficient number of foster places in England.<sup>71</sup> A similar critique, but in regards to early help, was raised by Phoebe:

There was a lot of money put into early help in the last decade in this country. That is actually intervening with families before it gets to the point when it comes to the social workers, but I think because the outcomes have shown to be quite poor, but also because of political will there is less money in early help now... That seems to reduce it. It is quite a small service now, it was a massive service, early help, so quite a lot of money quite a lot of government oversight of it and now it has been reduced quite a lot. So early help is still there, but it is offered by a small group of people and it is much more interagency. So schools are expected to do quite a lot of early help as help professionals.<sup>72</sup>

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<sup>65</sup> The CA 1989, s 17(1)(a).

<sup>66</sup> The CA 1989, s 17(1)(b).

<sup>67</sup> Ibid, Part III and Schedule 2.

<sup>68</sup> Interview with social worker in England- Anna on 23 February 2018.

<sup>69</sup> Brayne, Carr, and Goosey (n62) 199.

<sup>70</sup> Ibid 196-198.

<sup>71</sup> Pat Petrie, Janet Boddy, Claire Cameron, Valerie Wigfall and Antonia Simon, *Working with Children in Care: European Perspectives: European Perspectives* (McGraw-Hill Education (UK) 2006) 148.

<sup>72</sup> Interview with social worker in England- Phoebe on 26 of February 2018.

MacDonald argues that social work needs adequate funding and support,<sup>73</sup> although, in comparison with Kazakhstan, children's services in England have better resources, including human and financial resources. Lord Laming suggests that the staff need the confidence and the capability to deal with difficult cases and that the staff requires support in protecting children.<sup>74</sup> Hence, there are not as many problems with legislation as there are with failures of its application in practice.<sup>75</sup>

There are two prominent cases, that were widely discussed in the media, that contributed to the development of social services for children in need. The first is the 1973 case of Maria Colwell, where the blame on social workers was seen to be excessive.<sup>76</sup> As a result of the reforms, social services provided by the local authority were split into two departments that provide different services for adults and children.<sup>77</sup> The second case is the murder of Peter Connolly in 2000, known in the media as the case of 'Baby P'.<sup>78</sup> The outcomes of the death of this child was another wave of reforms in social work, the report of Lord Laming, and the institution of the Social Work Task Force (SWTF), that was consulted to provide advice on the reform programme.<sup>79</sup> The government made three reports for their enquiry emphasizing the following issues: workload and with it enormous pressure, the need for quality training, public understanding of social work, and the selection process to find the right people to work in social work.<sup>80</sup> All the recommendations of Lord Laming were accepted and used to produce an implementation action plan.<sup>81</sup> This kind of report and response by the state demonstrates the manner in which self-reflection and self-criticism can enable further development. The profession of social work has developed and evolved by learning hard lessons from cases such as those of Maria Colwell and Peter Connolly. The main finding from my fieldwork is that the changes proposed in social work have actually happened, at least in part, and social

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<sup>73</sup> Alistair MacDonald, 'The Caustic Dichotomy-Political Vision and Resourcing in the Case System' (2009) 21 *Child & Fam LQ* 30.

<sup>74</sup> Lord Laming, *The Protection of Children in England: A Progress Report* (The Stationery Office 2009) 4.

<sup>75</sup> *Ibid.*

<sup>76</sup> Department of Health and Social Security, *Report of the Committee of Inquiry into the Care and Supervision Provided in Relation to Maria Colwell* (London, HMSO, 1974).

<sup>77</sup> Jonathan Dickens, 'Social work in England at a watershed—as always: From the Seebohm report to the social work task force' (2010) 41 *British Journal of Social Work* 22.

<sup>78</sup> Laming (n74) 4.

<sup>79</sup> Dickens (n77).

<sup>80</sup> *Ibid.*

<sup>81</sup> Department for Children, Schools and Families, *The Protection of Children in England: action plan The Government's response to Lord Laming* (Cm 7589, 2009) 3.



workers are generally positive about them. For instance, these are some quotes from the interviews I conducted for this thesis

What I value now is the focus on relationship practice so the belief that it is through the relationship with the parents, with children, that change happens. I really value that because that is what I believe to be the case. Because in the past we were quiet, so managers were bureaucratic. We still are, but the sense of the relationship needs to be a centre of our work so there has been a lot of changes... I really value the centrality of the relationship and in terms of working together I think there was an improvement in the way we work with GPs, doctors. That got much better because I think they were told that they have to work with us while in the past it was hard to get information from GPs and yet they are key because they often work with families for a long time.<sup>82</sup>

If you work within the local authority then there is ... lots of training which is very good...<sup>83</sup>

I think the legislation keeps changing, and every time there is a new policy or procedure or children act or anything any legal frame, it is very much based on how we can do things better for the children.<sup>84</sup>

At the same time, social work is still criticized because of the cutting off policy in social work in England that leaves a limited time for the social workers to get familiar with all research done in the area.<sup>85</sup> However, social workers operate within a strongly defined framework, which includes ethical guidance and shared values, and are established and set down by a registered organisation namely, the Health and Care Professions Council. This is the official organisation responsible for the standards of education and training, although the College of Social Work can also approve training.<sup>86</sup> Hence, social workers in England 'must be qualified and registered'.<sup>87</sup> Social work is complex because of the constantly changing context and ethical dilemmas inherent to social cases, but the principle of the best interest, which is the statutory responsibility of the social worker, is what should guide the social workers in their job.<sup>88</sup> At the same time, social workers are not alone, they have recourse to other agencies when there is a need for special assessments or consultancy as is written in WT guidance, and in addition, they can rely

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<sup>82</sup> Interview with social worker in England – Phoebe on 26 of February 2018.

<sup>83</sup> Interview with social worker in England – Sarah on 28 of February 2018.

<sup>84</sup> Interview with social worker in England – Anna on 23 of February 2018.

<sup>85</sup> Stephen A Webb, 'Some considerations on the validity of evidence-based practice in social work' (2001) 31 *British journal of social work* 57.

<sup>86</sup> The Health Professions Order 2001; the Health and Care Professions Council, 'Standards' <<https://www.hcpc-uk.org/about-us/> accessed 5 November 2018; Brayne, Carr, and Goosey (n62) 49-50.

<sup>87</sup> The Health Professions Order 2001; The Health and Care Professions Council (Registration Appeals) Rules 2003; the Health and Care Professions Council, 'What we do' <https://www.hcpc-uk.org/about-us/what-we-do/> accessed 5 November 2018; Brayne, Carr, and Goosey (n62) 48-49.

<sup>88</sup> The Health and Care Professions Council, 'Standards of conduct, performance and ethics' <https://www.hcpc-uk.org/standards/standards-of-conduct-performance-and-ethics/> accessed 5 November 2018; Brayne, Carr, and Goosey (n62) 51.

on the support of supervisors. Likewise, service users have an independent reviewing officer, who monitors and ensures that the child is obtaining the services that they need and that their wishes and feelings are taken into consideration by the local authority.<sup>89</sup> Overall, it can be concluded that the practice definitely reflects the legal framework that emphasises a child-centred approach:

This child centred approach is fundamental to safeguarding and promoting the welfare of every child. A child centred approach means keeping the child in focus when making decisions about their lives and working in partnership with them and their families.<sup>90</sup>

In terms of the legal framework that sets out the responsibilities of social workers, the key Act is the Local Authority Social Services Act 1970. This act refers social services users to others statutes that prescribe the duties of local authorities that are carried out by social workers.<sup>91</sup> Overall, the status and the role of social workers in England demonstrates dramatic differences from Kazakhstani staff who work according to the Soviet practice which is characterised by an education system that works with the majority of children deprived of parental care but where the staff are not equipped to fulfil a social work role.<sup>92</sup> Therefore, as a prior consideration, before taking English or any other more developed legislation and child care system as an example, Kazakhstan needs to re-evaluate their human resources and their knowledge.

The review of the legislation shows that the procedures of social workers are written down in detail covering almost each of their steps, the guidance facilitates social work and does indeed guide social workers in their practice. According to the data from the fieldwork that was conducted in England, there is a clear understanding among social workers on how to provide services currently required of them. This conclusion was arrived at during the interviews when every practitioner could easily explain what to do in different scenarios. For example, Sarah explained the contemporary practice in this way:

...every child needs to be considered separately... at each stage we look at what a particular child needs and according to that we need to make an arrangement... it is a very individualist plan that needs to be found...there are various things that come into consideration, so there are some special assessment, some case by case basis that we have to do,.. sometimes we do have very special assessments, like a psychological assessment or developmental assessment of the child to determine, so then we involve other specialists for getting those, because our social workers they have very generic understanding, but in the court that might not be sufficient to

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<sup>89</sup> HM Government, *Working Together to Safeguard Children A guide to inter-agency working to safeguard and promote the welfare of children* (London, July 2018), para 19; the CA 1989, s 25A, s 25B.

<sup>90</sup> HM Government, *Working Together to Safeguard Children A guide to inter-agency working to safeguard and promote the welfare of children* (London, July 2018), para 10.

<sup>91</sup> The Local Authority Social Services Act 1970, s 7; Brayne, Carr, and Goosey (n62) 55.

<sup>92</sup> See Chapter 4 Section 4.3 above.

make the life time decision,... you have a referral here, this is early help, this child in need, this is child protection, and you have legal you know, so here family coach or the school or for example if there are young children then you have health visitors, they continue to work at the same plan, they continue to work... this is coordinated by social workers, this can be any agency, for example, the school is a lead agency in an issue about absence (early help), if the problem is about school attendance the school will be the lead agency, if the problem is about young children health and nutrition, mom's neglect, then the health may be you know the main agency...<sup>93</sup>

The decision-making process of England emphasises the dominance of preventive mechanisms, which seems more child-centred in comparison with the Kazakhstani system, described in Chapter 4. At the same time, such an approach corresponds with the neo-liberal welfare regime of England where state role is minimized. Limitations on the separation of children from their family in England corresponds with the UNCRC and UN Guidelines for the Alternative Care for Children and is reflected in English Law only to be implemented as a last resort.<sup>94</sup> It is important to note that the majority of referrals do not need to be referred to court because they are sorted within the resources of children's services departments or other relevant agencies, including education and health.<sup>95</sup> For example, in the year ending 31 March 2013 out of 593,500 referrals only 441,500 proceeded to assessment and only 43,100 children's cases needed a Child Protection Plan.<sup>96</sup>

In cases when the child is suffering or is likely to suffer significant harm, only the police and the court have the power to protect a child by authorizing his or her immediate removal.<sup>97</sup> However, the police's power is limited. For example, the police can keep a removed child in their protection for no longer than 15 days (8 initial and 7 for extension), in accordance with the decision of the court on an emergency protection order.<sup>98</sup> During this time, the child will be in suitable accommodation, while their parents (or others with parental responsibility) will be kept informed of the situation and on the whereabouts of the child's accommodation, though their contact might be restricted by the court decision.<sup>99</sup> Hence, emergency and police protection are still balanced by restrictions that apply to both police as well as parents (and others with parental responsibilities).

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<sup>93</sup> Interview social worker in England – Anna on 23 of February 2018.

