

A Consultation Report on Child Protection and Foster Care in Kosovo

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A Report Concerning Revisions to the
Law on Social and Family Services,
with a Focus on Foster Care Provisions
and Capacity Building to Social
Welfare Structures concerning the
Specialization of Foster Care Families.



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The Organization for Children without Parental Care (OFAP) acting through its programme office in Pristina served as the Contractor for the International Consultants.

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Desk research was conducted in Autumn 2019 and a site visit to Kosovo was made in March 2020. A two-day meeting with key actors on child protection and foster care was held on 4-5 March 2020.

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Acronyms & Key Professional Concepts

CAC	Child Advocacy Centre's (also known as Forensic Interviewing Centre's)
Child Advocate	An independent child advocate charged with acting in the best interest of the child
CWLA	Child Welfare League of America (holds copyright on PRIDE Model of Practice)
CSW's	Centre for Social Work (social workers)
KOMF	Coalition of NGO's for Child Protection
MLSW	Ministry of Labour and Social Welfare
Multi-disciplinary Case Management Roundtables	A process whereby allied professionals come together to support assessment and planning in child protection and foster care.
National Panels	A panel conducted by MLSW (with best practice consideration for municipal/regional panels)
NGO's	Non-governmental Organizations
OFAP	Organization for Children without Parental Care
PRIDE	Parents as Resources, Information, Development and Education (a model of practice with a preservice training curriculum for foster and adoptive families)
Trauma Informed Practice	Understanding the impact of trauma on individuals and using appropriate interventions to guide healing.
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations International Children's Emergency Fund

A Consultancy Report on Child Protection and Foster Care in Kosovo

Executive Summary:

This international consultancy was arranged by the Organization for Children Without Parental Care (OFAP) in Kosovo to examine revisions of Law on Social and Family Services. This consultancy assignment was part of a more expansive project: “Development and strengthening of foster care services for children without parental care in Kosovo” and was financially and technically supported by United Nations International Children’s Emergency Fund (UNICEF) Kosovo Office. Beyond the examination of the Law on Social and Family Services there was a specific focus on foster care provisions and methods to build capacity in the social welfare structures concerning the specialization of foster care families in Kosovo. To this end questions guiding the work centered on what the gaps and barriers exist preventing a national system of child protection and foster care in Kosovo.

The methodology used in this consultancy report was desk research of available literature concerning the care and protection of children in Kosovo, as well the current family law. Expanded research in child protection/foster care was done to consider innovations to policy, programs, and practices based on evidence of good practice. The desk review served to compile and analyze existing and available data of relevance for children without parental care in Kosovo. The research was needed to assist stakeholders in Kosovo to make changes in policy and practice necessary to build capacity in fostering services.

In July 2018 Kosovo undertook the amendment of its Family Law (Law No. 2004/32 Family Law of Kosovo). These changes resulted in stakeholders responding to the changes concerning the proposed legislative changes and its impact on foster care (KOMF, 2018 date estimated).

Several specific research questions guided the broader research issues concerning gaps and barriers in child protection and foster care services:

What is the existing legislation, strategies, and administrative policies related to family-based care services/foster services?

What is the current professional and technical capacities of Center for Social Work (CSW) to perform their mandate in the protection of children in need of care and the placement of vulnerable children alternative family-based care services/ foster care?

What are the current permanency planning processes from family reunification to adoption?

Is there a national model of fostering services, including fostering older children, children with disabilities, ethnic minorities, and other special populations (trafficked children)?

What is the role and responsibility of the National Panel on Fostering and/or the need for other multidisciplinary processes in child protection and foster care (panels)?

What is the role of Ministry of Labour and Social Welfare (MLSW) in developing and monitoring child protection and fostering services?

The recommendations made in this report address these important questions and have given due consideration to the proposed changes in Family Law. The conclusion of the research resulted in the identification of seven priority areas based on international standards for the protection of children (United Nations Convention on the Rights of the Child (UNCRC) and UNICEF Guidelines on Alternative Care).

The international standards for protecting children were clearly articulated in 2019 by the United Nations General Assembly, November 2019, Resolution on the Rights of the Child which:

emphasizes the importance of growing up in a family environment and the right of the child to a family, highlights the rights of children with disabilities with respect to family life, opposes the unnecessary separation of children from their families and the unlawful or arbitrary deprivation of liberty of children, encourages efforts to reunify families where in the best interests of the child, and stresses that children should not be separated from their families solely due to poverty or lack of access to resources. and urges States to provide a range of alternative care options and to protect all children without parental care, among other recommendations.

Better Care Network, 2019

n/p

A child's right to grow up in a family is embedded **in the seven priority** areas found in this research.

1. Clarification of Roles
2. Training
3. Developing an Expanded Fostering Service System
4. Allied Professional Services
5. The Voice of the Child
6. Leaving Care
7. Continuous Improvement

These seven priority areas are discussed in detail followed by commentary on the proposed changes in the Family Law with the goal of a national system of child protection/foster care in Kosovo.

PART ONE: The Context of Developing a National System of Child Protection and Foster Care in Kosovo

Examining the Priority Areas

As part of child protection reform in Kosovo and the expansion of foster care it is necessary to have a national system of child protection/foster care. The research identified seven priority areas as foundational to achieving a national system.

Clarification of Roles:

The process of decentralization (2008) is an important part of the delivery of child protection and foster care services. Defined by law and protocols role responsibilities between the MLSW and the municipalities are defined. The Ministry of Labour and Social Welfare is responsible for all policy and administrative procedures to guide Child Protection Policies, Program and Practices including foster care. The CSWs are responsible for caring out the direct services in adherence to the law and national policy (Kahlert & Danaj, 2018).

Today there remain confusion in policy and practice delivery.

The *Law on Local Self-Government*, the *Law on Administrative Boundaries of Municipalities*, the *Law on Local Elections* and the *Law on Local Finance* outlined the structure and competencies of the municipal level. An *Action Plan for Decentralization* was issued in the same year and a *Strategy on Local Self-Government ...and* Despite the importance and the progress in the last years, the decentralization process is not completed yet, due to many political, legal, territorial, fiscal and organizational issues: an unclear framework of rules and administrative regulations, unable to support an effective division of competences between central and local authorities; a fiscal system that does not guarantee adequate transfers to the Municipality.

Buseline Report (2014 date estimated, p. 3)

According to Kahlert & Danaj (2018) “These uneven legal, fiscal and infrastructural developments have led to uneven service provision, resulting in negative consequences for the vulnerable populations (p.2).

Recommendation for Priority Implementation:

To meet the goal of a national system of child protection and foster care clarification between the MLSW and municipalities/CSW is needed. A national framework provided and regulated by MLSW with enough detail for the municipalities/CSWs to act on the care and protection of vulnerable children and families. MLSW is responsible to assure the best interest of the child is reflected in child protection policies and practices with children as carried out by CSWs.

Recommendation: Annual Child Protection and Foster Care Plan:

Municipalities should be required to submit an annual plan to MLSW concerning the recruitment, retention, and utilization of foster care services to MLSW.

Annual plans submitted to MLSW may include subcontracting with NGO's for services needed to assure the needs of child and families are being addressed in all areas in the development and use of alternative care.

MLSW shall provide a clear process for registering local NGO's for utilization by municipalities and standards for subcontracting services.

Municipalities shall maintain records concerning foster care inquiries, foster families assessed and approved for registration and number of children placed in foster care.

Placement of children in foster homes out of the municipality or into a small group homes shall require a waiver process from the MLSW. This placement waiver is to protect the right of the child to have access to their family and community.

Recommendation: Data management and Finances:

MLSW shall make grants available to municipalities to pay for child protection services including but not limited to fostering services and accountability of the funds provided by the grants shall be closely monitored by MLSW through review of placements and digital reporting systems.

MLSW shall through its budgeting process assure adequate funds for workforce development to hire qualified CSWs to meet the demands of child protection and alternative care services.

MLSW to make a budget priority adequate funds for CSW social workers to visit and supervise foster homes as well as mobile phone services to contact foster homes.

Recommendation: National Resources:

MLSW after consultation with the municipalities may enter into a contractual agreement with an NGO (such as OFAP) to create a national foster parent association to assist local municipalities in recruitment, support and retention of foster cares. (Continuation and/or expansion of current OFAP services or a similar NGO).

The scope of the contractual services provided after a mutually defined assessment of how an NGOs could provide the necessary support to municipalities in carrying out child protection and fostering services.

MLSW in its gatekeeping role needs to work with local municipalities where small populations exist to develop regional service agreements for all areas of child protection and particularly fostering services.

Recommendation: Standards of Practice

MLSW in its administrative role is expected to assure the CSW social worker under the supervision of the municipality conduct ethical practices.

MLSW as part of its oversight responsibilities with municipalities shall assure compliance with Kosovo Fostering Standards and related laws.

MLSW shall strengthen mandatory reporting processes for reported cases of child abuse and neglect to assure timely responses by the municipality to reports of suspected abuse, neglect, or domestic violence.

Recommendation: Training

All work in child protection and foster care services needs to be recognized as a specialty area. This does not exist in Kosovo. All social services are provided by CSWS with child and protection and foster care competing with other areas of need. Without specialization it will be unlikely to achieve the goal of a national system of child protection and foster care. “As governments undergo social service system reform, it is important to align training of the workforce with national priorities (Di Martino, Kulkarni, & Harvey, 2019 p.26)” MLSW and the University of Pristina are key actors in developing training standards for a national curriculum in child protection and foster care and their leadership is essential to shift CSW practice from that of a generalist to a specialized unit.

Recommendations for Priority Implementation:

MLSW working with the University of Pristina should establish a specialization in Child Protection to train CSW social workers. A national curriculum needs to be developed focusing on skills and competencies needed to fully implement child protection policy and conduct direct services. All curriculum should be trauma informed.

MLSW in designing curriculum needs to recognize the specialization in child protection and foster care/ adoption. Thus, those CSW social workers successfully completing approved specialized training should obtain a professional certificate in Child Protection certifying the social worker’s competency.

Training of foster parents is needed. MLSW needs to set a standard for training of foster parents (number of training hours needed annually). Training of foster parents starts at the time they inquire about becoming a foster parent. This may be with a curriculum like PRIDE (Parents as Resources for Information and Development and Education) or another similar curriculum. Foster parents need to be trained in their critical role working with CSW social workers to assure for the safety and permanency of the child.

Foster parents need on-going training for the duration of their fostering career which requires advanced curriculum development. MLSW is responsible for developing a national training

calendar for foster parent training. This should reflect the needs articulated in the CSW annual plan.

Allied professionals (Panels and Multidisciplinary Roundtable Members, etc.) need to be trained to work in foster care this includes panel members and multidisciplinary members. Cross training among community professionals assures consistent standards among allied professionals on these important topics.

Recommendation: CSW Workforce Specialization

As a specialization CSW social worker need to be provided with intensive training. The goal of this training should be a national certificate as a Child Protection Specialist.

Child protection workers need to be trained in specific techniques to investigate child abuse, neglect, and domestic violence.

Within specialization is the role of the foster care worker. The foster care worker needs to be provided additional specialized training in how to recruit, assess families for foster care, place children into foster care, manage care plans, and assist in permanency outcomes.

Adoption workers who assess families for their suitability to adopt require specialized training in adoption.

Kinship care givers should be assessed for their ability to provide for the care and protection of the child and social workers should be trained to conduct family friendly assessments.

On-going continuing education for CSW social workers needs to be conducted annually under the supervision of MLSW.

Recommendation: Foster/Adoptive Parent Training/Allied Professional Training

Foster and adoptive parents need access to training as well as all allied professionals (Panel and Multidisciplinary Roundtable Members etc.) with training content trauma informed and reflecting best practice standards.

Developing an Expanded Fostering Service System

It is imperative that Kosovo develop a system of foster care. Children in need of care and protection should be placed in the least restrictive care setting which has been assessed to meet the needs of the child.

When considering a system of care a robust fostering service needs to recognize the place of kinship care in the broader plan for alternative care. Kinship services exist both as an informal service where the family steps in when there is a need to care for its children. It also exists as a formal service for children who are under the care and supervision of CSW social workers. Formal kinship care recognizes families often need more than minimal cash assistance and may benefit from a full range of services such as those provided to a foster parent. When considering alternative care options, the important place of kinship care is consistent with the UN Guidelines on Alternative Care.

MLSW needs to develop a continuum of alternative foster care services to include:

Supporting families (utilization of respite or short break care foster care)

Emergency/crisis foster care,

General short-term foster care (under 6 months),

Provide long term care,

Develop therapeutic foster care with specially trained foster parents for children with special emotional, learning, or physical challenges, and families trained to work with ethnic minorities.

Within the above list is respite or short break care services that needs to be given attention as a family preservation service.

Foster parents should be considered for the adoption of their foster children thus administrative policy needs to be developed to guide CSW social workers in foster parent adoption. Foster parent adoption deserves immediate attention.

Older children have the right to be adopted as well. Recruiting families to foster and adopt older children should be a priority.

Recommendation for Priority Implementation:

MLSW in collaboration with the municipalities/CSWs should conduct a needs assessment to determine the extent and what types of expanded foster care services are needed. The review of needs should include a file review of all children currently residing in shelters to determine the type of foster home needed by the child. This should include reinstituting the Coordination Meetings with CSWs, NGOs, and Ministry for review of placements of children living in shelters whose permanency plan should include community- based foster care placement.

Recommendation: Processes Necessary to Expand Fostering Services

Conduct needs assessment for types of care needed

File review of children in shelter care

Protocols for referrals and placement of children/youth into therapeutic foster need to be developed by MLSW along with creating budgetary cost Centre's to pay for intensive services.

Train CSW and/or allied professional to work in specialized/therapeutic foster care.

MLSW needs to define and develop policy for respite and short-break care of children, particularly for families with children with disabling conditions.

Adoption policy revision by MLSW allowing for foster parent adoption and the adoption of older children.

Establish a public awareness campaign to recruit foster parents for older children, children with special needs, and ethnic minority children (Follow Me Home Campaign).

Allied Professional Services

Foster care belongs to the community and becomes high quality only when the benefits of the community are respected, such as providing health care, psychotherapy, educational tutoring etc. This includes a recognition of the talents in the community as allied professionals assisting members of the fostering team. But allied professionals need training in work in child protection and foster care. Allied professionals are resources as members of the panels and assist with the Multidisciplinary Tables. NGO's as a significant resource should also be recognized.

Recommendation for Priority Implementation:

A rigorous review of policy and practices to expand the use of panels is needed and should be conducted by MLSW. Expanding the use of panels at the municipal level should be considered to assess permanency plans for children in alternative care with oversight at the MLSW level. MLSW's panel should exist as oversight and a point of appeal on difficult cases where permanency goals have not been defined and carried out for a child. This shift will require clear definitions of panel responsibilities with clarity as to role responsibility between MLSW and CSW.

The authority for the panels to act should rest with MLSW with staff from the ministry having hands on oversight for the professional functioning of the panels. Among the duties of the MLSW workers would be examining the outcomes from panel meetings that is if the panel is meeting the national standards of protection and permanence for children. Therefore, MLSW becomes the gatekeeper determining if the system is working and if the system is in fact serving the children. This would represent a shift in practice by expanding the use of panels at the municipal level with MLSW having an oversight role. With this shift tracking data concerning time frames to permanency, number of moves experienced by a child, etc. can be obtained to determine the functionality of the system.

Recommendation: Role development of Allied Professionals

MLSW in their gatekeeping function supports local municipalities to assure standards for local panels and for Multidisciplinary team members. This includes the recruitment and appointment of members to Panels and Multidisciplinary Tables.

The case holding social worker is expected to be a CSW social worker, working with not only the Panels but also the Multi-disciplinary case management team and reporting outcomes of the Panels and Multidisciplinary Team activities to MLSW.

Work needs to be done to assure for role clarity with Consulting Bodies and Competent Body given their roles in the fostering system. The scope of their roles and duties needs to be explained in the flow of child protection services.

MLSW needs to provide clarity on the place of NGO's in providing contractual services in all areas of child protection particularly in relationship to Consulting Bodies and Competent Body.

MLSW will provide all allied professionals with mandatory national specialist training in child protection.

MLSW needs to develop a process to work with CSW in the recruitment and appointment of all relevant panels.

Recommendation: Innovation of Practice:

Innovation of practice is suggested with MLSW developing regional child Advocacy Centre's also known as Forensic Centre's, to help law enforcement in cases of child sexual abuse, sex trafficking, and other particularly complex cases of child abuse, neglect and domestic violence. Child Advocacy Centre's use a Multidisciplinary Team which considers custody options. These might include when a child might remain with the non-offending parent or placed with a kinship caregiver or into foster care. Each form of care addresses the safety and the therapeutic needs of the child.

The development of child Advocacy Centre's should be connected to trauma assessment work at the University of Pristina.

The Voice of the Child

In keeping with UNCRC the child and young person has the right to a voice in all proceedings either administrative or judicial. The expression of voice should use the international standards of well-being and the right of the child to have a family. To protect the voice of the child a trained child advocate to speak for the child in the administrative or judicial proceedings is needed. This is important when children are of a tender age, have experienced trauma or suffer from developmental challenges making the expression of their views unlikely.

Recommendation for Priority Implementation:

MLSW in respecting the voice of the child should develop a program for an independent child advocate to support the child to articulate their wishes in court and administrative hearings (Panel meetings/court hearings).

Recommendation: Child Advocate:

MLSW should develop a child advocates to provide services to children under the care and supervision of CSW's.

The Advocate working with the child will follow the standards implicit in of the best interest of the child at the fore of all communication and recommendations.

The Child Advocates would work at the local municipality level but would report to MLSW.

Leaving Care

MLSW in the review of existing policy needs to expand services to this population. Many of these young people have fallen through the gaps and experience severe personal and social problems needing services and support as they approach adulthood. Young people leaving care have the right to family-based services as well as the right to be heard.

Recommendation for Priority Implementation:

With proposed changes in the Civil Code there are opportunities to improve outcomes for this group of young people with the suggested expansion of age from 18 to 24, but specific services need to be designed to meet their unique needs.

Recommendation: Youth Panels:

MLSW is in a key position to give voice to this population by creating a national young person's advisory committee with representatives from municipalities or agreed regions. The National Advisory Youth Board should be managed by an MLSW social worker. Through the Board young persons will be given the opportunity to report experiences, gaps in services, and comment on local services and national policy.

Recommendation: Professional Preparation for Working with Youth in Transition

MLSW as part of its comprehensive national training plans to improve foster care needs to develop specialized training for CSW social workers in how to work with young people transitioning from alternative care to adulthood.

MLSW working with other Ministries (Health, Education and Finance) need to develop the other relevant services for this population.

Young people have the right to stability of placement and should not be forced to leave a placement at age 18 only to be released on their own to the community or placed in an institution. MLSW needs to develop a range of services to meet the needs of this group of young people.

Recommendation: Examples of good practice:

Among other services for MLSW to consider through policy and practice revision require the allocation needed funds to conduct:

Family finding for birth family members where separations have occurred.

Provide group skill classes to help young people learn to navigate life as an adult, which should include managing money, resource finding, job seeking, and use of public transportation

Provide access to digital services/technology necessary to function in society.

Continuous Improvement

MLSW is responsible for the continued improvement of child protection/foster care in Kosovo. Continuous improvement is dynamic and reflective. Quality improvement is dynamic and evolving based on new information/new evidence about what works, and the success of policies, practices, and programs currently in use. MLSW's role is to provide the leadership necessary to keep pace with changes needed to improve child protection and fostering services.

One of the key steps in quality improvement is its reflexive nature as it evaluates lessons from the field through interviews with foster parents, children, birth parents, and kin caregivers as well as allied professionals concerning their perception of services. It is also data driven using reports looking at benchmarks for permanency (how many days of care, how many adoptions, numbers of reunifications, etc.).

Recommendation for Priority Implementation:

MLSW in its role should tend to an annual reporting process to evaluate the current state of child protection and fostering services in Kosovo. All stakeholders need to have the opportunity to

participate in evaluating the effectiveness of the national system of child protection and foster care with opportunities to suggest changes.

Recommendation: Data Driven

MLSW in collaboration with the CSWs shall develop a continuous improvement process driven by quantitative and qualitative data. The review of data and other supporting information should guide MLSW in helping CSWs with their annual quality improvement plans, measuring what is going on locally against the national system of services and standards.

Based on data from annual reports the training of staff at all levels of the child protection system/fostering services will need on-going support and training to achieve improved outcomes. It is not a one and done approach. Therefore, as part of its annual plan MLSW will evaluate the effectiveness of training needs and support with specific plans to address future training needs.

Recommendation: Technology

The use of technology in care and protection should be part of the on-going discussion of services. There are many opportunities for innovation when combining the power of technology with face to face services and processes. For example, this can be true in data management, training opportunities, supervision of foster parents and specialized consultancy through tele-experts.

MLSW should strengthen the current mandatory reporting system by developing a call Centre and a system to track responsiveness to community reports concerning child abuse, neglect and domestic violence.

SUMMARY OF KEY FINDINGS FROM DESK RESEARCH:

The conclusions made in this consultancy report represent integration of the thinking of many experts and groups motivated to create a family focused and child centered system of child protection and foster care in Kosovo. The desk research was then synthesized into the seven priority areas heretofore discussed.

Regional Context of Alternative Care:

To assess Kosovo progress in developing a national system of child protection and foster care it is important to understand how Kosovo relates to other countries experiences in care and protection of children.

Euro child (2017) conducted an analysis of 17 countries in Europe in relationship to their experiences with alternative care. Euro child's snapshots from several countries in the Kosovo region share many commonalities relative to the development of foster care.

The following countries embarking on the development of foster care were determined to relevant for Kosovo:

Bosnia/Herzegovina developed new legislation: "The Law on Foster Care (2017) concerning improving foster care services. It was noted that training of foster parents has improved since the passage of this law. "Efforts of both entities to introduce mandatory training for foster parents, and training of professionals in foster care are presented in a form of implementation of PRIDE training – a model of training for foster parents and adoptive parents. In 2018, 90 existing and new foster parents were trained using this model. Additionally, a group of 23 professionals undertook this training and became national trainers (Fact Sheet, 2018)."

Bulgaria has embarked on a plan for deinstitutionalization, but progress has been slow. 49% of children under age 3 are vulnerable and remain in institutional care. Concerns over quality of alternative care was noted (Fact Sheet, 2018).

Croatia: The development of alternative care was established through legislation in 2006 but progress has been slow. Adoptions declined in 2017. "Although foster care placements have increased in Croatia, there is still insufficient number of foster families across the country. Support services for foster families are rare or non-existent in some areas (Fact Sheet, 2018)."

Estonia use of foster care is underdeveloped with only 11% of children in foster care. There has been a focus on the development of small group homes, but the quality of care varies greatly. Training of care givers was key to improvement of the conditions in the small group homes. "To increase the number of children in foster care and to improve the quality of care provided, the countrywide register of foster families is expected to be launched. The social insurance board will ensure the quality of foster care across the country by providing assessment and registration to all foster careers. In addition, local authorities will have to support foster parents either through material support or through remuneration.

Moreover, an awareness raising campaign started in November 2018 with the aim to recruit more foster parents. As part of the campaign, fifteen theatre plays will take place across Estonia, explaining the needs of children without parental care and various options how to support them (Fact Sheet, 2018)". Professional foster care services were important in the development of alternative care (Fact Sheet, 2018).

Hungary: 36% of children entering alternative care do so because of poverty and social exclusion (ethnic minorities). Hungary has developed small group homes, but staff is poorly trained and there is a high turnover of staff. National government seems motivated to replicate the small group home model. Hungary needs to develop specialized services for children with disabling conditions. "Although foster care is widespread – over 60% of children in alternative care lived in foster families in 2016, their support and remuneration is very limited. Often the allowance provided for children is not covering even the basic needs of children (Fact Sheet, 2018)"

Moldova: Moldova has experienced considerable success in the closing of institutions, but the development of foster care still lacks. Regional and local offices are key in the delivery of foster care services. "To ensure that the basic social services package in the central budget includes foster care provision at the local level. Efforts to diversify foster care services must be continued by increasing and varying monthly salaries for foster career's and child allowances for children aged 0-3 and children with disabilities (Fact Sheet, 2018)".

Romania: Romanian government has demoted deinstitutionalization as a priority with poverty as the main reason children enter care. In addition, risks for placement includes "the lack of material support, the lack of accommodation, the lack of parenting skills, domestic violence, abuse or neglect (Fact Sheet, 2018)", thus pointing to the need for structural change in legislation on how to best support families at risk of children entering care. Deinstitutionalization is going forward with the target of closing 50 institutions (Fact Sheet, 2018). It is noteworthy that children with disabling conditions are vulnerable for placement. "However, the number of foster career's must be further increased and kinship care placements must be adequately supported due to closure of many institutions and low capacity of the Child Protection Directorates to provide services for children coming from institutions. While prevention and family support services exist, access to them remains very limited. There is uneven distribution of services throughout the country, with most of them being concentrated in or around cities or richer areas of the counties (Fact Sheet, 2018)."