<sup>94</sup> The UNCRC, article 9; The United Nations Guidelines for the Alternative Care of Children (adopted 24 February 2010), A/RES/64/142, para 12; The CA 1989 guidance and regulations Volume 2: care planning, placement and case review, para 1.5.

<sup>95</sup> Brayne, Carr, and Goosey (n62) 236.

<sup>96</sup> Ibid.

<sup>97</sup> The CA 1989, s 44, s 46.

<sup>98</sup> The CA 1989, s 44, s 45 (2)(5), s 46 (7).

<sup>99</sup> The CA 1989, s 44 (6), s 46 (2)(3).

When a child needs accommodation in England, this is more likely to be provided by foster families rather than in residential care.<sup>100</sup> For example, according to national statistics on children looked after in England (including adoption) at year ending 31 March 2019, the majority, namely 72% of all children looked after are in foster placements, and the rest in placement for adoption (3%), with parents (7%), other placement in the community (4%), children's homes (8%), semi-independent living accommodation (4%), other residential settings (1%), and residential schools (1%).<sup>101</sup> The attachment theory of John Bowlby and his research in 1951 for the World Health Organisation changed the child care system in England, reducing the number of residential care placements in favour of foster care.<sup>102</sup> However, due to the limited number of foster carers, the child care system in England is criticised for not being child-centred enough because the number of available foster families is not corresponding with the demand.<sup>103</sup> Therefore, prior to the reducing the number of residential care settings, the state should assess to what extent alternative care such as foster families might cover the existing demand. The same issue of reductions in residential settings apparently arises in both countries under consideration: Kazakhstan and England, although there is a distinction in the underlying causes of this issue in these states. In Kazakhstan, the actions taken by the authorities to decrease the number of children in institutions is mostly driven by the desire to report first to the President of the state and then to the UN Committee on the Rights of Children about their 'achievements', while in England the explanation has at least two facets: the first is the negative history of residential care alongside the elaboration of attachment theory, and the second is the higher cost of residential care in comparison with foster care.

## 6.4 Conclusion

This chapter offers a brief discussion of England's landscape before the institution of the contemporary child protection law and practice. It took time for society to change its understanding and approach towards children and accept that they have rights, including

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<sup>100</sup> Petrie et al. (n71) 10, 37-39.

<sup>101</sup> Department for Education, *National Statistics Children looked after in England (including adoption) year ending 31 March 2019* (Crown copyright 2019) 6.

<sup>102</sup> Michael Rutter and Thomas G O'Connor, 'Implications of attachment theory for child care policies' in Jude Cassidy and Phillip R Shaver (eds) *Handbook of attachment: Theory, research, and clinical applications* (The Guilford Press 1999).

<sup>103</sup> Petrie et al. (n71) 38-39, 148-149.

the right to be protected from abusive or neglectful parents. At the same time, as Dickens argues, social work has changed, and still is developing and reforming its status to reflect changes in the demands of society.<sup>104</sup> The state's ability to recognise the mistakes and limitations of previous legislation and practices through the reappraisal of serious cases of child abuse and death played a significant role in the process of development of child protection law and practice. The importance of every member of society and anyone whose work related to children was reflected in laws which emphasized the role of society in promoting the welfare of children and safeguarding. Meanwhile, preventive work and family support replaced to a large extent the practice of social services of removing children from families. Notably, the positive changes have proved to be more or less sustainable in England due to constantly improving guidelines for social workers such as *Working Together*, and better human and financial resources. In contrast, Kazakhstan only goes halfway with their changes by introducing, for example, foster families but with no resources and services for the assistance of these families, or preventive mechanisms and other family support services.

A number of developments took place before the child-centred approach in child care and child protection emerged in the actual legislation and practice, including the impact of Bowlby's attachment theory and the UN Convention on the Rights of the Child.

Overall, this chapter demonstrates the self-reflection, self-criticism, mutual engagement and constant re-evaluation of social policy, legislation and practice that is peculiar to a developed democratic state and might be considered by developing countries such as Kazakhstan as a way to review the state's approach, legislation, and social policy. This discussion will be continued in the next chapter.

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<sup>104</sup> Dickens (n77).

## Chapter 7

### Barriers and the potential for better child care in Kazakhstan: lessons from the English approach

#### 7.1 Introduction

This chapter offers concluding reflections on the themes that have emerged in my research regarding decision-making processes relating to children's placements in Kazakhstan. The chapter will start – in the first two sections – by drawing out the connections between the theoretical framework of this thesis and the findings from Chapters 3-5. The last two sections, in contrast, set out some possible solutions.

In particular, Section 2 critically discusses the situation with the implementation of children's rights and children's interests in the contemporary Kazakhstani child care system. The next section is about the structural and cultural obstacles to family-based care in Kazakhstan. While Section 2 identifies the problems with the implementation of children's rights and children's interests based on the contextual examples of Kazakhstan, Section three demonstrates the obstacles from the perspective of children's rights and interests in having a better life.

Possible solutions come from the potential for learning from the example of England discussed in Chapter 6. The suggestions do not cover each problem raised in the Kazakhstani context. But, they reflect the general approach taken in England that could assist in the implementation of the rights and interests of children in Kazakhstan. In section 7.4 of this chapter I apply the contextual comparison. It is limited to the extent to which Kazakhstan might learn from the better practice of England. 'Better practice' implies better practice from the perspective of the best interest of the child and a child's rights declared by the UNCRC, namely the right of the child to be raised in a family.

The last section suggests how Kazakhstan could also learn from the existing positive practice introduced by national NGOs. It highlights three relevant projects that show that there is practice that deserves to be considered by policy-makers in Kazakhstan for extension across the state.

Overall, this chapter provides the reader with a discussion based on the findings of all the previous chapters of this thesis. It also presents recommendations and examples that are worth considering by Kazakhstan for further implementation of children's rights to a family upbringing.

## 7.2 Children's rights and the best interests of children in Kazakhstan

The discussion in this section takes us back to Chapter 2, which focuses on children's rights and children's interests. Michael Freeman pointed out the moral aspect of taking children's rights seriously.<sup>1</sup> Without such an approach and a clear understanding of children's rights theory, as Jane Fortin argues, children will suffer from inconsistency and confusion.<sup>2</sup> This thesis acknowledges the existing academic critiques of the principles of the UNCRC, especially the critique of the principle of the best interests.<sup>3</sup> However, in Kazakhstan, as was noted earlier, none of the principles of the UNCRC were found to be adhered to.<sup>4</sup> Kazakhstani law does not provide a list of criteria of what constitutes the best interests of the child. Likewise, there is no discussion on this topic among Kazakhstani scholars, albeit the negative impact of institutions on children's development is discussed by scholars from medical and social perspectives.<sup>5</sup> In Kazakhstan, in spite of the awareness of the negative impact of institutionalisation on children, the approach of practitioners in regard to institutions has not changed.<sup>6</sup> This is because of the issues that will be discussed throughout this chapter such as the historical background to the issue, its complexity, the lack of adequate resource allocations and clear and effective mechanisms to implement international standards and practices.<sup>7</sup> A similar situation pertains in many post-Soviet countries.<sup>8</sup> Schmidt and Shchurko argue that 'a culturally sensitive approach to the UNCRC requires that the desired institutional changes are linked with relevant ideological grounds'.<sup>9</sup>

Hence, the situation in Kazakhstan reflects that described by Freeman, when a state may be a signatory to the UNCRC and symbolically reflect children's rights in domestic

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<sup>1</sup> See Chapter 2. Introduction; see also Michael Freeman, 'The human rights of children' (2010) 63 *Current Legal Problems* 1; Michael DA Freeman, 'Taking children's rights more seriously' (1992) 6 *International Journal of Law, policy and the Family* 52.

<sup>2</sup> Jane Fortin, *Children's rights and the developing law* (Cambridge University Press 2003) 30.

<sup>3</sup> See Chapter 2 Section 2.2 above.

<sup>4</sup> See Chapter 4 Section 4.2 above.

<sup>5</sup> Leyla Ismayilova, Fred Ssewamala and Aytakin Huseynli, 'Reforming child institutional care in the Post-Soviet bloc: The potential role of family-based empowerment strategies' (2014) 47 *Children and Youth Services Review* 136; Jean-Claude Legrand, 'Child care system reforms in Eastern and Central Europe and Central Asia: Why there is a need to focus on children below three years' (2015) 15 *Irish Journal of Applied Social Studies* 2; Mary O Hearst, John H Himes, Spoon Foundation, Dana E Johnson, Maria Kroupina, Aigul Syzdykova, Musa Aidjanov, and T Sharmonov, 'Growth, nutritional, and developmental status of young children living in orphanages in Kazakhstan' (2014) 35 *Infant mental health journal* 94.

<sup>6</sup> *Ibid.*

<sup>7</sup> See Chapter 3 and Chapter 4 above for the details.

<sup>8</sup> Ismayilova, Ssewamala, and Huseynli (n5).

<sup>9</sup> Victoria Schmidt and Tatsiana Shchurko, 'Children's rights in post-Soviet countries: The case of Russia and Belarus' (2014) 57 *International Social Work* 447.

legislation, but at the same time an examination on the ground shows that children's lives are not getting better.<sup>10</sup> It is definitely the case as Freeman argues that without services and resources children will not enjoy their rights.<sup>11</sup> First of all, what is notable in the context of the family interests of the child in Kazakhstan is that according to Kazakhstani legislation the child has the right to be brought up in a family.<sup>12</sup> In contrast, this right is not ensured by the state mechanism of child placements.<sup>13</sup> This inconsistency in the legislation of Kazakhstan, as noted in Chapter 4, is explained by the lack of appropriate measures on the part of the Kazakhstani government to implement children's rights. It also might be explained by the lack of understanding of the meaning and significance of the best interests of the child in Kazakhstani practice. In particular, Kazakhstan has formally adopted all the UNCRC rights of children, even adding the right of the child to be raised in a family, but did not support these rights with adequate human and financial resources.<sup>14</sup>

There is scant evidence of any implementing measures in regards to the family interest of the child within the system, society or the legislation. The existing system and legislation ensures the basic short-term needs of the child deprived of parental care such as accommodation, safety, meals and clothing. It also covers the minimum standards in terms of access to health services and education that might address partially their long-term needs. However, these minimum standards that provide for children deprived of parental care are not effective and violate their rights and interests. A number of illustrations derived from my empirical data would be instructive:

The first example relates to the violation of the child's right not to be separated from their parents.<sup>15</sup> Consequently, as this right of the child means also the right for family upbringing, Kazakhstani practice demonstrates the lack of meeting the best interests of the child (the right environment for his or her full and harmonious development). According to my empirical data, medical personnel of maternity hospitals still practise the Soviet Union exclusionary approach when a mother has a child with a disability.<sup>16</sup> In particular, as was stated by a respondent with experience of providing training for the

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<sup>10</sup> Michael Freeman, 'The sociology of childhood and children's rights' (1998) 6 *The International Journal of Children's Rights* 433.

<sup>11</sup> *Ibid.*

<sup>12</sup> See Chapter 4 Section 4.2 above.

<sup>13</sup> *Ibid.*

<sup>14</sup> See Section 7.4 of this chapter for the continuation of this discussion.

<sup>15</sup> The UNCRC, art 9.

<sup>16</sup> Interview with Mira (NGO) on 13 March 2018.



staff of maternity hospitals, the common practice of the staff in the case of a child born with disabilities or birth defects is still to recommend the mother to abandon her child,<sup>17</sup> which used to be common practice in the Soviet Union.<sup>18</sup> There are no support services provided. As my interviews revealed, staff with long careers and hence experience of practice admitted that they were not taught any different approach in spite of having psychologists and social workers in the health system and particularly in maternity hospitals.<sup>19</sup> This emphasises the acceptance of the need for psychologists and social workers in the health system, but the lack of any real use made of them in practice and the absence of developed or implemented standards.

The second example concerns the infringement by the state of its commitment to review the treatment provided for children in care and to protect children from all kinds of abuse and neglect.<sup>20</sup> Due to the fact that children deprived of parental care might easily be diagnosed with cognitive delays, the staff of institutions for healthy children use developmental delays against the children as a punishment.<sup>21</sup> In particular, these children if they disobey, might be sent to the hospitals for mentally ill people for treatment.<sup>22</sup> All in all, health services for children deprived of parental care are very questionable. This system requires reform since the existing health system does not have a coherent approach that promotes the child's best interests with regard to health and development. In addition, this system to some extent is not objective due to its interests in having such children in the system. The latter is because the orphanages are budgeted much better than family-based care (13,736 USD versus 896 USD per year per child) so that these institutions are the 'feeder' for the officials.<sup>23</sup> Hence, the lack of children in institutions means the lack of funding, job and source for additional resources (through the corruptive ways) for the staff. Understandably, there is strong resistance to deinstitutionalisation amongst the staff in the system.<sup>24</sup> This is because of the corrupt interests and criminal schemes of the staff that flourish in the adoption system.<sup>25</sup> The health system that accommodates newborn and small children (up to 4 years old) displayed the most resistance, followed by the

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<sup>17</sup> Ibid.

<sup>18</sup> Gabriela Walker, 'Postcommunist deinstitutionalization of children with disabilities in Romania: Human rights, adoption, and the ecology of disabilities in Romania' (2011) 22 *Journal of Disability Policy Studies* 150.

<sup>19</sup> Interview with Mira (NGO) on 13 March 2018.

<sup>20</sup> The UNCRC, arts 19, 24, 28 and 29.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> See Chapter 4 Section 4.5 and Chapter 5, Section 5.3.

<sup>24</sup> See Chapter 4 Section 4.4 above.

<sup>25</sup> See Chapter 4 Section 4.5 and Chapter 5 section 5.2 above.

education system that accommodates healthy children, and last came the social protection system that accommodates children with health issues due to society's lack of interest in these children. At the same time, there is no explicit plan by the state for retraining staff or gradually reducing the number of staff and no understanding of how to replace institutions with family-based alternative care. The state's policy does not address the concerns of the staff who are likely to lose their jobs in the event that all institutions close.

The third example demonstrates the lack of a child-centred and inclusive approach child care system in Kazakhstan. This example demonstrates the practice of exclusion and discrimination of children deprived of parental care within the state organisation, including school and orphanages. Children accommodated in orphanages joined other children in ordinary schools only recently.<sup>26</sup> My interviews with practitioners in Kazakhstan,<sup>27</sup> revealed to me that children from institutions have recently started to attend ordinary schools; previously, they had studied in the same institutions in which they were living.<sup>28</sup> However, the education system, though aware of the delays in cognitive development of children from institutions, does not provide special assistance to these children in mainstream schools. Hence, the inclusion policy in Kazakhstan is incomplete. Forth points on that institutionalised disabled children in Kazakhstan do not enjoy their rights mostly. They are excluded from the society from the day they are born in maternal hospitals (see the first example) and then they are treated as the outsiders of society till the end of their life. In particular, the issue of the long-term impact of institutions shows that the detrimental effects on disabled children are the worst.<sup>29</sup> According to the empirical data obtained from practitioners in the child protection system, disabled children deprived of parental care end up in institutions for mentally ill adult people or retirement homes.<sup>30</sup> Hence, these children's interests in their development are totally

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<sup>26</sup> Walker (n18), Andrew B Stone, 'Growing Up Soviet? The Orphans of Stalin's Revolution and Understanding the Soviet Self' (Dphil thesis, University of Washington 2012) 201; Judith Harwin, *Children of the Russian State: 1917-95* (Aldershot: Avebury 1996) 58.

<sup>27</sup> See Chapter 1 Section 1.4 Subsection 1.4.2 above.

<sup>28</sup> Interview with Dulat (NGO) on 21 April 2018.

<sup>29</sup> See Chapter 4 Section 4.5 and Chapter 5 Section 5.3 above; see also Roza Alimbayeva, Marzhan Baimukanova, Raikhan Sabirova, Baizhol Karipbaev, and Mendigul Tamabayeva, 'Psychological peculiarities of the professional self-determination of social orphans in senior adolescence' (2018) 23 *International Journal of Adolescence and Youth* 457; Maria G Kroupina, Liza Toemen, Musa M Aidjanov, Michael Georgieff, Mary O Hearst, John H Himes, , Dana E Johnson, Bradley S Miller, Spoon Foundation Research team, Aigul M Syzdykova and Toregeldy S Sharmanov, 'Predictors of developmental status in young children living in institutional care in Kazakhstan' (2015) 19 *Maternal and child health journal* 1408.

<sup>30</sup> Interview with Rinat (public worker) on 9 April 2018.

ignored. These children are not even considered for family placement because of the prejudice of society and officials (including doctors in maternity hospitals), parents and potential foster families (who in the main do not welcome these children).<sup>31</sup> In other words, the approach of both the state and society is exclusionary with regard to the interests of these children in being brought up in a family setting. They are not considered eligible for family placements even though these children have the potential to socialise and integrate into society if adequate support and care were provided.<sup>32</sup> This treatment of disabled children deprived of parental care in Kazakhstan pushed me to conclude that the only right that is guaranteed by Kazakhstan to this group of children is the right to life and to survive declared in Article 6 of the UNCRC. Meanwhile, the other rights of these children are in the hands of the caregivers of institutions depending on how lucky the child is and how familiar the caregiver is with the rights of the child.

My argument in this thesis is that the state's approach to children's rights and interests is purely formal and short-term. Children deprived of parental care in Kazakhstan do not fully enjoy their rights while their interests are met only to a minimum level by providing them with basic accommodation, food and rudimentary education while they are children. This approach does not correspond with the principles of the UNCRC, specifically the principle of the best interest of the child 'for the full and harmonious development of his or her personality' with impacts into adulthood.<sup>33</sup>

According to the discussion in Chapter 2 of the best interests of the child, the right environment is the main aspect of the best interests of the child. Meanwhile, Chapter 3 examined three different historical periods and how they differed with regard to the environments in which the children of Kazakhstan were brought up. The findings of chapter 3 show that the right of the child to be looked after within the tribe and the family interests of the child in the pre-Soviet period were ensured by the community. In contrast, the institutionalisation of children and the absence of children rights emerged as a result of the Soviet Union ideology and in particular its focus on raising 'Soviet men' (Soviet men who would work for the state's interests). The findings of Chapters 4 and 5 demonstrate that the contemporary Kazakhstan has not decided yet how to meet the family interest of the child and to ensure the child's right to be brought up in a family. These findings contradict not only the formal support for the interests and the rights of

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<sup>31</sup> See Chapter 5 Sections 5.2 and 5.3 above.

<sup>32</sup> Interview with Aisulu (public worker) on 19 of March 2018.

<sup>33</sup> The UNCRC, the preamble.

the child, but also contradict and fail to recognise the significance for a child's identity in Kazakh society of family and tribal ties.

Meanwhile, the issues raised in the current section related to the institutional and cultural obstacles will be discussed more in the next section. This discussion enables the reader to gain a good overall picture of the child care system in Kazakhstan at the time this thesis was written (2018-2019).

### 7.3 Institutional and cultural obstacles to Children's Rights in Kazakhstan

Chapters 3, 4 and 5 show that the moves to deinstitutionalise children in Kazakhstan are tortuously slow (despite the fact that some legal foundations and pilot projects do exist).<sup>34</sup> This thesis revealed the reasons that might explain the resistance of the old child care system to change and the incomplete implementation of the UNCRC in Kazakhstan. These reasons relate to the bigger and overarching five themes that should be tackled first.

#### *Resources*

The first theme is the purely formal nature of the policy and the inadequacy of the resources. Chapters 4 and 5 of this thesis provide the evidence that family upbringing as a priority placement is set out in some primary legislation of Kazakhstan but that the subordinate legislation that explains procedures demonstrates that the actual practice relies first and foremost on residential placements. Having minimum resources and also inconsistent and complex legislation for preventive activities, the Kazakhstani system is limited to addressing only those issues which already pose serious problems by removing the child from the family that is unable to provide care.<sup>35</sup> The gender and family policy that announced the transformation of institutions for children into family support centres shows the same trend because there are no resources allocated from the budget for such a transformation.<sup>36</sup> Financial requirements must be calculated and defended or justified by the initiator (usually a Ministry) according to the Budget Code of Kazakhstan.<sup>37</sup>

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<sup>34</sup> See Chapter 4 Section 4.2 above for the legal foundations, that include the amendment in the legislation that introduced new family-based alternative forms of placements, the priority of family placements and the social services for children deprived of parental care, and Chapter 5, section 5.2 above for pilot projects in regard to children's placements in health and social protection systems.

<sup>35</sup> Carolyn Hamilton and Jonathan Watkins, *Modelling for Integrated Child Protection System in Kazakhstan* (UNICEF 2011) 11; SANGE Research Center, *The level of legal protection of children in Kazakhstan. Methodical toolkit for parents and specialists of educational bodies and organizations involved in the protection of children's rights* (the Committee for the Protection of Children's Rights of the Ministry of Education and Science of the Republic of Kazakhstan 2018) 49.

<sup>36</sup> See Chapter 4 Section 4.5 and Chapter 5 Section 5.3.

<sup>37</sup> Budget Code of the Republic of Kazakhstan 2008, chapter 12. Budgeting.