Serbia: "It is a worrying fact that the new draft Law on Social Protection, introduced in July 2018, proposes that settings for children and young people should accommodate up to 25 users. Such provisions are unacceptable, primarily because of the high probability for additional admissions to residential institutions (Fact Sheet, 2018)." In Serbia 80% of the children in institutional care had disabilities. Serbia has developed foster care but there is inadequate budgetary provisions to meet the needs of families and children, and particularly children with disabilities and Roma children (Fact Sheet, 2018).

The review of the country snapshots, identified common thematic areas and many are relevant to Kosovo:

- Recruitment of foster parents,
- Training of workers and foster parents,
- Full implementation of policy and legislation for alternative care,
- Gatekeeping for quality standards,
- Funding of foster care services,
- Support and retention of foster parents.

The country snapshots noted challenges but provides a context for change for Kosovo. A recent Better Care Network Newsletter remarked how child welfare reform has happened in Moldova (2019, n/p). Key findings include: shared vision, collaboration to mobilize resources and know how, independent gatekeeping to prevent separation, prioritize family care services, divert funds from institutions to family-based solutions, avoid building smaller institutions, and invest in community social workers (Better Care Network, 2019, n/p).

Moldova's experience with reform aligns with the seven priority areas determined to be important to Kosovo and also regard theory of change also at work in Kosovo.

The Kosovo Context on Child Protection and Alternative Care

Based on the desk research there is ample understanding of the gaps and challenges for Kosovo to move forward to increase the capacity of child protection and community based alternative care. This conclusion comes from the substantive previous research on alternative care in Kosovo. For example, several "situational analyses" were found to be important.

KOMF- Coalition of NGOs for child Protection (2014) Take me home! Short Analysis on the Advancement of the Protection of Abandoned Children in Kosovo (0 - 3 years Old).

SOS Children's Villages International (2013). A Snapshot of Alternative Care Arrangements in Kosovo

UNICEF & CELCIS (2015). Strengthening family-based care, strengthening social work: a situational analysis of foster care in Kosovo

UNICEF (2017), Situation Analysis of Children with Disabilities in Kosovo.

The KOMF report on changes in Civil Code serves as an example of the need for changes in family law as well as practice approaches.

Other working groups examined systemic processes. These reports and the findings of working groups raised questions about child protection: what the core definition of child protection was, how to design quality programs and the mechanisms for the delivery of services. The reports noted the importance of building an integrated framework for child protection and foster care.

More specifically, the situational analysis and work groups discussions centered on these issues:

What are the current gaps and needs to improve alternative care services?

A variety of alternative care programs need to be developed to transform care from institutional care (may include over reliance on small group homes).

Expanding alternative care programs to:

- supporting families (utilization of respite or short break care foster care)
- emergency/crisis foster care,
- offer general short-term foster care (under 6 months),
- provide long term care,
- develop therapeutic foster care with specially trained foster parents for children with special emotional, learning, or physical challenges, and families trained to work with ethnic minorities.
- Assessing and expanding the important role of kinship care.

Two other situational analysis warranted a closer look-SOS, International (2013) and UNICEF/CELCIS (2015).

In 2013 SOS Children's Villages conducted a snapshot of alternative care in Kosovo. This snapshot discussed how fostering services were delivered.

Foster families are selected, evaluated and given training by the Centre for Social Welfare; they may provide short-term care (up to six months) and long-term care (longer than a year), although in most cases children who need care between six months and a year they still remain in the foster family until their status is resolved. Kosovo has a network of 40 families who are well prepared to foster children. In exchange, these families receive a fee of €150 per child per month. There is broad consensus that such a network is much better than the institutionalization of children.

SOS, International, 2013, p. 6

The notion of specialized child protection units at the municipal level is seen as optimal and was concluded by the SOS International (2013) report. The units (*child protection*) exist according to SOS International (2013) but lack "formalization" (p.6). A dedicated case manager was also recommended (SOS, International, 2013). There is a need of procedural manuals and protocols (SOS, International, 2013). The operationalization of quality care, gatekeeping, care planning, and permanency review were noted but not necessarily fully in place (SOS, International, 2013).

SOS, International concludes "There was no functioning and transparent system of inspections: these standards will also serve as criteria for licensing Family and Social Service providers in order for the Ministry of Social Welfare to hold data on the regularity of inspections or their findings (SOS, International, 2013, p. 7)" as system is needed.

SOS (2013) noted that foster parents were well trained but there was no national training curriculum in 2013.

Since the SOS International's (2013) report, foster care has improved in Kosovo (2019) with foster parents being paid 250 euros per month per child and an enhanced fee of 350 euros per month for a child with disabilities. Kinship careers are paid 100 euros per month. Medical fees are reimbursed. However, kinship career's frequently raise the concern of not receiving sufficient funds to meet the needs of their wards, particularly when the child has chronic special needs (UNICEF, 2017). Today, resistance to foster care remains with seemingly, small group homes being preferred by CSW social workers.

In 2015 the Centre for Excellence conducted a situational analysis of foster care in Kosovo. The charge of the work by UNICEF & CELCIS was to "identify gaps in in the systems as bottlenecks and weaknesses in the operation of care planning and this use of alternative care. (Milligan, 2015, p.5)"

Key concerns from the UNICEF & CELCIS (2015) report included:

Lack of specialization of the CSW social workers providing foster care services, subsumed within this identified issue is the need for a national model of training CSW social workers in alternative care (assessing foster parents, supervision of the foster care placement, development of care plans)

Lack of a national system of foster care services to replace what has been a rather ad hoc approach to foster care services.

Role conflict between MLSW and CSW as a result of decentralization raising questions involving direct services as well as budgetary concerns.

Lack of a robust plan to recruit and retain foster parents, as well as underutilization of the registered foster cares.

Lack of recognition of the place of kinship career's in the broader plan for alternative care.

Lack of monitoring foster parents and the placement resulting in foster parents not receiving support and supervision as required by Minimum Standards.

Foster parents not advised of their rights. (Milligan, 2015)

To date many of the issues identified by SOS International and UNICEF & CELCIS remain unresolved with many municipalities just "not getting started with foster care" (Milligan, 2015, p. 23). In fact, there has been a reduction of foster career's in Kosovo in 2018-19.

In 2009 the Kosovo MLSW commenced a process of decentralization resulting in a broad mandate for direct social service delivery to occur at the municipal level. The process of decentralization finds conflict between CSW and LMSW around role, responsibility, gate

keeping, consistent national standards, training, and budgetary planning. This area of conflict was one of the priority areas.

At the CSW level there is the reality of practice:

The pathway to translate into realities is confronted with serious political, social and economic challenges. Also, the current political context reveals that the change in the development assistance landscape is complicating the growing inequity and youth unemployment in Kosovo.

UNICEF, 2017 p. 29

CSW social workers are burdened by a broad scope of functions from cash assistance for families of poverty, services to families with individuals with disabilities, and services to the aging, among all of this are child protection activities. CSW social workers are not adequately resourced to carry out full child protection duties such as recruitment and development of foster care services. CSW social workers are not trained nor viewed as specialists. This specialization is widely recognized as necessary to improve the quality of services for children in need of protection. This too was seen as one of the key priority areas.

Poverty and unemployment exist nationally and in the shadows are a lack of trust between ethnic minority sectors in Kosovo. The need for inclusion and improving conditions for vulnerable populations has been noted such as UNICEF's (2017) Situation Analysis of Children with Disabilities in Kosovo. All children in Kosovo are entitled to equal protection under the law. This is not always the case as children with disabilities and ethnic minority children often are unaware of their rights or their concerns are not taken seriously.

Further children with disabilities should be able to report, anonymously, on instances of abuse/neglect, ensuring that their reports are taken seriously, and complaints are followed through. In addition, Violence Prevention activities should be continued and expanded to educate professionals and the general public on the right to protection of children with disabilities. Ensure all children and their families, particularly those in vulnerable or disadvantaged communities (i.e. Roma, Ashkali and Egyptian communities) are aware of their right to protection and of the ways in which they can claim their rights.

Hunt & Belegu, 2018, p.23

In addition to ethnic minorities and children with disabilities and children made vulnerable by virtue of sex and labour trafficking should be afforded care and protection. The rights of this group as well as children at other points in the child protection system led to the conclusion of the need for a specialized Child Advocate.

MLSW is charged with the duty to provide the overarching guidance and resources needed by CSWs in the work in child protection/foster care. It is the duty of the MLSW to develop specific standards and provide gate keeping in child protection. As a result of the lack of clarity of roles, the need for training, and significant need for revisions of policy MLSW struggles to overcome resistance in the implementation of a national system at the municipal level.

Budgeting process and standards was found to be particularly frustrating (KOMF, 2016, estimated). Problems in financing is a barrier to developing integrated child protection and foster care services necessary for a uniform national system.

Despite the decentralization of social services on 1 January 2009, municipalities have made little concrete action to allocate the budget in order to protect the children within their municipality. Lack of a grant for social services in municipalities disables providing quality service for minimum protection. As such, this situation prevents children from protection and realization of their rights¹. This disables municipal institutions and contracted organizations in fulfilling their mandate and obligations under the legislation. If we continue with this form of financing, the situation can deteriorate to the extent, where we bring CSW and non-governmental organizations entitled to provide services in nonfunctional state, and by not having sufficient funding will not be able to provide social services.

(KOMF, 2016 estimated, p. 5)

Budgeting, financing and contracting for services might have been its own priority area but it was determined the matter of providing adequate funds was part of how MLSW and municipalities function together to assure for the provision of child protection and foster care. What is important to remember is: “Municipalities must support MLSW to create a sustainable and adequate financing plan for social services” (KOMF, 2016 estimated p.14).” Municipalities need to submit an annual plan to MLSW that is data driven and aligns with local needs for the care and protection of “all” children.

It is worth mentioning four additional reports and their contributions:

Financing Social Services in Kosovo (KOMF, 2016, estimated) stressing the need for clear standards in financing using a transparent and timely budgeting process.

The Legal Framework for Child Rights in Kosovo (UNICEF, 2014). Embodied in this report was not only the need for revisions in family law but also placing the law in the context of a process of service delivery. “A legal framework is not an end in itself, of course. Laws are of little use if they are not implemented adequately, and laws that cannot be implemented properly, due to financial or other objective constraints, are not good laws. A good law must address the most significant problems to be solved and must be based on a realistic assessment of the resources that are needed to do so, and available (UNICEF, 2014, p. 158.”

Decentralization of Social Services in Kosovo – Policy Challenges and Recommendations (2018) authored by Rahel Kahlert and Sonila Danaj as a policy brief for EUROPEAN CENTRE FOR SOCIAL WELFARE POLICY AND RESEARCH POLICY BRIEF 2018/5 concluded the legal framework for decentralization has been achieved: “Legally, decentralization has been achieved, but funding and infrastructure are lagging as not all municipalities are assigning sufficient funding to CSWs or do not ask about their particular needs (p.8).” A process for systemic planning is necessary to achieve the goal of a national system of child protection and foster care.

Guidelines to Strengthen the Social Service Workforce for Child Protection (UNICEF, 2019) concludes with the importance of child protection being an area of specialization with a unique social role in delivering services to protect vulnerable children and families. This specialization requires specialized training which may draw on the expertise of the University in designing and carrying out curriculum to support the competency of the social services workforce.

Each of these four reports have their own perspective (decentralization, workforce, finance, the law) regarding change but each stress the importance of an integrated approach needed for a national system of child protection and foster care and relate to the seven priority areas.

PART TWO: Review of Family Law

In July 2018 Kosovo undertook the amendment of its Family Law (Law No. 2004/32 Family Law of Kosovo). These changes resulted in stakeholders responding to the changes concerning the proposed legislative changes and its impact on foster care (KOMF, 2018 date estimated). When the Amendments to the Family Law are enacted it will also be necessary to for changes in administrative policy (sublegal directives) to guide child protection and foster care.

REVIEW OF FAMILY LAW AND RECOMMENDED CHANGES

The draft law on Amendments and Supplements to Law No. 20004/32 Family Law of Kosovo is intended to clarify and strengthen policy related to children in need of protection as well as to clarify roles and responsibilities, including the adoption of children and the use of alternative care. Changes in the family law in Kosovo must be predicated on improving the quality of care in line with the UNCRC as well as international law and evidence on national standards for the care and protection of children. Efforts to create this integrated change in family law was recommended in UNICEF's Report: "The Legal Framework for Child Rights in Kosovo (2014). This consultancy report concluded the need for codification of family law to reduce confusion.