However, because the ministry has done no work to determine how to transform residential institutions (orphanages, etc.) into support centres for the placement of children in families,<sup>38</sup> it has no idea how much the policy of such a transformation would cost. Hence, the ambition to make this transformation will remain without financial resources. The position in Kazakhstan in March-April 2018 – when I was last in the field – remains reminiscent of the position described by Belolipetskaya in relation to Russia: in the case of the Russian Federation, it merely pursues a decrease in the numbers of children in institutions with no concomitant provision of new social services to provide adequate alternative care.<sup>39</sup> Foster families as alternative care providers require extra budget during the transition period of replacing institutions. Recruiting and retaining foster families necessitates extra social services such as, for example, training, psychological and legal advice, while institutions where children will remain until the number of foster families increases also require financing.<sup>40</sup> Hence, having both systems in operation while building up the number of foster families, means the state budget needs to be extended. Thus, the government of Kazakhstan is inconsistent - its apparent good intentions do not correlate with actual practice. It would be a step forward for Kazakhstan if the state elaborated a plan to encompass a gradual transformation and amended the legislation in relation to the process of such a transformation. The Soviet Union established institutions and allocated resources for marginalised children.<sup>41</sup> Without the same thorough-going and comprehensive approach by the contemporary state, the inherited rigid institutionalised system for children will remain in place for much longer than it should. Therefore, structural changes that are supposed to happen according to the Action Plan for the implementation of the Family and Gender Policy Concept in the Republic of Kazakhstan until 2030 (orphanages should be transformed into Family and Children Support Centres) will not happen or will only happen formally (e.g. an institution might change its name from residential institution to Family and Children

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<sup>38</sup> See Chapter 4 Section 4.2 above; see also Akulova Oksana, 'Do not offend an orphan!' *Social and political newspaper Time* (10 December 2018) <<http://www.time.kz/articles/territory/2018/12/10/63891-ne-obizhajete-sirotu>> accessed 10 December 2018. Comments of Acting Chairman of the Committee for the Protection of Children's Rights Erzhan Ersainov: - At the moment we are deciding what mechanism of closing orphanages would be. We understand that it would be not possible to close them right now (there are adolescents, children with the special needs who difficult to place in family)...In very soon interdisciplinary working group will start developing the action plan, and then it would be possible to say how we will achieve this aim.

<sup>39</sup> Guseliya Sagidullova Belolipetskaya, 'Implementation of the state policy in the field of protection of orphans and children left without parental care: trends and prospects' (2017) 2 *Socium* and power 53.

<sup>40</sup> See Chapter 5 Section 5.3.

<sup>41</sup> See Chapter 3 Section 3.3 Subsection 3.3.2.

Support Centre) until there is a strong political will. Therefore, it might be concluded that the failures of the deinstitutionalisation of children were more substantive than procedural, although the latter also take places as the resistance of the personnel, discussed in Chapter 5, and the lack of any evaluation report, the separate plan or policy.<sup>42</sup> Additionally, taking into account social changes and the multi-ethnicity of Kazakhstan, the state needs to provide social services to support families who encounter difficult challenges as a preventive measure. As suggested by practitioners interviewed in Kazakhstan, and UNICEF in Eastern and Central Europe and Central Asia<sup>43</sup>, vulnerable families need social services that will help them to overcome their difficulties and to preserve the family unit. Such an approach requires consistency in providing these kinds of services and collaboration between the three systems of health, education and social protection. However, unfortunately, these systems operate individually with very little collaboration.<sup>44</sup> In order to stop this vicious circle, the UNICEF recommendation of shifting the focus to family support needs to be better implemented.<sup>45</sup>

#### *The professionalism*

The second theme is the professionalism of the personnel that work in social services. Kazakhstani practitioners in this field at the moment do not need any certification unlike in England<sup>46</sup> so that their qualifications and knowledge of children's rights is questionable due to their lack of understanding that the child is an individual with rights and interests that have to be met and ensured. Therefore, Kazakhstani staff who work in child care and child protection do not support deinstitutionalization, they are not motivated and are not trained for the new practice of family-based placements.<sup>47</sup> In order to ensure that children enjoy their rights, Kazakhstan needs to invest in human resources, and specifically in the elaboration of training and certification schemes for all those working with children.

#### *Complexity of legal framework*

The third theme is related to legislation, which remains complex and fragmented in the context of the social sphere.<sup>48</sup> The numerous rules and regulations demonstrate the lack of transparency and the complexity of the system that is fragmented amongst the different systems. The labyrinthine nature of the legislation and procedures enables corruption to

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<sup>42</sup> See Chapter 4 Section 4.5. and Chapter 5 Section 5.3.

<sup>43</sup> Legrand (n5).

<sup>44</sup> See Chapter 4 Sections 4.2 and 4.3 above.

<sup>45</sup> See Legrand (n5).

<sup>46</sup> See Chapter 6 Section 6.3 above.

<sup>47</sup> See Chapter 5 Section 5.2 above.

<sup>48</sup> See Chapter 4 Section 4.2 above

flourish,<sup>49</sup> but the worst outcome is that children might be harmed in favour of the interests of adults. The interest of the child is not considered as paramount – indeed it is often overlooked because the focus is shifted to the agencies’ interest to fulfil their commitments. As yet, unfortunately their commitments do not include children’s need for a family environment; the family as a unit and as the best environment for child development is not the focus of any agency.

#### *Interagency collaboration*

The latter explains the fourth theme, which is the lack of collaboration between agencies, which is at the root of the lack of a comprehensive approach to family problems that could be resolved at an early stage by applying preventive services. As mentioned above, every agency is limited in its scope to its own area of responsibility and competence, but this practice overall does not contribute to the safeguarding and promotion of the welfare of children. In fact, as evidence demonstrates, systems operate separately in accordance with their own specific functions and limits. At the same time, the ongoing modernisation of systems in Kazakhstan also shows the absence of a coherent approach and of any effective collaboration. For example, the concept of further modernisation of the social service system that envisages improvements in the sphere of providing social services solely covers the functions of the system of social protection.<sup>50</sup> In regard to children who need social services, this formulation mentions only relevant enhancements in favour of disabled children. It seems that the development of social services in Kazakhstan is still limited to a social protection system with no understanding of possibilities for better social services if they collaborate with other relevant systems (for example, health, education and the police).

There is, however, understanding amongst those working in social protection of what needs to change to improve social services. The latter might be seen in the draft of the

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<sup>49</sup> Transparency International, ‘Corruption Perceptions Index 2019’, <<https://www.transparency.org/cpi2019>> accessed 5 February 2020. According to Transparency International’s 2019 edition of the Corruption Perceptions Index, Kazakhstan is ranked 113 out of 180 countries that evidence high perceived levels of public sector corruption; The latest notable case of corruption relates to the Vice-Minister of the Ministry of Education and Science Sukhanberdieva Elmira. See Asel Satayeva, ‘How Vice Minister Sukhanberdieva forced subordinates to donate iPhones and tablets to children’ *Tengrinews.kz* (09 July 2019) [https://tengrinews.kz/kazakhstan\\_news/vitse-ministr-suhanberdieva-prinujdala-podchinennyih-darit-373432/](https://tengrinews.kz/kazakhstan_news/vitse-ministr-suhanberdieva-prinujdala-podchinennyih-darit-373432/) accessed 1 of September 2019; Asel Satayeva, ‘Vice Minister Elmira Sukhanberdieva pleaded guilty’ *Tengrinews.kz* (09 July 2019) <[https://tengrinews.kz/kazakhstan\\_news/vitse-ministr-elmira-suhanberdieva-priznala-vinu-373398/](https://tengrinews.kz/kazakhstan_news/vitse-ministr-elmira-suhanberdieva-priznala-vinu-373398/)> accessed 1 of September 2019.

<sup>50</sup> Ministry of Labor and Social Protection of Population of the Republic of Kazakhstan, ‘Draft of the concept for further modernization of social services’, <<http://www.enbek.gov.kz/ru/node/345221>> accessed 20 October 2018.

document developed by the Ministry of Labor and Social Protection of Population of the Republic of Kazakhstan that called the Concept of Further Modernisation of the Social Services system. This document, for example, mentions the need to shift the focus towards prevention rather than on dealing solely with outcomes; the need to improve the quality and availability of social services; and to engage with service users in order to assist them in recovering from the challenges they are encountering.<sup>51</sup>

However, while each system focuses only on their area of competence, the family in a difficult situation has to look for help to a range of agencies and that minimises their chances of overcoming their problems at an early stage when they have most capacity to do so. In practice, this way of looking for help is reminiscent of a soccer game with the family as a ball kicked from one agency to another. This approach by the state's agencies does not contribute to the development of preventive social services. In regards to children deprived of parental care in Kazakhstan, the problem of the lack of collaboration between health, education and social protection systems is that many families in need, if they get early help, could avoid separation from their children. At present, the majority of children deprived of parental care in institutions (82,4%) are 'social orphans' who have parents but are separated from them.<sup>52</sup> Most of them are placed in the education system (98 institutions) or in the healthcare system (22 institutions). These last two systems have different priorities in their activities, namely education and health respectively, so that the development of social services (which has the lowest priority) in these two systems requires collaboration with the system of social protection. Thus, the system, including its numerous rules and regulations, needs to be simplified by one legal document that links all agencies to work for the best interests of the child with case managers or specified departments (the allocation of human resources is important) that ensures the child and his or her family gain access to all the relevant services. As an alternative, according to my interview data, one of the suggestions made was to have one body that accumulates all the documentation and has access to the resources of all the state's systems that provide social services.<sup>53</sup> Another suggestion was to have additional services such as psychological and social support, and temporary accommodation for children whose

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<sup>51</sup> Ibid.

<sup>52</sup> Zh C Dzhandosova, A E Sharipbaeva, T V Kudasheva, O V Nikolaeva, N Yu Baitugelova, F S Dzhandosova, Sh K Smagulova and others, *Report on the situation of children in the Republic of Kazakhstan in 2018* (Committee for the Protection of Children's Rights of Ministry of Education and Science of Republic of Kazakhstan, 2019) 135

<sup>53</sup> Interview with Darya (public worker) on 09 of April 2018.



parents are not deprived of parental rights, but need to overcome a life crisis or to enhance their parenting skills.<sup>54</sup> Social projects in Ust-Kamenogorsk, Astana and Almaty in family support centres that work in collaboration with national NGOs, UNICEF, the Committee of the Rights of Child in Kazakhstan and local authorities demonstrate the necessity of agencies that deal with families in need or in difficult life situations, on an ongoing basis. Because the state only has recourse to removing the child from the family, families in need prefer to avoid local authorities and seek help from the NGO-based organisations.<sup>55</sup>

#### *The social issues*

The next and the last theme is the social issues that need to be tackled. As discussed in Chapter 5, engagement with society could help to minimise the number of children in care. This is possible if doctors stop encouraging parents to abandon disabled children, if the schools undertake education on social norms to address prejudices, sex education and contraception, and if there is ongoing and consistent work in the media on an inclusive society and the strength of the family. In addition, society is a good resource for alternative care but the recruiting of foster families or increasing the number of adoptions and guardianship placements should be assisted by the state through support services. It also requires prior preparation or work with society on the elimination of stereotypes and the marginalisation of children from institutions.

In fact, the society of Kazakhstan does not display just one particular trend in regard to children deprived of parental care and institutionalisation in general. Different social issues in contemporary society in Kazakhstan contribute to the problems posed by institutionalisation from different perspectives. Firstly, there is the issue of the stigmatisation of institutionalised children, who are often characterised as children with unknown origins and/or possibly negative characteristics inherited from their parents. This is one of the reasons why adoption and fostering services do not always welcome children from institutions. In addition, as well as the challenges posed by their unknown origins, children from institutions are difficult to place in the families of young couples because young women are expected to have their own children.<sup>56</sup> Because of social pressures, young couples are ready to pay from \$2,000 to \$25,000 for babies and hide the fact they are adopted. Following this logic of hidden adoption practice (including

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<sup>54</sup> Interview with Mira (NGO) on 13 of March 2018 and with TV (NGO) on 16 of March 2018.