Comprehensive child rights laws provide an opportunity to incorporate the Convention into the national law in a way that will have the maximum possible impact, while giving the legislature an opportunity clarify the meaning of the rights and principles contained in the Convention and to add any other rights that it considers consistent with the needs, culture and aspirations of Kosovo and its communities. A law of this kind must be carefully drafted to ensure that it fills gaps and complements other legislation, rather than creating conflicting norms and causing confusion amongst those who apply the law.

UNICEF, 2014, p.156

KOMF (2018 date estimated) brought together a cross section of stakeholders in child protection and foster care to analyze the proposed changes in family law. Their work stressed the importance of clarity between central government and the municipalities using human rights standards.

accordance with the rights and responsibilities of the central and municipal level in accordance with the applicable laws that define in detail the specific role and responsibilities of the social services and central level services in particular such as the Kosovo Family Law No. 2004/32, Law on Social and Services, No. 02/L-17, for amendments and supplements of the Law no. 04/L-081 on Social and Family Services. (p.1)

The spirit of UNICEF (2014) and KOMF (2018, date estimated) was given due regard in the Desk Research Commentary related to the changes in the Civil Code. In addition to the changes in the Civil Code the law needs to be strengthened by sublegal directives (administrative policy) to guide practice in child protection and foster care.

PROPOSALS AND REASONING ON THE FAMILY PART (CHILD PROTECTION) DRAFT CIVIL CODE

(Proposals for amendments and supplements to the Law No. 2004/32 Family Law of Kosovo) Pristina, July 2018. Assembly of the Republic of Kosovo;

Based on Article 65 (1) of the Constitution of the Republic of Kosovo;

Approves: **DRAFT LAW ON AMENDMENTS AND SUPPLEMENTS TO LAW No. 2004/32**

FAMILY LAW OF KOSOVO

Article 1

Purpose

The purpose of this law is to amend and supplement articles... of the Law No. 2004/32 Family Law of Kosovo (hereinafter: The Law).

Article 2

Definitions

1. The expressions used in this law have the following meanings:

Adoption – is a special form of protection of a child without parental care, through which the child is enabled to change its family status from his biological parents to the future adopting parent or parents;

Family Shelter (foster care)– is an alternative form of social protection for children without parental care, mistreated children, neglected children and for children whose parents for some reason are prevented from exercising their parental rights;

Family Shelter with Relatives (kinship care)– means family-based child sheltering in a family-related family;

Family Shelter in Another Family (foster care)– means sheltering a child in an alternative family that is not family related;

Specialized Family Shelter (specialized foster care)- means sheltering parents who are selected, trained, approved, monitored, regularly supported and specifically trained for children: for newborns and infants; children with disabilities; victims of domestic violence; abused; mistreated; neglected, unaccompanied; victims of trafficking in human beings (without riskiness); whose parents are prevented in exercising their parental rights. There must be monthly financial support for the children and foster families.

Residential Shelter – (residential care) is a form of protection of children without parental care which includes provision of specialized services in any type of group environment. Residential care is considered as a formal form of care, regardless of whether it is provided by public institutions, public/private institutions or by the civil society sector;

Community-setting Shelter – (Community based care) Community-setting shelter is an organized, open-type care, which includes integrated and systematic psycho-social care services.

Independent monitored living – is a form of alternative care as a continuation of support for children that were part of one of the alternative care forms in order to strengthen their skills for an independent life in a safe and supporting environment;

Desk Research Commentary

Per the Administrative Instruction (MLSW) No, 02/2016- For the Regulation of Family Housing in Kosovo (1.10) foster families is defined as alternative families that are selected, evaluated, trained by municipal CSWs, and approved by the Panel which operates within the Department, which are available for the care of children without parental care for a period of time (Abrashi, 2016, p. 4-5). Within the draft of the Civil Code foster care is found in Family Shelter in Another Family 1.4 and Specialized Family Shelter (1.5).

In addition, kinship care is found in Family Shelter with relatives (1.3) of the draft of the Civil Code. Best practice calls for the use of kinship care. Kinship care is culturally relevant given the prevalence of large extended Muslim families. Use of kinship care needs to be a significant resource when expanding alternative care for children.

When children cannot remain safely with their parents, placement with relatives is preferred over placement in foster care with nonrelatives. Caseworkers try to identify and locate a relative or relatives who can safely care for the children while parents receive services to help them address the issues that brought the children to the attention of child welfare. Placement with relatives—or kinship care—provides permanency for children and helps them maintain family connections. The involvement of the child welfare system in kinship care varies...from case to case, depending on the children's age, safety needs, legal custody, and other differences.

Child Welfare Information Gateway, 2016 p. 2

Due diligence should be undertaken to identify proper kinship careers with CSW social workers documenting efforts to identify appropriate kinship careers with set time limits for the search for kin. This will require a new administrative policy on identification of kinship careers.

Cash assistance to kinship careers often does not meet the needs of the child particularly in the case of the care of children with special care needs (UNICEF, 2017). A policy to establish a sliding scale for cash assistance for kinship care is needed.

Clarity of definitions of alternative care (foster care and kinship care) is needed to codify definitions across all administrative policy and legislation.

Foster, adoptive and regulated kinship careers are to be assessed and found to meet the national fostering standards for the care of vulnerable children. There are key issues that CSW social workers or state approved NGO social workers should address when evaluating the family's suitability to foster, adopt, or be regulated as a kinship career. The applicant family should provide evidence (proof) of key documents such as birth certificates of all family members, marriage certificates, divorce certificates, proof of financial stability (bank documents, loans for property or other debt), death records for any past member of the household and proof of health as well as referee statements. By securing these documents the worker has evidence to assess the veracity of the applicant's ability to safely care for children.

CSW social workers should be trained to interview prospective families. There are key areas the social worker should ask when engaging family members in the foster family assessment process:

Attitudes and beliefs regarding foster care and adoption issues

Motivation to foster or adopt - the applicants' ability to understand appropriate and inappropriate reasons for adoption and foster caregiving with anticipated outcomes as determined by two basic questions: Why do you want to adopt or foster? And why do you want to adopt or foster now?

Personal and emotional maturity

Stability and quality of interpersonal relationships -the applicants' ability to develop, maintain, and sustain healthy interpersonal relationships. In a two-parent home, the relationship of the applicants must be strong enough to withstand the demands of parenting.

Coping skills and history of stress management -The ability to acknowledge the impact trauma has on their life

Level of openness in family relationships

Parenting skills and abilities

Ability to empathize with others

Understanding of entitlement issues - the adoptive/foster parents' ability to accept they have the full rights and responsibilities to parent a child not born to them. Feeling entitled allows adoptive parents to lovingly discipline, to make important decisions, and to intervene on behalf of their children. Entitlement also refers to the foster caregivers' ability to believe they have the right and responsibility to facilitate age and developmentally appropriate experiences for children and youth in care. They acknowledge their duty to make reasonable and prudent decisions that enhance development and support normalcy.

Ability and willingness to take a hands-on parenting approach – the applicants’ ability to model (vs. verbally instruct) appropriate behaviors for the child and to use concrete behavior management techniques of a more cognitive nature. Parenting children with a history of trauma often requires close supervision, interactive instruction, modeling, redirection, and purposeful play to build attachments. Foster parents need to manage behavior exhibited by the child with sympathy and understanding and receive the necessary training to avoid the use of corporal punishment.

Family functioning

Good moral character a person without criminal convictions or history of substance misuse, mental illness that has not been addressed through rehabilitation with documentation from approved professionals.

Ability to make and honor commitments-work cooperatively with social worker, other professionals, birth family, assist in care planning by maintaining information needed for care plans.

Cultural and religious affiliation and/or spiritual belief

Living arrangements to accommodate additional family members

Institute for Human Services for the Ohio Child Welfare Training Program 2015. p, 7-8

As the CSW social worker meets with the prospective family and reviews evidenced based documents, the social worker needs to determine if the family has the skills and competences to care for a child in need of care, not all applicants should be approved.

The family assessment is presented to the fostering panel for approval to be placed on the registry as an approved foster family. At this time the panel is a responsibility of the Ministry but a compelling argument may be made to create regional panels with the Ministry providing oversight of the permanency activities at the local/regional level.

During the assessment process the prospective family should attend preservice training to assure their readiness to care for a child¹.

Some standards are addressed in Kosovo’s current standards for foster care (Specific Minimum Standards), but these Standards need to be expanded and framed in evidence-based assessment process. This needs to include on-going supervision of foster homes for compliance with the Minimum Standards.

Criteria concerning the rights and responsibilities of foster parents needs clarity. A foster parent handbook needs to be developed and all prospective foster parents should be provided with the handbook during the assessment and training process. (See sample handbook: Illinois

¹ This might well be the use of the PRIDE curriculum.

Department of Child and Family Services: Foster Family Handbook, 2014). Anecdotal evidence (March-April, 2020 provided to international consultants) noted significant problems for foster parents seeking emergency medical care for children. This is a statutory and practice issue that needs legal and administrative attention.

CSW social workers need specific training on assessing families to provide alternative care with an emphasis on consistent implementation of Minimum Standards. In fact, work in child protection and foster care needs to be seen as a specialty area in the work of CSWs.

The recognition of Domestic Violence/Intimate Partner Violence prevention could be served by specialized housing for parent and child(ren) noted as safe house and/or transitional housing and is defined in the draft of the Civil Code in section 1.7 Community Setting Shelter.

The need for safe, affordable housing for victims of domestic violence is well documented.¹ without access to housing options, women fleeing from abusive relationships are often forced to live in substandard conditions or return to their batterers. While many battered women need only short-term, emergency shelter, others face numerous barriers to achieving independence free from the abuse and require long-term housing assistance and a variety of support services. Recognizing the housing needs of battered women, many domestic violence service providers now offer longer-term, transitional housing to the women and children they serve.

Correia and Melbin, 2005, p.2

The needs of victims, both adults and children, of domestic violence/intimate partner violence needs to be acknowledged. If the non-offending parent can safely protect the child, this parent should be afforded safety in housing separate from the offender.

Young person's aging out of care services need emotional, physical, and financial support from municipal CSW services. Section 1.8 in the draft of Civil Code notes Independent Monitored Living, recognizing the previous placement of the young person in alternative care and the need to strengthen the young persons' skills.

Research has noted the negative effect of lack of services for these young people.

Exiting foster care and facing adulthood without strong connections to families, school, employment, and community places young people at risk in both the short and long term. High rates of housing instability and homelessness exacerbate the problems, creating significant obstacles to healthy development and self-sufficiency in education, employment, and physical and mental health.

Fryar, Jordan, DeVooght, 2017, p.35

The International Foster Care Organization and the Jim Casey Youth Initiatives are examples of empowering youth to influence policy and practice. Lessons learned from both organizations should provide Kosovo with a new conceptual framework for youth engagement (International

Foster Care Organization, 2019, Jim Casey Youth Initiatives, 2020) by developing a national youth board.

2.2 In the work of the courts and of the public administration bodies which conduct proceedings deciding directly or indirectly on the rights of child, primary is the protection of child's rights and its welfare;

2.3 The child enjoys the right to develop its personal relations with both parents, unless this is in contradiction with the wellbeing of the child;

Desk Research Commentary

Article 3, subpoints 1-2.3 constitution standards reflected in the UNCRC where the interests of the child should reflect the child's right to be heard.

Article 12 of the Convention, states that: 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or appropriate body, in a manner consistent with the procedural rules of national law.

Lansdow, 2011, p.11

The process giving voice to the child needs to be formalized either through legislation, administrative or court rule for the child to express their views, which might best be addressed through an independent Child Advocate. By creating the role of an independent Child Advocate within the changes in the Family Law the rights of the child are not a value guiding the law but becomes a practice tool to assure the best interest of the child.

When the court takes legal custody of the child in care and protection proceedings the rights of the parents are suspended and the court acts as "parents in loco". The rights of the child shall be defined using the UNCRC and related best interest standards. As noted, children under supervision of the court are to have the opportunity to express their views on their future. Often the child needs the assistance of a Child Advocate. Children of a tender age may not have the developmental acuity to fully express their views and others may have been traumatized by one or both parents. The phenomena "Stockholm Syndrome" may be expressed by the child. The Stockholm Syndrome occurs when a victim begins to identify and have affection for their captor/perpetrator. Children who have been neglected and abused, particularly sexual abuse, are known to express conflictual statements of loyalty and fear. The psychological impact of Stockholm Syndrome on the victim needs understanding with respect to the wishes of the child (Julich, 2005). A trained Child Advocate could assist in the communication of the views of the child in the context of their abusive experiences and their feelings of loyalty and fear.