<sup>55</sup> Interview with Olga (NGO) on 9 of March 2018, with Mira on 13 of March 2018, and with Umyt (NGO) on 16 of March 2018.

<sup>56</sup> See Chapter 5 Section 5.2 above.

fostering that in practice are used as hidden adoptions)<sup>57</sup> older children and disabled children who are deprived of parental care are unlikely to be placed in adoptive or foster families. Currently, disabled children, adolescents and big groups of siblings remain marginalised and stigmatised resulting in their remaining in institutions. The stereotypes of children deprived of parental care, inherited from the Soviet Union time, should be challenged. This could be changed by promoting and recruiting alternative family-based care that is undeveloped in Kazakhstan.

The second social issue is the social conservatism of some regions which does not correspond with the reality of the early sexual life of younger generations. The avoidance of open conversations of such topics in the education system and in society contributes to unplanned pregnancies. Therefore, at present, it seems that society has double standards. On the one hand, Kazakh people in some regions remain conservative and follow traditions such as taking custody of children deprived of parental care amongst the extended family. However, on the other hand, Kazakh people do not all act in the same way as they are part of a multi-ethnic society and a country in transition that has inherited practices which became more prevalent in the Soviet Union era. These includes some aspects of gender equality and early sexual activity outside marriage. These double standards have a contradictory effect on the issue of the institutionalisation of children. On one side, the majority of children remain within the extended family – and this is argued to be a positive effect of complying with Kazakh family traditions.<sup>58</sup> On the other, children easily get abandoned due to the unacceptability of the child born outside marriage in some families and because of the social norm that children will be for better in institutions.

The third problem in society is a combination of reasons that includes socio-economic changes in society and to some extent the isolation of vulnerable families from their relatives. Socio-economic changes explain the struggle of some people in providing for their own children so that they do not feel they can take on the extra burden of looking after other people's children. The latter goes against the customs of the tribal past of the Kazakh people and corresponds with the contemporary market economics when families in difficult life situations are excluded from social support and survive as best as they can with no support. This leads to the breakdown of connections with relatives. Hence, in the

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<sup>57</sup> See Chapter 4 Section 4.4 above.

<sup>58</sup> See Chapter 5 Section 5.2 above.

case of the institutionalisation of children, not all relatives are willing to take such children into their homes.

To conclude, as suggested by UNICEF, the interpretation of child's interests should not depend on cultural perspectives; and all rights of the child should be ensured.<sup>59</sup> A focus on the child's interests might help to overcome the cultural prejudices of society in Kazakhstan exemplified by attitudes such as 'it is shameful' 1) to adopt a child, 2) to have a disabled child or a child outside marriage. In particular, prioritising the child's interests might address the case of single mothers with babies, or the abandonment of children with health issues or the adoption of children from institutions. Overall, it was observed that the cultural features of Kazakhstani society have both negative and positive influences on the issue of the institutionalisation of children, but the history of the Soviet Union also shows that social values and cultural customs can be adjusted by state policy and ideology.<sup>60</sup> The Soviet Union, in empowering women in Kazakhstan, intervened in every household and demonstrated that, in spite of cultural resistance and reluctance, each family could be reached. If there is sufficient political will now, that approach might help to overcome both institutional and cultural obstacles. Kazakhstan, as a state in transition after the collapse of the Soviet Union, has the potential to develop sustainable social child protection systems as required by the UNCRC and the UN Guidelines for the Alternative Care of Children if there is the will to do so.

#### 7.4 Lessons from England

The UN Guidelines for the Alternative Care of Children provides a comprehensive list of recommendations to states on how to promote the long-term interests of the child deprived of parental care, including the full development of the child's potential.<sup>61</sup> However, the findings of this thesis show that this document is not implemented in Kazakhstan. In support of these guidelines, Hamilton and Watkins recommend Kazakhstan to review the way social services are provided and advise the refocusing of resources (financial and human) on family support services and prevention of family separation that together work for the children's best interests.<sup>62</sup> The critique of Hamilton and Watkins remains valid

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<sup>59</sup> Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (UNICEF 2007) 38.

<sup>60</sup> See Chapter 3 Section 3.3 Subsection 3.3.1 above.

<sup>61</sup> United Nations Guidelines for the Alternative Care of Children (adopted 24 February 2010), A/RES/64/142.

<sup>62</sup> Hamilton and Watkins (n35) 13.

and accurately describes the system and approach of Kazakhstan towards children as not child-centred.<sup>63</sup> However, the concept of a child-centred approach is a relatively recent achievement of the English system that was elaborated by Munro in her review in 2011.<sup>64</sup> Thus, the Munro review might be useful for Kazakhstan since its recommendations reflect what the Kazakhstan system needs. Following Munro, Kazakhstan should revise and simplify the complexity of its regulations. It should improve interagency cooperation and preventive work in child protection and care. Training and support of the main stakeholders in the system should also be improved. And it should make clear the responsibilities and commitment of personnel that work with children.<sup>65</sup>

Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children of England (WT guidance)<sup>66</sup> defines a child-centred approach as:

keeping the child in focus when making decisions about their lives and working in partnership with them and their families.<sup>67</sup>

Further explanation of this approach in the WT guidance demonstrates how England and Wales interprets and implements the main principles of the UNCRC such as the best interests of the child and the right of the child to be heard. This guidance in particular states that:

All practitioners should follow the principles of the Children Acts 1989 and 2004 - that state that the welfare of children is paramount and that they are best looked after within their families, with their parents playing a full part in their lives, unless compulsory intervention in family life is necessary;<sup>68</sup>

Anyone working with children should see and speak to the child; listen to what they say; take their views seriously; and work with them and their families collaboratively when deciding how to support their needs.<sup>69</sup>

The provisions of WT guidance based on the following principle from the Children Act 1989 that should be considered and applied in Kazakhstan primarily:

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<sup>63</sup> Ibid; see also Chapter 4 Section 4.3 above.

<sup>64</sup> Eileen Munro, *The Munro review of child protection: final report - a child-centred system* (Department for Education, Cm 8062, 2011).

<sup>65</sup> See Chapter 6 Section 6.3; Department of Education, *A child-centred system: the government's response to the Munro review of child protection* (Ref: DFE-00064-2011, 2011) paras 9-30.

<sup>66</sup> HM Government, *Working Together to Safeguard Children A guide to inter-agency working to safeguard and promote the welfare of children* (London, July 2018).

<sup>67</sup> Ibid, para 10.

<sup>68</sup> Ibid, para 11.

<sup>69</sup> Ibid, para 14.

A key principle of the 1989 Act is that children are best looked after within their families, with their parents playing a full part in their lives, unless compulsory intervention in family life is necessary.<sup>70</sup>

This principle has its reflection in WT guidance alongside the principle of paramountcy of the welfare of children.<sup>71</sup> These two principles reflected the principle of the best interests of the child declared in the UNCRC.

All the above extracts from legislation of England demonstrate how the subordinate legislation of Kazakhstan might be enhanced and at the same time, how it should promote the best interests and the rights of the child. Kazakhstan also should learn from England that the family support should come first in work with family by minimising the practice of removal of the child (that operates as the first aid in Kazakhstan). However, what also should be noticed about child care in England by Kazakhstani policy makers is that the practitioners in England have the resources that enable them to follow the principles. For example, there are family assistance, corporate parenting or family centres where a child or parents might attend social activities, receive advice or be accommodated.<sup>72</sup>

Meanwhile, WT guidance shared responsibility for the safety of the child between everyone who works with children that also contribute into promoting of the child best interests. The obligation of anyone working with children to act in favour of the welfare of children that declared in English guidance might be also taking by Kazakhstan as a good model for motivating all agencies to co-operate in favour of a child's best interests. At the same time, the social workers in England who were interviewed for this research revealed that the collaboration between agencies improved only recently and there are still things that might be improved.<sup>73</sup> The approach of social workers in England, that children are better off remaining with their families, and working with families in order to prevent their separation from their children is similar to what the UNCRC and the UN Guidelines for the Alternative Care of Children suggest. Hence, the analysis of actual legislation and practice shows that the child-centred approach in England is not only formally declared but also in daily use by practitioners. One of the clear examples is the much more developed alternative care provision for looked after children: 72% are placed

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<sup>70</sup> Department of Education, *The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review* (Ref: DFE-00169-2015, 2015) para 1.5.

<sup>71</sup> HM Government, *Working Together to Safeguard Children A guide to inter-agency working to safeguard and promote the welfare of children* (London, July 2018), para 11.

<sup>72</sup> Ibid, see also Department of Education, *The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review* (Ref: DFE-00169-2015, 2015).

<sup>73</sup> Interview with Phoebe (social worker in England) on 26 February 2018.

in foster families.<sup>74</sup> Compliance of England with the rights declared in the UNCRC also is visible in another positive lesson that should be considered and learned by Kazakhstan. Namely, the legislation of England that decreased the power of local authorities and passed it to the courts helped to ensure the appropriateness of the measures taken by the authority and meeting the child's best interests.<sup>75</sup> Such an approach will enable the family and the child to express what they need while the local authority has to prove in court that they used all possible measures to meet such needs of the family and the child, including the family interests of the child.

Overall, the scrutiny of the development of child protection systems in England shows a more sustainable and thoughtful approach.<sup>76</sup> The finding of this thesis that is of most use for Kazakhstan is that the contemporary child-centred approach and the existing legislation and practice in England is a result of self-reflection, self-criticism, mutual engagement and constant re-evaluation of social policy, legislation and practice. As such, the ongoing process and the first WT guidance that was published in 1988 has been reviewed constantly. Although, this thesis acknowledges the dramatic differences in the cultural and social contexts between the two countries, the English lessons and principles might be applicable for Kazakhstan since they correlate with the principles of UNCRC and the social family values of Kazakhstan. Therefore, in order to develop sustainable services in Kazakhstan, guidance similar to the WT guidance of England and Wales might be helpful.

## 7.5 The lessons from NGOs of Kazakhstan

There are several well known NGOs in Kazakhstan whose activities fill the gaps of the state in providing preventive social services to children and families, and also in placing orphanage children in families (adoptive, foster or extended families). Some of these NGOs implement relevant pilot projects in collaboration with the Government. In contrast to the state activities, these NGOs demonstrate a child-centred approach. At the same time, it is possible that using partially the resources of NGOs, the Kazakhstani Government is testing what can work and if there is need for these approaches or it is also possible that authorities are simply diverting the attention of society by these small-scale

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<sup>74</sup> Department for Education, *National Statistics Children looked after in England (including adoption) year ending 31 March 2019* (Crown copyright 2019) 6.

<sup>75</sup> See Chapter 6 Section 6.3 above.

<sup>76</sup> Ibid.

interventions from the larger-scale work required. However, the most important observation of the activities of these NGOs is that in addition to the external lessons like those considered in the previous section (the lessons of England), the Kazakhstani Government might also learn from the internal lessons of the national NGOs. Hence, it is relevant to my study to demonstrate the potential of the state in the context of the topic of this research. I will discuss activities of three projects that are directly related to the policy of deinstitutionalisation of children and family support which I am familiar with through my own attendance in the project as an expert, or as a researcher while conducting interviews for this thesis.