The child's rights need to be protected and articulated by a trained Child Advocate in other areas. Among the rights to be protected is family continuity through contact visits when a child is in alternative care. Children should be afforded visits as are developmentally appropriate. For infants and young children multi-weekly contact is preferred to assure the attachment of the child to the parent(s). Children needing protection in cases of severe abuse (sexual abuse) should have contact visits only if the visits do not harm the well-being of the child. When appropriate contact visits need to be supervised.

Practice guidelines need to be developed for contact visits to address the developmental needs of the child as well as the child's history of abuse and neglect.

3. In Article 3 of the Law, sub-paragraph 2 becomes sub-paragraph 3 to which new sub-paragraphs 4, 5 and 6 are added as following:

“4. Courts and administrative authorities in all proceedings, involving family-legal issues related to children, must act promptly to enable concurrent protection of children's wellbeing”;

Desk Research Commentary

In the United States and the UK regular administrative and court reviews of child protective proceedings are held. In general, there is a timetable for judicial and administrative review. For example, in many jurisdictions in the USA the first hearing once a child is placed in alternative care the hearing is held within 48 hours of custody. This is a preliminary hearing where a temporary order of custody and visitation is entered. A full hearing is held within 3 to 6 months. At this hearing the court reviews the evidence found at the time of placement and what is expected of the parents for family reunification to occur. An order of continuance of placement and visitation may be made by the court at this hearing with regular judicial reviews every 6 months until a decision of permanency is made for the child. In addition, administrative reviews are common in the UK and are held by an independent reviewing officer. These reviews are held every 3 months. A “child friendly advocate” (Guardian Ad Litem, community advocate, an attorney) represents the interests of the child at all judicial proceedings in the UK and USA.

In keeping with UNCRC the child and young person has the right to a voice in all proceedings either administrative or judicial should use the international standards of well-being and permanence. These standards need to be operationalized in accordance with the rights and needs of the child by having a guardian or advocate speak for the child in the administrative or judicial proceedings.

As the Civil Code is amended a schedule for regular administrative and judicial review needs to be developed as part of the rules of the Court or by MLSW. MLSW needs to function as a key gate keeper to assure the protection of the rights of the child. This is important as the child has

the right to permanency be it long term foster care, adoption, kinship care, reunification, or independent living services. Currently, CSWs have extensive authority in cases of child protection and foster care but there is weak oversight and the experiences of vulnerable children vary greatly throughout Kosovo. All children in Kosovo and particularly those with special needs have a right to care and protection. There is no national system of child protection and foster care. This needs statutory and administrative attention to assure the rights of all vulnerable Kosovo children.

In Kosovo, some rules exist in juvenile proceedings as expert reports are to be completed within 21 days. Expanding the role of the Child Protection Judges needs careful consideration. It is important to map processes to determine where gaps and barriers prevent timely permanency planning services to determine what is in the best interest of the child.

“5. Before anyone else, parents have the right, obligation and responsibility to live with and take care of their child, whereas assistance and intervention is provided only when necessary.”

“6. Parental right belongs to the mother and father and it is exercised jointly to the best interest of the child.”

Desk Research Commentary

In addition to the child’s right to be heard is making decisions based on the best interest of the child. There are many perspectives on what constitutes the best interest of the child. “Best interests’ determinations are generally made by considering a number of factors related to the child’s circumstances and the parent or caregiver’s conditions and their capacity to parent. Best interest decisions should be predicated on the child’s safety and well-being as the paramount concern (Child Information Gateway, 2016, p. 2.)

Principles related to the implementation of a Best Interest Standard include:

1. The importance of family integrity and preference for avoiding removal of the child from his/her home (Family Preservation Services, *sic*)

The health, safety, and/or protection of the child (Consistent application of mandatory reporting, *sic*)

The assurance that a child removed from his/her home will be given care, treatment, and guidance that will assist the child in developing into a self-sufficient adult (permanency planning activities focusing on child well-being, *sic*)

Factors used by child protection professionals to assess for best interest include:

The emotional ties and relationships between the child and his or her parents, siblings, family and household members, or other caregivers

The capacity of the parents to provide a safe home and adequate food, clothing, and medical care

The mental and physical health of the parents

The presence of domestic violence in the home

Child Welfare Information Gateway, 2016, p.2

Clear language to guide both the CSW social workers and the municipal/juvenile court in determining factors related to best interest is needed. All professionals need training in child protection and foster care.

The independent interests of the child are best served with the appointment of an independent Child Advocate to assure the interest of the child stands apart from the interests of the parent and the other agencies or NGOs.

3. In Article 3 of the Law, paragraph (1) sub-paragraph 4 becomes sub-paragraph 7, to which the new sub-paragraphs 8 and 9 are added as following:

“8. The child that is capable of forming its own thought enjoys the right to freely express that thought.”

“9. The adopted child enjoys the same rights towards the adopters as a child does towards its parents.”

Desk Commentary Research:

As noted, amending law and policy to call for the appointment of an independent Child Advocate is strongly recommended.

Article 4

In the Law, after Article 3, a new Article 3a is added as following:

Article 3a

Domestic Violence

1. Violent behavior of spouses and of any family member is prohibited in the family;
2. According to the law, everyone is entitled to protection from violent behavior in the family;
3. Violent behavior shall mean any form of violation of physical and psychical integrity in terms of the special law on protection from violence;

Desk Research Commentary

According to the United Nations domestic violence is gender-based violence.

In Article 2 of the United Nations Definition of Domestic Violence: Violence against women shall be understood to encompass, but not be limited to, the following:

Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.

Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

as cited in Center for Relationship Abuse Awareness, 2020 n/p

Children who bear witness to domestic violence/intimate partner violence experience trauma. By witnessing violence, the child's development is derailed, altering the child's behavior, emotional responses, cognitive functioning and the neurology of the brain, feeding negative responses of "flight, fright, or freeze". All of which impact the child's ability to enjoy healthy relationships with others.

CSW social workers need training in assessing cases of domestic violence. Models of practice need to be developed to allow the non-perpetrating custodial adult to retain custody of their children and if needed to be placed in a safe house or transitional housing. Safety from domestic violence should be understood for all forms of families (birth, kin, adoption and foster) However, adoptive families still under supervision prior to the finalization of the adoption and foster parents are held to a higher standard as they are approved by the local municipality and MLSW for the care of children. This may well be true for regulated kinship providers as well.

Addressing reports of domestic violence need to be given priority based on the physical and emotional risks to the victims. Timelines for responses to reports of domestic violence need to be developed in sublegal actions to guide police and CSW's.

Given the paternalistic nature of many Kosovo families issues of power and control are expected to be present. Power and control are at the heart of the domestic violence, and needs cultural understanding. Therefore, it might be expected that some kin, adoptive, and foster families will experience domestic violence.

Preservation of kin, adoptive, and foster families who have a child in their custody and who may also be under the supervision of the court and need to be afforded a safety plan to assure for the well-being of the child. Careful consideration needs to be afforded when determining if the placement should be disrupted. When making this decision a best interest test should be utilized. Policy concerning how to manage domestic violence in cases of adoption, foster care, or kin care needs attention.

The perpetrating parent should be removed from the house and depending on judicial involvement ordered into treatment in accordance with best practices for perpetrator treatment. (See Duluth Model). Developing perpetrator treatment in keeping with best practice standards as well as victim support services is recommended. These services need to be funded by the ministry to assure access to treatment for victims and perpetrators.

Article 5

Social Protection

Institutions provide social protection which includes material support, social and family services, direct social care for persons in need;

Article 6

Article 6 in the Law is amended as following:

Article 6

Institutional Protection of Rights

1. Custodian Body is a municipal professional body competent on social issues. It shall be comprised of a group of experts with professional work experience in specific field of responsibility;
2. Custodian Body may also be a body (a group of experts as mentioned above) of the specific social institution which is established by the Municipal Assembly to conduct such obligations;

3. Custodian Body is mainly a competent authority to provide professional assistance and protection of the rights and interests of the child and of other members of the family;
4. Custodian Body shall act urgently in all the procedures that are related to family legal issues involving children and shall, at the same time, protect children's wellbeing;
5. Custodian Body, participating in the procedures, is authorized to present motions for the protection of children's rights and interests, to present facts that parties have left out, to suggest administration of the necessary evidence, to exercise legal remedies and undertake other judicial actions. The Court is obliged to summon the Custodian Body participating in the procedures, to all court sessions and to serve it with all the decisions;

Desk Research Commentary

The Custodial Body is part of the legal framework for the care and protection of children. The scope of the Custodian Body is defined in part:

Article 236, The Family Law states that “(1) The custodian is appointed to the person under custody by the Custodian Body. (2) As a custodian can be appointed any person who has the personal capacity and necessary ability to fulfill the obligations of a custodian and who accepts in advance to become a custodian. (3) The custodian shall be in the first place appointed from among persons in the family of the person under custody. The Custodian Body shall decide whether this is in the interest of the person under custody.”

Article 244, Family Law, lists obligations of the custodian, “(1) The custodian is especially obliged to take care in good faith of the personality and the rights and interests of the person under custody and to administer his property with care, as well as to inform the Custodian Body of the course of custody. (2) The custodian is especially obliged, with the assistance of the Custodian Body, to make use of all necessary means of social welfare in order to ensure the material requirements needed for the enforcement of custody measures.” (OSCE, 2010, p. 4)

There is a direct yet confusing relationship between the concept of Custodian Body and Centre Social Work. The CSW may act in the capacity of the Custodian Body. Family Law states:

Article 9.5, Law on Social and Family Services, requires the Centre for Social Work, in fulfilling its responsibilities under the Juvenile Code, and in its role as custodian body, to ensure that the services it provides under this mandate are “[...] in keeping with its obligations to children as set out in the United Nations Convention on the Rights of the Child.”

The custodian body (*CSW social worker*) is authorized to present motions for the protection of children's rights and interests, to present facts that parties have left out, to suggest administration of necessary evidence, to exercise legal remedies, and undertake other contentious actions. The

court is obliged to summon the custodian body to all court sessions and serve it with all the decisions. (OSCE, 2010, p. 2-3).

In addition:

Delays in providing the CSW expert assessment In cases in which expert advice is requested from the CSW, the court may make no final disposal until it has given due consideration to the content and recommendations of that expert advice.²² Therefore the law is specific and provides that following submission of the court request, the director of the CSW should order its officials to commence investigations in order to ensure that the court will be provided with the required report, no later than 21 days after the request is made, unless otherwise specified in the request.

OSCE, 2010, p. 4

Kosovo's legal framework requires that the expert opinion of the CSW be part of its procedural safeguard designed to provide special care and protection for children involved in civil proceedings. Any delay in reviewing the CSW's expert assessment not only affects the child's rights but also the rights of others... The role of the CSW in civil proceedings is essential in protecting the best interest of the child. In matters falling under the competency of civil courts, the CSW is limited by law to only provide expert opinion and recommendations. Nevertheless, the OSCE has monitored civil proceedings where parties, their legal representatives, and the CSW expressed confusion as to the role and responsibilities of the CSW. Moreover, in these cases there was no intervention by the court to clarify the CSW's functions.

OSCE, 2010, p 5-6

The specifics of the Family Law set forth the goal of protection by detailing the role of the Custodial Body:

Article 4. All persons enjoy equal treatment of rights and obligations set forth in this Law. There shall be no direct or indirect discrimination against any person or persons based on sex, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or convictions, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status.

II. PROTECTION OF RIGHTS

Article 5. Social Protection (1) Children without parental care, and those with diagnosed mental or physical disorders as well as parents who are not capable to create necessary living conditions for themselves and their children are under special financial and social support. (2) The social community undertakes custody for elderly persons in cases when they are not capable to ensure living conditions and have no other persons in their kin who are obliged by Law to provide assistance.

Article 6. Institutional Protection of Rights (1) Protection and family assistance shall be governed by the competent body of the municipal administration which is responsible for issues of social assistance. (2) The Custodian Body is an administrative municipal body competent for social issues. It shall be comprised of a group of experts with professional work experience in the specific field of duty. 2 (3) The Custodian Body may also be a body (group of experts as mentioned above) of a specific social institution which is established by the Municipal Assembly to carry out such obligations. (4) The Custodian Body, participating in the procedures, is authorized to present motions for the protection of children's rights and interests, to present facts that parties have left out, to suggest administration of necessary evidence, to exercise legal remedies, and undertake other contentious actions. The court is obliged to summon the Custodian Body participating in the procedures, to all court session, and serve it with all the decisions.