Firstly, an NGO project called ‘Ана Yū’ (translated as Home for Mother) demonstrates that abandonment of the child is avoidable if support is provided for single mothers in need.<sup>77</sup> This example provides evidence of the effectiveness of the child-centred approach when the child is the main focus. In particular, face-to-face support to single mothers within this project, an NGO with branches in each region of Kazakhstan, prevented the abandonment of children by 3,654 mothers by providing them with social services such as accommodation, psychological and legal counselling and support in overcoming the difficulties of their circumstances.<sup>78</sup> Thus, this is a private project that has demonstrated to the government that early help to single mothers prevents the abandonment of children. Another project that is called Mentoring was initiated by groups of NGOs in 2014 in Almaty and in 2015 in Astana (Nur-Sultan), and currently is being spread out within the other three big cities of Kazakhstan, Pavlodar, Karaganda and Uralsk.<sup>79</sup> This project’s target is to help children over the age of ten in orphanages to learn how to function in society by finding them personal adult mentors. These mentors are obliged to undergo special training and to meet with groups of children at events organised by the NGO. After each event, the child and the mentor confidentially choose who they would like to work with. If there are matches in the choice of the child and the potential mentor, the mentor works with the child for at least one year according to the contract signed with the orphanages and the local guardianship authority. The rest of the children with no mentors waiting for the next wave of potential mentors that are trained by the NGO. While working with the child, mentors have constant support, including psychological and legal

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<sup>77</sup> Home for Mother Foundation, ‘About project’ <<http://www.dom-mamy.kz/dom-mamy/o-proekte/>> accessed 09 October 2019.

<sup>78</sup> Home for Mother Foundation, ‘About the project’ <<http://www.dom-mamy.kz/dom-mamy/o-proekte/>> accessed 09 October 2019.

<sup>79</sup> Dara Charity Foundation, ‘Mentors’, <<https://dara.kz/en/projects/mentors/>> accessed 9 October 2019.

consultancy, provided by the NGOs. During the four years this project has been in existence out of 1057 people potentially interested in mentoring only 104 actually became mentors. The whittling down of the numbers is explained by the best interests of the child because the training and prior meetings allow potential mentors to fully understand the commitments and for the team of the project, the motivation of potential mentors and if it is felt not to comply with what is required it is better for the child not to have such a mentor.<sup>80</sup> Being a member of the team in this project in Astana (Nur-Sultan) in 2015, I know of success stories when the mentors became the foster parent of the child in a context and a country where it is exceptional for children in institutions older than ten to find a family.<sup>81</sup> This project demonstrates that training and support for alternative families may carry the risk of mistaken placements when the alternative families have motivation based on their own interests. In addition, however, this project and interviews with practitioners also highlighted the fact that support could decrease the number of children returning to institutions.<sup>82</sup> Overall, this project shows what kind of social services (training, psychological and legal consultancy) are needed for foster families and the model that might work for recruiting and supporting foster families. However, in spite of the fact that the state is familiar with the project and its results,<sup>83</sup> the way of recruiting and supporting foster families in Kazakhstan has not changed.

The most recent pilot project in Kazakhstan called Onege addresses the issue of the lack of one body that might ensure multiagency collaboration in favour of the interest of the family and the child. In particular, from June 2019, an NGO called The Family Academy obtained a grant from the state organisation, The Civil Initiatives Support Centre, to organise resource support services (in other words family support centres) in nine regions of Kazakhstan.<sup>84</sup> The targeted audience of the project was young families or couples that are planning to get married, families in difficult life situations, families experiencing

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<sup>80</sup> Ibid.

<sup>81</sup> Ребенок должен жить в семье (The Child must in the family) and Dara Charity Foundation, 'History of the project', <<http://www.nastavniki.kz/about-us/history/>> accessed 9 October 2019.

<sup>82</sup> Interviews with Olga (NGO) on 9 of March 2018, with Mira (NGO) on 13 of March 2018, with TV (NGO) on 16 of March 2018, with Umyt (NGO) on 16 of March 2018 and with Elena on 9 of April 2018.

<sup>83</sup> The Child must live in the family and Dara Charity Foundation, 'History of the project', <<http://www.nastavniki.kz/about-us/history/>> accessed 9 October 2019. The project is supported by the Committee for the Protection of Children's Rights of the Ministry of Education and Science of the Republic of Kazakhstan and local authorities in Astana, Almaty and Karaganda regions. The partnership is enshrined in a special Memorandum of Cooperation.

<sup>84</sup> Lichnost.kz, 'About Project' <<https://www.lichnost.kz/site/about>> accessed 14 October 2019; Alena Smirnova, 'Project "ONEGE": conscious parenthood and a happy childhood', *Novoe Televidenie* (16 July 2019) <<http://novoetv.kz/2019/07/proekt-onege-osoznannoe-roditelstvo-i-schastlivoe-detsvo/>> accessed 14 October 2019



domestic violence and young parents who need support. The main problem of this project is that it is not sustainable since the grant was given only for six months. Hence, with no command from the top or resources this project will stop. However, there is a benefit to the project which is that it demonstrates to the authorities that there is a need for such an agency and that families need not only financial assistance, but also professional support in managing family issues such as legal, social and psychological counselling, including development of parental skills.

All three projects reached the attention of the President of Kazakhstan so that there is potential for their development by the state.<sup>85</sup> Although, there is concern that sustainable development in this realm will never happen in Kazakhstan due to the lack of relevant policy and resources, I would argue that there are positive premises in Kazakhstan that might lead to such changes. These prerequisites include the obligations of Kazakhstan to comply with the UNCRC and the activities of UNICEF in the region helping to do so. Apart from UNICEF, the activities of national NGOs that correlate with the UNCRC and research like this thesis also might be a driving force in the reform in child care in Kazakhstan.

## 7.6 Conclusion

Kazakhstan as a transitional state has potential to further develop its child protection system since the state has declared its intention to do so and there are pilot projects which could be implemented more broadly. However, unlike England,<sup>86</sup> Kazakhstan as a member of the UNCRC, needs to accelerate such reform by allocating the required human and financial resources in order to meet children's rights and interests not only in legislation, but also in practice. The evidence gathered by this research that has been discussed in this chapter, raises the range of issues which need to be tackled in the further development of Kazakhstan and future research. Primarily it raises issues that might be of interest to sociology and politics. It demonstrates the robust interconnection between

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<sup>85</sup> Civil Alliance of Kazakhstan, 'Kazakhstan should not have orphanages – Nazarbayev' (28 November 2018) <<https://www.azamattyqforum.kz/news/v-kazahstane-ne-dolzno-byt-detskih-domov-nazarbaev>> accessed on 28 November 2018; Family Support Centre 'Family Academy', 'Presentation of the project Onege in the ceremony with attendance of the President of the Republic of Kazakhstan' (12 December 2019) <<https://www.facebook.com/onege2019>> accessed 15 December 2019; Dara Charity Foundation, 'In 2020, the project "Mentoring" is assigned to us! The President said it is a good project and wished us luck!' (10 December 2019) <<https://www.facebook.com/fondddara/>> accessed 15 December 2019.

<sup>86</sup> see Chapter 6, section 6.2. England and Wales have had a longer time to develop its legislation and practice due to its earlier development and understanding of human rights and children rights.

systems, policy, society and law. While society keeps practising a policy of excluding children deprived of parental care and disabled children, the state is limited to a merely formal and short-term approach to addressing the issues of children deprived of parental care. Neither the state nor society has a clear understanding of children's rights and children's interests since what they do corresponds with none of the principles of the UNCRC and particularly not with the principle of the best interests of the child 'for the full and harmonious development of his or her personality'.<sup>87</sup>

In regards to the society of Kazakhstan, the double standards or contradictory trends within the society that are discussed in this chapter<sup>88</sup> has a double effect on the issue of the institutionalisation of children.<sup>89</sup> On the one hand, the majority of children deprived of parental care remain within the extended family which is a positive side of the family culture in Kazakhstan. In contrast, the same conservatism of Kazakhstani society allows the abandonment of their children due to the unacceptability of the child born outside marriage in some families, and not all children from institutions are welcome in alternative families because of their unknown origins or disability. In addition, this conservatism allows the continuance of shame to be attached to the inability of those young couples who fail to produce their own children

Another issue emphasises the lack of desire of different agencies to collaborate in the provision of social services to children deprived of parental care and families in need. While social protection system has some understanding of and is planning modernisation in accordance with international standards, other systems, including education and health, are not participating in such reforms but rather continuing the old practices due to the low priority accorded to their social role. This chapter shows how the legislation and practice of England might be helpful in the improvement of collaboration between agencies in Kazakhstan which also implies compliance with the principles of the UNCRC such as the principle of the best interests of the child and the right to be heard. There is no sustainability and child-centred approach in Kazakhstani Government activities in regard to social services for families in need. However, the activities of NGOs discussed in the last section of this chapter might be considered as offering a positive potential which could be extended into national practice.

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<sup>87</sup> The UNCRC, the preamble, arts 3 and 12; see also Chapter 2 Section 2.2 above.

<sup>88</sup> See Section 7.3 of this chapter.

<sup>89</sup> Ibid.

## Chapter 8

### Conclusion

Children deprived of parental care in institutions in Kazakhstan remains an issue in spite of the state's effort to close all such institutions. This research has attempted to identify which areas in the legislation, policy and practice of the Kazakhstani child care system require revision. It has suggested that the principles of the UNCRC could provide better guidance in this respect than the current legislation, policy and practice do. The children's rights approach was central since it established the framework that was universally accepted in the formulation of the UNCRC, to which Kazakhstan, as well as the UK, are signatories. Children's right to be brought up in a family is not clearly declared in the UNCRC, but it might be derived from the articles 7 and 9 of this convention. The reasons for the necessity of having this right for the child's best interest were explained in Chapter 2 of this thesis.<sup>90</sup> Overall, the children's rights theoretical framework provided the starting point for the subsequent exploration of the legislation and practice in both Kazakhstan and England.

There is not much critical academic research done in Kazakhstan in regard to the implementation of the UNCRC<sup>91</sup> so that the significance of this study was to fill in this gap. The way in which I discuss the research problem is unique since I explored it from different perspectives: historical, social, and legal; showing the roots of the problem and the previous practices in child care in the nomadic Kazakh society, the contemporary practice in Kazakhstan and an analysis of possible future changes taking into account better practice such as that found in England. Therefore, this research provides an original discussion on the deinstitutionalisation of children in Kazakhstan in the light of the past and contemporary cultural and social contexts. There has been little change in the academic discourse on child care and child protection system in Kazakhstan even 27 years after obtaining independence from the Soviet Union. Whereas Kazakhstani officials (government, ministers, local authorities) start their reports with the positive achievements and only at the very end mention some negative practices, my research rebalances this trend and is multi-faceted so that the issue can be viewed from all angles. This way of exploring the research problem enabled me to demonstrate the discrepancies

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<sup>90</sup> See Chapter 2 Sections 2.2 and 2.3 above.