Article 7. Form of Protection (1) For implementation of family relation's rights, the mother and child are provided special protection by means of social welfare. (2) Children without parental care are given special protection through custody, family shelter, residential shelter and adoption (United Nations Mission in Kosovo 2004 p.2-3).

There has been documented written reports (OSCE, 2010) and anecdotal information concerning CSW social workers not meeting the standards required by law to protect children and fulfill its duties to plan for children and advance foster care. Among the anecdotal reports to the international consultants (March 2020) is the failure of CSWs to provide detailed child protection reports to the court to guide the permanency plans. The lack of child specific reports to the court is a clear barrier to practices of child protection and needs attention. Developing specialized child protection and foster care CSWs along with training will improve these problems of lack of information needed by the courts to act in the interest of the child.

Specialization of the CSWs was noted by SOS International (2013) as a need at the Municipal level to develop specialized child protection units. The lack of specialization impacts protection of children with CSW's failing to carry out their statutory duties as Custodian Body.

Questions concerning the Custodial Body remain on the minds of current social workers. In 2019 a training for social workers from the Kosovo Social Work Association addressed concerns related to the Custodial Body in a session entitled: "Social Work in Kosovo, Training on "The Role of Custodian Body". The training centered on contemporary concerns such as the definition of the "guardianship body" (now referenced as custodian body), its function, representing clients in court and other topics (International Federation of Social Workers, 2019, n/p).

From its inception and today as amendments to the Family Law are considered, there is/has been considerable confusion about the role of CSW and its responsibilities. Further is the Custodian Body only an administrative municipal body staffed by competent professionals (other experts) or the framework by which the Custodial Body carries out its duties through the CSW social workers. Clarifying these points are essential.

What is the scope of the duties of the custodial professionals?

Is it limited to CSW social workers and those professionals approved by administration of the CSW?

Is the role of the Custodian only administrative or is it descriptive of other roles such as foster parents?

Should new roles such as Guardian ad Litem, or other Child Advocates be included to assure the goals of safety in family-based care are achieved for the child in line with the UNCRC?

These questions are salient to improving outcomes for vulnerable children in Kosovo.

To achieve reform clear definition of the role of MLSW, CSW, Custodial Body and the real or perceptual differences needs to be resolved.

Processes for gate keeping needs to be developed to measure standards for permanency as related to the professional roles of the MLSW, CSW and Custodial Body.

The role of the foster parent in child protection proceedings needs to be defined. Are foster parents' part of the professional Custodial Body Team? If so, can the foster parent testify in court and give their opinion on permanency. To what extent does the foster parent have the right to make educational, health, and mental health decisions for the child.

There is a National Panel administered by MLSW. In Kosovo local or regional panels should be developed as part of the functioning of the Custodial Body with its charge the selection and maintenance of foster parents, placement of children and monitoring permanency plans.

In the UK panels exist as Safeguarding (does the child need care and protection), fostering panel to approve foster parents for the registry (and to an extent approval of kin careers), and adoption panels. In the UK panel members are appointed and represent the local municipality. The members have an interest in the care and protection of children. An exception is the Safeguarding panel which has child protection social worker members with knowledge of the individual case as well as other child protection specialists. Fostering panels approving foster parents for registration have social work supervisors, psychologists, and independent social workers. Similarly, this is true for the adoption panel and panel members may serve on more than one panel.

KOMF (2014) noted the following concerning the status of panels in Kosovo:

According to the legal provisions, the panel as a body should be an oversight authority for the CSW which gives an opinion on the local adoptions, however in practice, in certain areas (*sic foster care*), this Panel has executive competences due to the fact that the documentation collected for the abandoned children by the CSW should be initially approved by the panel, and then submitted to the court. Also, the panel approves the adoptive parents' right after reviewing the assessment and the research conducted by a specific official of the social services. based on the provision and practice, it is not clear whether this is an advisory authority, a supervisory authority, or an authority with executive competences for the CSWs regarding the abandoned children. (p.12)

This statement raises two key issues. The first relates to role and superintending authority, i.e. who does the panel receive its authority from and to whom does it report. The second addresses the skills of the CSW social worker to act in the care and protection of the children. Perhaps this is best summarized by querying if should MLSW have responsibility to direct the placement of children?

All the parties from the Ministry level down to the municipal level should act in concert with one another. KOMF (2014) states:

Services, the chain of the system comprising of the CSWs, Panel (MLSW) and the court constitutes of the responsible institutions for the development of procedures and decision making on the alternative forms for the abandoned children. every legal vacuum, lack of clarity even regarding the understanding of the legislation on each party, of the legal deadlines, documentation and procedures influence directly on the quality of the services and the forms of protection provided to the abandoned children. (p. 12)

The CSW social worker is a member of the Panel and cooperates with the panel and its membership. Information from the panels should guide judicial decisions.

In Kosovo it is suggested that panels approve the placement (match) of a child to a foster parent. KOMF (2014) in a situational analysis "Take Me Home" noted:

on the other hand, the law on Social and family Services envisages a panel for placement of children, a panel that is not envisaged by the law on family. The panel has the following functions: it gives an opinion on the suitability of the sheltering parents; it gives an opinion on the placement of children in shelter families; it gives an opinion on the placement of children for adoption and on the suitability of the potential adoptive families. the panel on the placement of children keeps a register of individuals who are approved as adoptive parents after the review of the assessments and research done on its behalf by a specific official of the social services (p. 12).

This is true concerning the role of the MLSW in gatekeeping in several other areas. The authority of the MLSW panels to act should be devested to regional or local panels with MLSW staff from the ministry having hands on oversight with the municipality to assure for the

professional functioning of the panels. Among the duties of the Ministry workers would be examining the outcomes from panel meetings, that is if the panel is meeting the national standards of protection and permanence for children. Therefore, MLSW becomes the gatekeeper determining if the system is working and if the system is in fact serving the children. MLSW is responsible for the continued improvement of child protection practice. A MLSW panel should remain with a role of reviewing appeals from local/regional panels.

If the MLSW panel has the authority to make what should CSW social worker and their supervisors' decisions, this MLSW authority of the panel greatly weakens the ability of the CSW social worker to act. For social workers to be invested in the use of foster care they need to be empowered in making professional decisions concerning placements. The CSW social worker is responsible to supervise placements and must report to those institutions with a shared interest in protection of children (MLSW & Courts).

Child protection social workers are entitled to supervision from well qualified supervisory professionals. Supervision in these areas is seen as a specialty given the gravity of decisions being made by social workers reporting to their supervisor (Kufeldt, 2019). Without a specialty area of practice in child protection and foster care and without a national system of child protection and foster care what is now a fractured system failing to act in the interests of children and fails to provide quality supervision to direct care CSW social workers.

All of this points to the considerable role confusion between the MLSW and the CSW social work staff. This suggests a need for rigorous review of policy and practices of panels.

The protection of children belongs to the municipality as well as to the State whose role is to determine how the law and administrative rules are carried out. The municipality has local resources which can serve the interests of vulnerable children and families. These resources should include the development of all forms of fostering services. Once fostering services are developed other professionals are needed to support the foster family, birth family and the child. Kosovo's draft law on the protection of children has language concerning the use of Multi-disciplinary case management. The concept of multi-disciplinary work in child protection recognizes a holistic approach to working with vulnerable children and families.

The draft law states:

1. Multi-disciplinary case management roundtables shall be established in the municipalities of the Republic of Kosovo.
2. Work procedures in multidisciplinary case management roundtables, run by the workers for the protection of the child, in coordination and cooperation with responsible structures and services for the protection of children, shall be acted upon the basis of procedures detailed in a sublegal act, thus being in line with following procedures:

2.1. Identification of the cases of children at risk is done by every citizen or the social, education, health, police, services officer, non-for-profit organisation and the public wide;

2.2. Every case identified is referred to Centre for Social Work, which is to immediately Inform the Police in order that every immediate intervention is jointly made;

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Every case identified is referred to Centre for Social Work, which is to immediately inform the Police in order that every immediate intervention is jointly made; (Republic of Kosovo 2019, p. 36.)

Desk Research Commentary

The case holding social worker is expected to be a CSW social worker, working with not only the panels but also the Multi-disciplinary case management roundtables. It is essential to develop written policy to clarify roles and responsibilities for MLSW and CSW in relationship to Multidisciplinary processes. This includes the need for clarity on the place of NGO's in providing contractual services in all areas of child protection is needed. MLSW (along with other ministries Education & Health) needs to provide appropriate funds for multi-disciplinary services.

In the USA and UK multi-disciplinary case management for complex cases particularly sexual abuse cases often are seen by centres known as Child Advocacy Centres which conduct forensic interviews.

Forensic interviews are used by trained professionals to gather information about incidents of alleged child abuse in a manner that will yield factual information from the child and stand up to scrutiny in court. For example, forensic interviewing techniques are designed to remove or minimize the potential for the interviewer to use suggestive or leading questions that may call the child's statements into question.

Child Welfare Information Gateway, 2017, p.2

The forensic interview process prevents the child from having to tell their story to multiple parties involved in the case, thereby reducing trauma to the child. Child Advocacy Centre's rely

on well-trained multi-disciplinary teams. The University of Pristina and its trauma Centre are well positioned to create a forensic Child Advocacy Centre's.

It should be noted the UNICEF report (2014) "The Legal Framework for Child Rights in Kosovo" supported the importance of forensic centers. MLSW should authorize research on child advocacy/forensic centers to determine the efficacy of such a model being adapted to Kosovo.

Article 7

1. Article 7 of the Law is deleted.

Article 8

1. Article 125 of the Law is amended as following:

Article 125

Principles on Protection of Children

- (1) Every child enjoys the undeniable right to live. Protection of child's life is the primary obligation of any person, institution or other authority;
- (2) Any activity or decision related to children that is taken by parents or the custodian and institutions, the best interest of the child should be the prevailing and the highest consideration;
- (3) Children have the right to grow in a family with parents. Children that do not live with both parents are entitled to meet regularly the parents they do not live with;
- (4) Children with diagnosed mental or physical impairments are eligible to special care, suitable conditions of life which guarantee their dignity and facilitate active participation in social life.
- (5) Any action or decision related to children, must guarantee the child, who is able of forming his/her views, the right to express freely these views on any issue pertaining to him/her, by evaluating them in compliance with his/her age and level of maturity, be that directly, through a representative or through a suitable body in accordance with the law in force;
- (6) Children enjoy the right to protection against any form of physical or mental violence, insult, mistreatment, sexual abuse, economic usage, child exploitation, trafficking and sexual exploitation, negligence, abandonment, disdain, maltreatment, usage including abuse during the time they under the care of their parents, their legal representative(s) or of any other person they are entrusted to and against any activity that could be harmful to their health and wellbeing;

(7) Every child is eligible to equal rights recognized under the legislation in force and the Convention, which are guaranteed without discrimination regardless of the race, colour, sex, language, religion, political or any other opinion, national, ethnical or social origin, wealth, disability, family origin or any other state of the child or of his/her parents or legal representatives;

Desk Research Commentary

Standards for human rights clearly state the right to social inclusion. As a measure of this is the child's right to be heard and provided family-based care, that is developmentally appropriate. Services for traumatized children need to be provided by specially trained CSW social workers and/or other professionals in trauma informed care.

Trafficked children represent a special population in need of alternative care. In accordance with best practice recommendations by the United Nations trafficked young persons need to be afforded a safe space for reflective consideration of the impact of trafficking (United Nations Office on Drugs and Crime 2006). Trafficked children are entitled to care and protection, but it is important to understand the nature of their trauma, including Stockholm Syndrome where the young person often identifies with their captor. At such time as the young person is custody the placement needs to keep the child safe from their captor. Care for trafficked young people should be provided by foster parents or care taking staff who have special skills and knowledge in trauma informed care.

Children who experience trafficking, disabling conditions in all forms, and ethnic minority children and children who are victims of trauma should be afforded an independent Child Advocate to express their views. This Advocate should be separate from their CSW social worker. Such services might be contracted through one or more agencies represented in Coalition of NGOs for Child Protection in Kosovo – KOMF and funded through the MLSW.

The critical needs of these populations point to the importance of creating specialized services in child protection and foster care subsumed within this is the importance of training.