<sup>91</sup> See Chapter 1 Section 1.3 above.

between what is stated in the law of Kazakhstan and how it operates in practice. Specifically, it reveals the big gap between the intention of the state to place the child deprived of parental care in family-based care (key laws)<sup>92</sup> and actual practice which entails placing all those children who do not have relatives willing to take them in institutional care.<sup>93</sup>

The theoretical framework was applied as a tool to measure the appropriateness of the recommendations. From a theoretical perspective, the main contribution is the discussion of the differences between the formally declared children's rights in Kazakhstan versus the actual understanding and implementation of these rights in England. It was found that the UNCRC and Children's Rights theory is a 'soft' concept and was developed on the basis of western practice and understanding. As a result of this and also the different backgrounds, the implementation of the standards and principles of children's rights that are 'fundamental' in western practice and new to some extent in Kazakhstan, took place differently in Kazakhstan and in England. Therefore, the investigation of the historical background to the decision-making process relating to children's placements and the institutionalisation of children within the territory of present Kazakhstan was significant. It was found that the creation of institutions for children deprived of parental care were the result of a variety of factors, including the impact of the great famine, the Second World War, and the repression and forced migration of different ethnic groups within the Soviet Union.<sup>94</sup> However, the findings show that the Kazakh people had a better understanding of the child's best interests in remaining within the extended family during the pre-Soviet time when customary law was being practised. The study demonstrates the absence of a similar level of understanding during the Soviet time and the lack of a sustainable child-centred approach and the incomplete implementation of the UNCRC, including the principles of the best interests and the rights to be heard, in national legislation and practice in contemporary Kazakhstan. These practices also contradict the clearly enunciated policies of the state and are used despite the well-known negative impact of the institutionalisation of children. However, as the data for contemporary Kazakhstan shows, the majority of children deprived of parental care remain within the extended family, which reflects the pre-Soviet practice of keeping children within the extended family. Adoption and guardianship of children deprived of parental care were

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<sup>92</sup> See Chapter 4 Sections 4.2 and 4.5

<sup>93</sup> See Chapter 4 Section 4.5

<sup>94</sup> See Chapter 3 Section 3.3 above.

regulated by the customary law and children were kept within the tribe of the father. Twenty-eight years after Kazakhstan obtained its independence in 1991, the Kazakh people were able to revert to the traditions of the majority ethnic group, returned to their dignity and openly started to exercise again their family traditions. Chapter 3 demonstrates the cultural aspect of the family interests of the child and supporting arguments in favour of the child's right to be brought up in the family. In particular, due to the tribal division of Kazakh society and significance of tribal belonging for the child's future career and marriage prospects, the family interests of the child are even more crucial. Therefore, the family ties that are inherent in Kazakh culture and the tribal structure of the society, still present, should be taken into account as being of potential benefit for children deprived of parental care. This context might be used more actively by policy makers and via social media to encourage people to keep children safe within the family.

Since the main aim of this research is to contribute to the development of the Kazakhstani decision-making process in relation to child placement, Chapter 4 mainly reveals the gaps and inconsistencies in the legislation. It was found that the current national legislation of Kazakhstan is controversial in its nature because it is aimed at addressing international standards, but at the same time, it aims to fit into the existing and limited system of institutionalisation of children deprived of parental care. It is noticeable that the system is in general lacking in gatekeeping measures. The exception to this is not efficient and consistent practice of the Juvenile Commission.<sup>95</sup> The key decision-maker and gatekeeper is the local authority, namely the guardianship authority that makes decisions as to where to place children. Institutions are there only to admit children and do what they are told to do by the guardianship authority. If there are no family members who are ready to take a child deprived of parental care, the child cannot avoid an institutional placement.<sup>96</sup> This is what the analysis of the empirical data and secondary legislation has demonstrated. In the analysis in chapter 7, this structural obstacle to the implementation of the deinstitutionalization in Kazakhstan is considered under the theme of resources.<sup>97</sup> The entire system and approach of Kazakhstan towards children is not child-centred.<sup>98</sup> Thus, the entire system of child protection and child care in Kazakhstan, including its

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<sup>95</sup> See Chapter 4 Section 4.3.

<sup>96</sup> See Chapter 4.

<sup>97</sup> See Chapter 7 Section 7.3.

<sup>98</sup> See Chapter 7 Section 7.4.

legislation, needs to be revised such that decisions in regard to children take place in the context of a system where the interests of the child are embedded. This should include criteria to measure what is in the interests of the child and what is not. The way this is implemented in England might be considered by Kazakhstani policy makers as a model embodying better practice to learn from.<sup>99</sup>

The practice of the child care system of Kazakhstan (explored in this thesis) demonstrates the purely formal implementation of the UNCRC in the field. Actual implementation is not pursued in any concerted, structured, careful way so that entrenched ways are actually addressed and changed. Thus, the child's interests and rights are a low priority of the state. Moreover, as discussed in Chapter 4, the Government has a tendency to delegate its duties regarding child protection and child care to civil society.<sup>100</sup> This is exemplified by the practice of the new national agency of adoption that should have started work in July 2020; namely the functions of child placement (child protection and care) will be fulfilled by any accredited Kazakhstani organisation.<sup>101</sup> As far as I know this practice has started from 1 of July 2020. This is evidence of the low priority accorded to children's interests within the Government. Whereas, article 20 of the UNCRC states that:

A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

Clearly, the initiative of the Kazakhstani government to delegate their duties concerning children deprived of parental care does not correspond with the above provision of the UNCRC. The government has been reluctant to engage in reform of the child protection system because of the superficial and formal approach to children's interests and rights. In fact the latter is the last priority of the state.<sup>102</sup> Therefore, although Kazakhstan wants to appear in the international arena like a state that values children and their rights as declared in the UNCRC, in fact the government has not been given the authority (an order) from the leader of the nation (Nazarbayev Nursultan) or the current President

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<sup>99</sup> See Chapter 7 Section 7.4.

<sup>100</sup> See Chapter 4 Section 4.3

<sup>101</sup> The Law of the Republic of Kazakhstan On introducing amendments and addenda to some legislative acts of the Republic of Kazakhstan on improving criminal procedure legislation and strengthening the protection of personal rights 2019.

<sup>102</sup> See Chapter 4 Section 4.6 and Chapter 5 Section 5.3.

(Tokayev K. K.) to launch all the structural changes related to children in order to ensure their rights. This implies financial and human resources, well planned child or child's rights related policy. However, since the interests of the children and their rights are the last priority of the state such resources will never be allocated until there is a strong political will for this.<sup>103</sup> This is the key underlying cause of the political resistance to change.

Chapter 5 brings more insights from the field that support the above findings, but also provides other explanations for existing practice. It also shows that law alone cannot solve these issues. Empirical data show inconsistencies within the system, policy, culture and society that overall produce resistance to changes relating to de-institutionalisation and family-based placements. Therefore, the findings of the empirical study emphasise the social context of the legislation which does not exist in isolation and also demonstrated the variety of other reasons beyond the scope of the legislation for not achieving the best interest of the child in the family environment. This data is original and provides a new source for academic discussions related to the contemporary child care system in Kazakhstan.<sup>104</sup>

A noticeable social aspect of the Kazakhstani child care system is the ethnic imbalance between children in residential care and potential family provider candidates (foster families, adoptive parents and guardians). As was shown in Chapter 5, the number of Russian children is bigger than the number of candidates to look after these children from the same ethnic group.<sup>105</sup> The collapse of the Soviet Union, the subsequent economic difficulties of the country and the emigration of Russians to Russia, has resulted in this imbalance that Kazakhstani policy makers should bear in mind. Attention needs to be given to finding solutions, including the training of candidates that cover ethnic differences within the family and the right of the child to preserve his or her ethnic identity.

In addition, it is possible that due to the different cultural backgrounds of those of Kazakh and Russian and/or other heritage, fewer children deprived of parental care of Russian and other ethnic heritage are taken into guardianship by relatives, so their number may be relatively greater in residential care. This is a topic for further research, but the pattern of

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<sup>103</sup> See Chapter 2 Section 2.5; Chapter 3 Section 3.3 Subsection 3.3.2; Chapter 4 Sections 4.4 - 4.6; Chapter 5 Section 5.3, and Chapter 7 Section 7.3.

<sup>104</sup> See Chapter 5 and Chapter 7 Section 7.3 above.

<sup>105</sup> See Chapter 5 Section 5.2.

ethnic imbalance should be noted by the government and necessary measures should be taken to address it.

This thesis explored the history, culture, society, legislation and practice of Kazakhstan and England in order to address the research questions and to show the gap that exists between, on the one hand, the realities of the Kazakhstani child care system and decision-making process in child placement and on the other hand, the best interests of the child. English legislation and practice indicate that to bridge this gap and get closer to the best interests of the child, Kazakhstan is required to have a child-centred approach. Kazakhstani policy- and lawmakers should open their minds to self-reflection, self-criticism and self-improvement. There were several private projects in Kazakhstan discussed in this thesis that demonstrated the existence of an understanding of a similar approach to that in England, but the state has yet to be convinced to provide more preventive social services. Clearly, lessons from England cannot be taken for granted, but the approach must be such that the child's interests lead the reform. I believe that to achieve sustainability in the Kazakhstani approach to its child care system, the structural and cultural obstacles discussed in Chapter 7 of this thesis<sup>106</sup> should first be overcome. The last and crucial step that is missing as in other post-Soviet states, is strong political will.<sup>107</sup> This is reflected in the data from the fieldwork in Kazakhstan which provides part of the perceived cultural explanation of the current policy:

we are not England with their practice and history of parliamentarianism, and so on. We will say this according to the mentality and we will relate enough to an authoritarian society, and not in a negative sense ..., this way of life that has developed over thousands of years, and in my opinion there is no need to change it. When the structure is created because we are so used to it, it is no secret to anyone that reforms in our society go from the top down, but this is our path. If the political leadership of our country makes such a decision, then this direction should be followed by the rest of the structures, but of course combined with initiatives that come from the field, so I think it should be done this way when the order is given so that to organise inter-agency cooperation.<sup>108</sup>

The social tension that rapidly increased in Kazakhstan from the beginning of 2019<sup>109</sup> potentially could force the new president of the state to issue an order for a change in the child care system, but his commands were limited in their scope to special support for

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<sup>106</sup> See Chapter 7 Section 7.3 above.

<sup>107</sup> Nigel Cantwell, 'The human rights of children in the context of formal alternative care' in Wouter Vandenhole, Ellen Desmet, Didier Reynaert, Sara Lembrechts (eds), *Routledge international handbook of children's rights studies* (Routledge 2015).

<sup>108</sup> Interview with Arman (an expert in education, inclusion and child care, ex- public worker) on 5 April 2018.

<sup>109</sup> See Chapter 4 Section 4.2 above.



disabled children and existing services to vulnerable families such as free transport services, free school meals for children from such families, and free medical services including dentistry.<sup>110</sup> However, what I learned doing this research is that social changes take time and there is hope in the NGOs in Kazakhstan which are currently operating and promoting a child-centred approach and thus demonstrating to the state what is needed.<sup>111</sup> Declaring the right of the child to be raised in a family and other rights in the national law is not enough; the elaboration of child or child's rights related policy would be a sign of action toward implementation of the rights of the child.