Alternative:

Article 9

After Article 128 of the Law, the new Article 128a is added as following:

Article 128a

Child's Opinion

1. Due attention shall be paid to the opinion of the child in all issues pertaining to all the procedures deciding on his rights, in compliance with the years of age and maturity of the child;
2. The child can freely and directly express his opinion in all the procedures deciding on his rights and can, personally or through another person or institution, address the court or administration body to seek assistance in exercising his right to express freely his opinion;
3. The court and administration body shall obtain the opinion of the child in the presence of a psychologist or respective subject matter expert of the Custodian Body or other specialized institution, without the presence of the parent;

Desk Research Commentary

It is noteworthy there as several policy and legislative references to the child's obtaining the age of 14 as a clear age for the young person to express their wishes. The child may have the chronological age of 14 years but may not have the psych-emotional age of 14 to express their interests therefore the young person should be afforded an advocate, as heretofore been described in Article 3 section 6. The child's statement should be taken by a trained forensic social worker and/or psychologist.

Article 10

Article 149 paragraph 1 of the Law is amended as following: "(1) Parents who misuse their parental rights or severely neglect their parental rights, are deprived of parental care."

Article 11

1. The following amendments are made to Article 156 of the Law:

1.1 In paragraph 1, after the word "disappeared" the words: "and abandoned child" are added.

1.2 Paragraph 2 is amended as following:

(2) A child without parental care is deemed also the child whose parent or parents, for any reason, temporarily or permanently, do not exercise their parental rights and obligations or their parental care.

1.3 After paragraph 2, the new paragraph (3) is added as following:

"(3) An abandoned child is deemed the child when his abandonment has been established by a decision of the competent court."

Desk Research Commentary

In the USA and UK abandonment is quantified by defining periods where the parent is not available to physically, socially, emotionally, or financial to support the child. The legal time frames for determining abandonment ranges from 15 months to longer periods of time. After the set period is passed the court has the legal authority to terminate parental rights and may order a permanent plan for the child including placement with kin, long term foster care, and adoption. To achieve permanence, it is important to set legal standards to measure conditions of abandonment to guide juvenile proceedings, thus avoiding unnecessary continuance of child protective cases when it is unlikely the parent will be available to care for the child.

Clarity in the Family Law or sublegal acts is needed in Kosovo to assure child in care and protection experience permanency within clearly defined timeframes.

Article 12

1. Article 157 of the Law is amended as following:

Forms of Protection

The fundamental forms of legal and family protection of children without parental care under this law are: **Custody, Alternative Custody and Adoption.**

Article 13

From Article 160 to Article 203 in the Law, the articles are amended and new articles are added as following:

II ADOPTION

The Notion and Purpose of Adoption

Adoption is a special form of protection of a child without parental care, through which the child is enabled to change his family status from his biological parents to his future adopting parent or parents;

Adoption is established based on all respective and reliable data, always bearing in mind the state of the child in relation to the parents, relatives and his legal representatives and, when necessary, the interested persons have granted their conscientious consent for adoption on the grounds of necessary counselling;

Adoption is allowed only if it is in the best interest of the child and if it guarantees respect of his fundamental rights and fulfilment of conditions for adequate upbringing;

Desk Research Commentary

Adoption by its definition is a legal process that establishes a relationship between a parent and a child that is recognized by the law, including a change of name to that of the adopting parties and secures the right of protection of the child by the adoptive parents and the right of inheritance.

Children who are legally free for adoption have been released to be adopted with procedures in accordance with Family Law. Infant and young child adoption often occur where there is a release of parental rights. Other children free for adoption are those children who have been placed in alternative care and custody of the Custodial Body who after a period of time, it is determined that family reunification is not in the best interest of the child, allowing for the child to be adopted by another family member or an unrelated suitable party, which maybe a foster family or a family who has expressed a desire to adopt a child.

Birth parents signing a release and those parents whose rights are terminated should be active participants in the adoption process. Birth parents should be interviewed to provide comprehensive information about the history of the family including but not limited to health, education, cultural, religious information. Every effort should be made to develop a photo story of the birth family to be shared with the adoptee at such time it is developmentally appropriate. CSW social workers should be trained in methods to develop a life story book for the child, explaining the child's care story. This life story book is the right of the child related to their knowledge concerning where they came from and why. The need for life story work rests in the clinical importance of recognizing that every adopted child has two stories (birth and adopted). An adopted child's identity integrates the strengths of the child's two families and is important to a child's mental health.

Where parental rights are terminated the child shall be afforded a "goodbye" visit with all significant parties, including birth family members, foster family members, and other significant persons in the life of the child.

Children released at birth at the hospital are entitled the right of an identity (in accordance with the UNCRC). The CSW social worker and staff at the hospital should record identifying information for the benefit of the legal proceeding related to the release and to assist in the development of the child and adoptive family by having birth family information. Policy concerning collection of DNAs should be developed, particularly where it may assist in identifying the putative father and his interests in the child. Albeit recognizing the limits in Kosovo for laboratories to process DNA.

Based on standards of evidenced based practice, infants and young children should be placed in family- based care: "No More Baby Shelters". The time from the release or termination of parental rights should be reduced to assure placements which afford the infant and young children the right to a secure attachment (see Bowlby, Ainsworth, and others as cited in Cassidy et. al 2014). Kosovo has established practices with SOS to make the transition from shelter care to foster care for infants and young children in 2020. To assure that infants and young children

do not return to shelters trained foster parents need to be available to care for them when a protection need exists.

Older children, children with disabilities, and those from ethnic minority groups have the same right to adoption as an infant and young child. It is the responsibility of all parties (MLSW, municipalities, CSW, Consulting Body, Adoption Panels) to develop an annual plan for adoption, including “hard to place” children. This requires a planned and intentional marketing program to recruit families willing to foster and adoption these children.

Adoption is to be recognized as a specialty area of practice and CSW, social workers are to be trained in how to assess families for adoption and what is in the child’s best interest, including those skills in how to prepare a child for adoption and to understand the voice of the young person. Placement Panels responsible for adoption are expected to be trained in adoption practices. Both CSW social workers and Adoption Placement Panels need to work from a view of the rights of the child when discussing matching a child for placement, making the move, and the quality of ongoing post placement supervision and support of the adoptive family.

All families being considered for adoption should attend training and be fully assessed to provide for the safety and well-being of a child in their care. The adoptive family report from the CSW social worker shall be provided to the court for review as part of the legal process of adoption. Approved adoptive family applicants should be matched with a child free for adoption. Matching should be a mutual process where children have the developmental ability to express their desires.

It is important for MLSW and the municipalities to develop sublegal acts related to timely placement of children for adoption. All parties responsible for adoptions should collaborate in the development of an annual plan to serve the needs of families and children in a municipality or region. As noted, adoption as a specialty area of practice and requires specialized training.

Article 14

Conditions for Adoption

An Adoptee can be:

A child prior to reaching 18 years of age;

A child who has no living parents;

A child whose parents are not known, or their residence is not known;

Children whose parents are entirely and permanently deprived of exercising their parental rights;

A child whose parents are entirely and permanently deprived of their capacity to act;

Desk Research Commentary

Children have the right to agree to their adoption. A child who is over the age of ten and has given their express desire to be adopted and/or expressed this to their Child Advocate who is acting in the child's interest should be allowed to inform the court in writing or verbally under oath as to their desires.

When it is found to be in the best interest of the child sibling groups should be adopted together and/or every effort to maintain contact shall be afforded the child(ren). Therefore, policy and processes need to be developed to address openness in adoption to preserve appropriate family ties. This may include other extended family relatives like grandparents, aunts or uncles.

An Adopter can be:

The person enjoying capacity to act and who has personal qualities required to successfully exercise parental rights and obligations;

2.2 The person whose difference in age with the adoptee is not less than 18 years and not more than 45 years;

Spouses shall adopt jointly;

2.4 Exceptionally, only one of the spouses can adopt but this shall require the consent of the other spouse. One spouse may also adopt a child alone if the other spouse can not adopt a child because of incapacity to act or because he/she has not yet reached 21 years of age;

2.5 At the request of the adopting party and with the consent of the persons who have participated in the adoption procedure, the other spouse may later be included in the adoption if he/she later fulfils the conditions specified under the Law.

2.6 The spouse of the child's parent, but the difference in age between the adoptee and the adopter must not be less than 18 years;

2.7 By way of exception, adopting party can also be a foreign citizen under the following conditions:

when no adopters can be identified amongst Kosovo citizens living in Kosovo and abroad;

when adoption is reasoned in a special manner and when it fulfills at maximum the implementation of the child's best interest;

the final decision is issued by the competent Court upon additional elaboration of each and every fact separately, which establish the belief that adoption is in favour and to the best interest of the child. Moreover, the Court can request an additional opinion of the Panel for placement of children without parental care for adoption with the respective ministry;

Desk Research Commentary

Foster parents should be given the right to adopt a child in their care. A reasonable timeframe of four months of continuous care maybe considered; however, a set time period (four months) should not prohibit foster parent adoption of a foster child in the foster child has been in the custody of the foster parent for shorter periods of time.

International adoption should be considered as a last resort after all efforts to support the birth family through family preservation and reunification are not found to be in the interest of the child. Foster families and other families interested in adoption who are citizens of Kosovo are to be considered before any other international party. All international adoption activities should be in accordance with the Hague Convention.

An Adoptee cannot be:

3.1 A child in direct blood line, brother or sister;

A child that has reached his full capacity to act;

A child before reaching the fourth (4) month of his life;

The following persons cannot adopt:

A person who by court order has permanently lost his/her parental right;

A person who does not guarantee implementation of parental obligations for a proper upbringing and education of the adoptee;

A person for whom there is founded suspicion that he/she will use the rights of an adopter resulting in harm to the adoptee or that he/she requests adoption for his/her own pecuniary benefit;

A person who suffers from a diagnosed psychiatric illness or is retarded from a mental perspective, as well as a person who suffers from an illness which may endanger the health and life of the adoptee;

A person who has been convicted of criminal offences belonging to the chapter of criminal offences against family and marriage, and sexual integrity;

A child's custodian, until the competent authority has decided on removal of custody over the child requested for adoption;

Desk Research Commentary

The safety of the child should be first and foremost when assessing adopters. The CSW social worker might seek a waiver from the MLSW panel for any of the above restrictions or conditions, if the prospective party has a continuous relationship to the child or the child is of an age where their well-being can be assessed by a trained adoption professional when considering

a waiver exceptions might be in the best interest of the child. Due caution concerning the best interest of the child should be foremost when requesting a waiver.

1. Article 161 of the Law is amended as following:

Article 15

Competent Authority for Adoption

The adoption procedure lies in the competence of the court;

The Court may seek advice from the Custodian Body while deciding on adoption;

Custodian Body shall appoint only specially trained personnel who will be suitable for the task, this due to personal characteristics, and who will have professional experience on working with children;

Adoption is established before the court based on the territory where the applicants had their last joint place of residence, as well as before the court of the territory of adoptee's place of residence;

Desk Research Commentary

Adoption services are to be provided by specially trained adoption professionals with a curriculum developed/or identified by the University of Pristina and approved by MLSW.

Judges shall be afforded training in child protection consistent with their judicial role enhancing their understanding of kin care, foster care, and timely adoption.

Article 16

PROCEDURES ON ESTABLISHING ADOPTION

Decision on declaring a child without parental care and abandoned child

Declaration of abandonment by parents is not allowed before the child is eight weeks old;

Declaration of abandonment is made before the Custodian Body;

A child without parental care is deemed a child whose both parents have passed away, and a child whose parents have by court decision lost their capacity to act and the child has been declared without parental care;

When within a period of 4 months the parents of a child are unknown, the Court decides on declaring him an abandoned child;

When the parents of the child have been declared missing, the Court decides on declaring him an abandoned child;

The competent court may declare abandoned the child that is placed in a healthcare or social institution, or with a custodian, when his parents do not exercise their parental obligations against the child for 1 year prior to the submitting the request for declaration of abandonment; (to be reviewed by the working group).

The Court renders a decision to declare a child without parental care when since his birth the child has been sheltered in one of alternative care protection forms for not longer than 4 months;

The Court requests from the custodian body, which has submitted the request, a report on whether attempts have been made to identify biological parents of the child and to return the child to his biological family;

Pursuant to paragraph 3 of this Article, a child will not be declared without parental care when a member of the close family has requested to take over caring of the child in one of the alternative care forms in accordance with the best interest of the child;

The request for declaration of abandonment is made by the custodian body where the child is located, or by the legal custodian of the child. The request is submitted with the Court which has territorial jurisdiction over the custodian body or the place of residence of the legal custodian who has taken the child under his care;

Any person having a legitimate interest to protect the child may intervene in the process of declaration of abandonment;

Relatives of the child without parental care who are not obligated to support such children, have priority in establishing adoption relations with such children;

In case a request is submitted according to paragraph 1, then the procedure concerning the wait list is not applied;

Desk Research Commentary

Specific time frames for adoption/permanency planning should be established. MLSW in their role should develop guidelines for administrative review working with the suggested local/regional Fostering/Adoption Panels to assure timely permanence for the child, and to review if a child is in residential care why the child is not placed in foster care or reunified with family. Subsumed is the important role of the CSW in providing services to the foster child and birth family to determine the permanency plan. MLSW should monitor the progress of the cases in these matters.