This research makes a contribution to the academic discussion of these areas and could also impact on practice in Kazakhstan. From the academic perspective, this thesis enriches the scholarly discourse related to considered problems in Kazakhstan, which is poorly represented in the available literature. At the same time, because of similarities in the roots of the research problem in all post-Soviet states, this thesis could be of interest to any researcher interested in a post-Soviet state's approach to child care. From a practical perspective for Kazakhstan, this thesis diagnosed the problem of the institutionalisation of children and offered recommendations based on children's rights, an analysis of existing Kazakhstani legislation and practice and lessons from English practice. The substance of this thesis has potential to be a good source for policy evaluation for such organisations as the UNICEF, the UN Committee on the Rights of the Child, Human Rights Watch. As the consequences, the government of Kazakhstan might be encouraged to improve their implementation of the child's rights based on the recommendations partially taken/influenced from/by this research. Although the comparison with English practice was limited to the implementation of the provisions of the UNCRC,<sup>112</sup> my analysis of the English example was enough to demonstrate how the rights of the child might be better implemented and reach all children in Kazakhstan, especially those who are deprived of parental care. Hence, it is suggested that this research contains recommendations that have been theoretically tested and developed out of the analysis of better practice of the implementation of the UNCRC, the principles of the best

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<sup>110</sup> Official site of the President of Republic of Kazakhstan, 'President of Kazakhstan Kassym-Jomart Tokayev's State of the Nation Address, September 2, 2019', <[http://www.akorda.kz/en/addresses/addresses\\_of\\_president/president-of-kazakhstan-kassym-jomart-tokayevs-state-of-the-nation-address-september-2-2019](http://www.akorda.kz/en/addresses/addresses_of_president/president-of-kazakhstan-kassym-jomart-tokayevs-state-of-the-nation-address-september-2-2019)> accessed 9 October 2019.

<sup>111</sup> This thesis acknowledges that in regard to some NGOs there is risk to have negative outcomes since there are no standards, regulations and control on their work so that as soon as the state realises that as better in favour of the best interests of the child.

<sup>112</sup> See Chapter 6 and Chapter 7 Section 7.4.

interests of the child, and the right to be heard, and with full consideration of the culture and social norms of the population of Kazakhstan. These recommendations reflect five themes that discussed in Chapter 7 which are resources, professionalism, complexity of legal framework, interagency collaboration and the social issues.<sup>113</sup> Namely, in order to ensure children's rights and children's interests, I suggest that Kazakhstani government develop a single policy for the reform of child care system with allocation of adequate resources for each stage of such policy. Meanwhile, this policy should include real (with assessment of the knowledge) trainings of personnel who work with families and children; simplifying the legislation, making it more transparent, consistent and correspondent with the UNCRC and other international human rights treaties, and improvement of interagency collaboration that should be directed to the child's interests and family support. Another big chunk of work of the state that is required is collaboration with the society. The latter includes improving the legal literacy of civil society with regards to children's rights, raising awareness of the significance of the family for the child development and necessity of the parents, caregivers and medical personnel to speak about sexual life with adolescents and young people in order to prevent unplanned pregnancy. In addition, the state policy should include state work on eradication of stereotypes related to children deprived of parental care and inclusion of children deprived of parental care (including disabled children) into society.

My recommendations lack an economic perspective such as the cost of the reforms, that include new social services, training courses and extra human resources, and which will be required for the reform to take place. The costs can be calculated in accordance with budget planning criteria; and this thesis provides the evidence and the way forward for the Committee on the Protection of Children's Rights in Kazakhstan to do so.

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<sup>113</sup> See Chapter 7 Section 7.3.

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## APPENDIX 1:

## Consent form for Interview

**PROJECT TITLE:**

**The decision-making process in child's placement in Kazakhstan: lessons from the approach of England and Wales**

*Project Approval Reference:*

	<b>Yes</b>	<b>No</b>
I agree to take part in the above PhD project which is conducted by a PhD student at the University of Sussex. I have had the project explained to me and I have read and understood the Information Sheet, which I may keep for my records. I understand that agreeing to take part means that I am willing to be interviewed by the researcher.	<input type="checkbox"/>	<input type="checkbox"/>
I understand that any information which I provide is confidential, and that no information that I disclose will lead to the identification of any individual in the reports on the project, either by the researcher or by any other party. Only the researcher and her two supervisors from the University of Sussex Law School (Richard Vogler and Lara Walker) will have access to the interview transcripts.	<input type="checkbox"/>	<input type="checkbox"/>
I understand that my interview will be saved under a number in order to prevent my identity from being made public.	<input type="checkbox"/>	<input type="checkbox"/>
I understand that I have the option of allowing or not allowing an audio-recording to be made of my interview	<input type="checkbox"/>	<input type="checkbox"/>
I allow an audio recording	<input type="checkbox"/>	<input type="checkbox"/>
I understand that I will be given a transcript of the data concerning me for my approval before it or any part of it is included in the write-up of the research.	<input type="checkbox"/>	<input type="checkbox"/>
I understand that my participation is voluntary, that I can choose not to participate in part or for all of the project, and that I can withdraw at any stage of the project up until December 2018, without being penalised or disadvantaged in any way. I understand that I am at liberty to withdraw from participating in this research at any time and without giving a reason and to	<input type="checkbox"/>	<input type="checkbox"/>

ask for any data to be removed and destroyed up until December 2018. On that date, the researcher aims to submit the thesis to the School for confirmation.

I consent to the processing of my personal information for the purposes of this research study. I understand that such information will be treated as strictly confidential and handled in accordance with the Data Protection Act 1998.

☐☐

I understand that my actions and words may be quoted in publications, reports and other research outputs.

☐☐


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 Name of Participant

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 Signature

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 Date

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 Name of Researcher

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 Signature

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 Date

## APPENDIX 2:

## The list of questions for a semi-structural interview in England

- 1) A key principle of the Children Act 1989 is that children are best looked after within their families. There are other principles listed in this law that mostly concern the family support that the local authority provides if there is some concern with a child's welfare. How do you think these principles work in practice? Is it very common in your experience, for family support to be provided?
- 2) Is there any support or training on parenting skills provided by your local authority?
- 3) Based on your experience, what are the most common reasons for families being unable to care for their children? Will you say that there are more cases when a family is in need of multi-agency services or more where a child is in need of protection?
- 4) According to the child protection referral data in the year ending 31 March 2013, the number of CP plans (52,100) consisted of about 10 percent of the total numbers of referrals (593,500). Why do you think there are so many referrals?
- 5) Would you agree that social workers are the main gatekeepers ensuring that children remain in their families? Who else can play that role?
- 6) Which permanent placement is the most common according to your practice: rehabilitation with parents, foster families, kinship care or adoption? Are there any explanations for such a tendency?
- 7) Given the frequent changes to the law affecting social work practice, what, as far as you are concerned, are the most positive changes in terms of child protection or family support or the role of social workers? Do you feel that you receive adequate training to deal with these changes?
- 8) As far as I can understand, the two main sources of guidance in your work are the Children Act 1989 (and relevant guidance) and the Working Together to safeguard children (WT guidance) How helpful do you find these documents? What other guidelines do you rely on most?
- 9) How would you like to improve the decision -making process or the working conditions of social workers (in law, procedures, way of family support)?
- 10) In your opinion, what are the main assessment criteria in terms of what is the best interest of a child? Do you use any practical scale or questionnaire or other tools that help to do such an assessment?

11) How would you describe your experience working with other officials such as police, health, education in child protection? How useful in this respect is the WT guidance?



## APPENDIX 3:

## The list of questions for a semi-structural interview in Kazakhstan

- 1) According to your experience, what are the main reasons that prevent parents from fulfilling their parental responsibilities for caring and raising their child?
- 2) What services are provided by the state in accordance with the legislation to a family and a child in a difficult life situation? In your opinion, what other kind of services are needed or what services can (should) be developed?
- 3) What principles are used by specialists in working with a child and/or family in a difficult life situation, including when it is necessary to remove the child from the family and place him/her in a different place? Do you find these principles applicable in Kazakhstani practice?
- 4) The majority (73% in 2015) of children deprived of parental care in Kazakhstan were placed in families, in particular under the care of relatives or in small foster families (patronage). Why do you think the rest (27%) could not be accommodated in families?
- 5) What steps can be taken to improve understanding within the society in regards to the new alternative families, such as foster family and guest family?
- 6) Why, in your opinion, is the placement of children in alternative families such as foster families and guest families not yet widespread in Kazakhstan?
- 7) How do you assess the government's plans to expand the number of foster families in Kazakhstan after amending the Marriage and Family Code in 2016?
- 8) In accordance with pre-Soviet Kazakh culture and law, children who have lost parents or are left without parental care were placed among their relatives. What do you think has changed since then and what can be renewed in relation to children?
- 9) What do you think about the transformation of orphanages into family support centres?
- 10) Are there organizations in your region (public / private / NGO) that provide special social services to support families and children in difficult life situations? If so, how do they work? What can you tell me about the role and work of non-governmental organizations (private organizations, NGOs) in your region?
- 11) What is your opinion on state policy regarding orphans and children left without parental care? What is the situation on this issue at the regional level (at the place of work)?

- 12) What can you tell us about the practice of the decision-making process in child placement in Kazakhstan?
- 13) What would you change in the route of children to Baby Homes, orphanages, and other institutional organizations?
- 14) What would you change in the route of children to the family (adoption, guardianship, foster care)?
- 15) What do you think is necessary to ensure in order to increase the family-based placement of children in Kazakhstan?
- 16) What forms of alternative family do you know? What types of alternative families (adoption, guardianship, or foster care) are most used in your area, why do you think?
- 17) In your opinion, does the country's population know these new forms of placement of a child in a family such as a guest family and the two types of foster families (small and big)? Do you know what measures are taken by the guardianship authorities or the state to recruit candidates for foster parents?
- 18) In your opinion, what is the difference between the two types of foster families (small and big)?
- 19) In your opinion, what measures should be taken to improve the work of guardianship agencies, professionals working in orphanages (other institutions for children deprived of parental care) and organizations working in the field of protecting the rights of children?
- 20) What do you think of social service like training for foster families?
- 21) Do you consider it necessary to monitor and support all types of substitute families?
- 22) In your opinion, how can you provide an early diagnosis of family problems?
- 23) What forms of work with dysfunctional families need to be introduced/developed?
- 24) What do you think, at what stage, and on what conditions should the deprivation or restriction of parental rights be applied?
- 25) Do you consider it necessary and possible to return children to their parents? When is this possible? How is this work in this direction carried out in your region?
- 26) What do you think about the level of interagency cooperation in working with a child and/or family in a difficult life situation?
- 27) What guidelines/standards/rules are applied by specialists in working with a child and/or family in difficult life situations, including when it is necessary to remove the child from the family and place him/her in a different place?

28) What can you tell me about the role and work of a social worker in Kazakhstan?  
(support, advanced training, cooperation with colleagues from other  
departments/agencies)

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