Article 17

Request for Adoption

To add Article 182 (4) and replace the word respective body with the word respective central authority and harmonize it with Article 179 (3).

Article 18

Legal Advice and Assistance

The Court must collect the necessary data and evidence from the custodian body and from other experts in the field of child- care regarding the adoption conditions;

The Court is obliged to adequately notify the adoptee and the adopter on legal, educational and moral intentions, as well as on the consequences of adoption;

The Court shall inform the adoptee on the legal nature, future rights and obligations, as well as provide relevant advice in this direction;

Desk Research Commentary

The child or his/her guardian shall be provided with all legal information related to adoption in such a manner to be understood by the child and this should include the child's advocate where one has been appointed.

Standards for writing policy should follow guidance on writing policy in plain language, this is particularly important when writing for children and parties not custom to reading and understanding policy and the law (Government Digital Services, 2019). Child/family friendly policy documents should be made available to children to advise them of his/her rights. Thus, a review of documents for understandability should be conducted by MLSW.

Plain language policy should be developed in all areas of child protection, foster care and adoption as part of rights-based system. MSLW should take the lead in providing these written documents.

Article 19

Opinion on Suitability

Regardless of the child's age, he must be consulted with in advance and his opinion must be taken during the process of suitability for adoption;

In order to render a decision on the suitability of the adopter, the Court must consider all justified opinions of the custodian body and of other experts, when necessary;

During the procedure of collection of data and evidence regarding the conditions to establish adoption, the custodian body shall ensure, directly or through the respective professional social

service, the necessary preparation of the adoptee, adoptee's parents, adopter, namely of the adoptee's legal custodian;

Desk Research Commentary

The child and their advocate have the right to be heard in all matters related to adoption.

Article 20

Consent of the Child

When the child is ten (10) years old, his/her consent shall also be required;

The opinion of a child younger than ten (10) years old shall be required if the court deems it necessary;

For a child with limited capacity to act, consent shall be granted through his legal representative or custodian;

Article 21

Trial Period

Adoption, as a rule, shall not be established while the adopter has been caring for the child for a reasonable time specified by the Court but not exceeding the period of three (3) months;

The trial period shall be initiated, monitored and evaluated in continuance by the Custodian Body which will provide a report to the Court as required;

The Court shall render a decision at the end of the trial period. Exceptionally, the Court shall extend the trial period for an additional period of up to three months due to other reasonable circumstances which have been brought to the Court's attention by the custodian body or by experts on the children involved in the procedure;

Prior to rendering a decision, the Court shall verify whether the above deadlines have been met (according to paragraph 1 and 3) and whether during the trial period the relationship between the child and the adopter has been functional;

Article 22

Declaration of Abandonment

Declaration of abandonment shall be made in written form and submitted to the Court in the procedure for adoption;

Declaration of abandonment cannot be subject to a condition or to a stipulation as to time, nor may it be made by a representative. It is irrevocable for as long as the consent was not given by mistake or under coercion or deceit.

Exceptionally, declaration of abandonment may be withdrawn by the parent or parents jointly until the moment the decision has been rendered by the Court, if based on the newly created circumstances the Court establishes that the adoption would not be in the best interest of the child;

In the event the person issuing the declaration of abandonment has limited capacity to act, his declaration requires approval of his/her legal representative/custodian;

Desk Research Commentary

In addition to the processes concerning the declaration of abandonment. The right of the child to have identifying information concerning their adoption should be afforded through legislation and/or policy. A repository for adoption records should be developed by MLSW. This should be in the form of a central repository/registry of all information concerning the adoption of a child. All legal and social documents shall be contained in the file. When the child attains the age of majority (18) the adoptee shall have the right to petition MLSW requesting information from their adoptive file. In a similar way birth parents may petition and if the adult adoptee agrees be granted information concerning the adoption.

Article 23

Confidentiality and Data Protection

The Competent Court and Custodian Body shall be responsible for protection of the data and privacy of the information collected during the adoption process;

The decision on adoption shall only be delivered to parties which participate in the adoption procedure and in accordance with this law;

Public shall be excluded from the procedure of establishing adoption;

The data contained in the minutes on establishing adoption, written evidence and other documents on establishing adoption are confidential and protected in accordance with the law.

Viewing such documents shall be allowed only to the adopter, adoptee and legal representatives;

Data related to adoption and its circumstances may not be revealed or investigated without the consent of the adopter and the child, unless this is required by specific reasons of the public interest;

The adoptee has the right of access to all information related to his adoption and upon his request he shall be provided with personal information on his biological parents after he has reached 18 years of age.

Desk Research Commentary

The suggested adoption registry would preserve the integrity of the adoption information and protection as needed.

Article 24

ESTABLISHING ADOPTION AND ITS EFFECTS

Approval of the request for adoption

If the court ascertains that the conditions for adoption specified under this law have been met, the Court shall establish adoption;

In order to establish adoption, the presence of the adopter, his/her spouse, legal custodian of the adoptee, as well as the presence of the adoptee, if he/she is older than 10 years old, is required.

Upon completion of the adoption procedure, parties shall sign the minutes which shall be read to the present persons;

Upon completion of the process, the court renders a judgment on establishing adoption;

Article 25

Minutes

Special minutes shall be kept on the process of adoption;

The minutes on the approval of adoption shall contain data about all actions undertaken, about all information collected by the court and about the statements and agreements of the adopter and parents, as well as the final declaration of adoption;

The minutes on establishing adoption provide data about the parents of the adoptee, as well as data about the adopting party;

The minutes shall be signed by all the persons that were involved in the adoption process, as well as by the judge who conducted the procedure;

The Court is under the obligation to keep all records and preserve documentation on the adopted persons and the adoption process; (Article 187 shall be the same)

Article 26

Registration

The competent court sends the minutes of the meeting on the establishment of the adoption immediately to the competent institution for registration in the official birth book, to the party and to the Custodian Body.

Desk Research Commentary

The privacy of adoption should be constructed on the principle of keeping adoption information from the prying eyes of the public and not from parties having a clear interest in the adoption. Processes to assure for the well-being of the child, birth family, and adoptive family shall be served by maintenance of adoption records in a confidential manner. If in the interest of the child, a situation arises MLSW shall review the need and provide information from the file (for example health information) to the adoptive parents.

Adopted children shall be afforded respect in all areas of their life including the right to a new identity with a birth certificate with their adoptive surname. In the case of an infant the adoptive parent may name the child, children over the age of six months should have their name changed with caution, while older children may request a change of first name.

Article 27

No Establishment of Adoption after the Death of a Child

The establishment of adoption cannot take place after the child's death.

Desk Research Commentary

Beyond the scope of the discontinuation of an adoption at the time of the death of a child, is the importance to developing Child Death Review Panels. The review of the circumstances surrounding a child's death of a child under the supervision of a CSW should be conducted by a specialized panel which may draw on the expertise of the Multidisciplinary Roundtables.

Article 28

Rejecting the Request for Adoption

If the Court, on the basis of the received and attached evidence and the opinion acquired *ex-officio*, as well as on the basis of an evaluation of all other circumstances ascertained in the procedure preceding the establishment of adoption, concludes the conditions for adoption set forth under this law or that adoption is not in the interest of the adoptee, the Court shall render a decision rejecting the request for adoption;

A complaint may be filed against the decision rejecting the request for adoption within 15 days from the day of being served with the decision.

Desk Research Commentary

Clear guidance on the conditions by which an adoption of a child is denied and a request for reconsideration is needed. The child's advocate is to be consulted in all matters of a child's adoption. Children with no legal relationships (not adopted, no guardianship, severance of birth parent rights) and who are wards of MLSW are entitled to the same privileges as any other child with the state acting as the corporate parent. The state as the corporate parent shall provide for the child in a manner in a way any reasonable parent would do.

Article 29

Legal Effect on the Status

If a child is adopted by spouses or if a spouse adopts a child of the other spouse, that child then acquires the legal status of a joint child of the spouses.

In other cases, the child shall acquire the legal status of a child of the adopting parent.

In all cases referred to under Paragraph (1) of this Article, the spouses are entitled to joint parental custody, in cases referred to under Paragraph (2) of this Article, only the adopting parent is entitled to parental custody.

Desk Research Commentary:

These adoptions are generally referred to as in-family adoption. The best interest of the child should be assessed in these adoptions.

Article 30

Cessation of Child's Relationships to Relatives and Claims

When adoption is approved, the legal relationship between the child and his descendants and relatives ceases together with the rights and obligations resulting thereof;

Exceptionally under paragraph 1 of this Article, if it is in the interest of the adopted child, the child may continue and is encouraged to maintain without any limitation's family relationships with his family and relatives;

Claims of the child which arose before the adoption, especially those relating to annuities, orphan's pension and other corresponding recurring payments, shall not be affected by the adoption; this shall not apply to maintenance claims;

Article 31

Continuance of Relationships with Relatives

If the adopting parents are second- or third-degree relatives of the child by blood or marriage, only the relationship between the child and his descendants on one hand and his parents on the other is legally terminated, together with the rights and obligations resulting thereof;

If a spouse adopts the child of the other spouse, the relationship does not legally cease in respect to the relatives of the initial parent, if this parent had parental custody and is deceased;

Desk Research Commentary

The MLSW and the Court are required to make a best interest determination related to the degree of openness a child be is afforded in an adoption. All decisions on openness and continuation of contact after the adoption should be based on the child's right to an identity as defined in the UNCRC and the best interest standard. MLSW should develop child rights guidance based on best practices concerning openness in adoption. The child's independent Child Advocate should play an active role in determining the degree of openness.

Article 32

Surname of the Child

The child acquires the surname of the adopting person as if it were his own surname;

If a married couple adopts a child or if one of the spouses adopts a child of the other spouse and the spouses do not have a joint marriage surname, they shall determine the child's surname of birth by making a declaration to the Court before it is decided on the adoption;

The Court may, while deciding on the adoption:

Adopting family, upon the consent of the child, decides to give the child the new surname before or after his previous surname, if this is in the interest of the child's welfare;

When the adoptee is older than ten years, his consent is required for the change of surname;

Desk Research Commentary

All adoptive children have two identities. The first identity rests with the information from their birth family. The second identity rests with the claiming process adoptive children experience through the adoption process. Healthy development for the adoptive child requires the psychological integration of both identities into their adopted self. The surname becomes symbolic of the integrated identity. CSW social workers need training in adoption to support the development of the adopted child.

Article 33

Termination of Adoption

Adoptive relationship may only be terminated under the following rules and articles...

Article 34

Annulment of Adoption

The Court may annul the adoptive relationship based on application, if it was established without a request of the adopter, without the consent of the child or without the required act (decision on termination of parental right or decision on termination of capacity to act of the biological parent);

The request lacking the necessary consent is ineffective only when the declarer;

Declaration of consent or Declaration of Abandonment is ineffective when the declarer:

was at the time of making the declaration in a state of unconsciousness or temporary incapacity, temporary mental health disorders or if the child younger than 10 years of age or without capacity to act has personally given his consent and a decision was made thereupon;

failed to understand the procedures of adoption or although he was aware thereof, he did not intend to request an adoption or to express his consent to the adoption procedures;

made a mistake concerning the identity of the child or the adoptive child made a mistake concerning the identity of the adopter;

was induced to make the declaration by fraud, concerning material circumstances;

was unlawfully induced by threats to make the declaration;

The annulment may not be made, if the declarer has ratified the request, the consent or the declaration after the cessation of the deficiencies mentioned under Paragraph (3) of this Article;

Claim for annulment of adoption may be submitted within six months from the day when it was learnt about the reason for annulment and no later than within one year from the day of establishment of adoption;

Desk Research Commentary

MLSW at the time of the cessation of the adoption becomes the corporate parent for the child until such time as the child is placed again for adoption or reaches the age of majority.

MLSW should develop policy and guidance for managing the cases where an adoption is disrupted, which should include the continued rights of the child to live in family-based care.

Article 35

Ex Officio Termination

During the minority age of the child, the competent Court may terminate the adoptive relationship through regular procedure, if for any reason this becomes necessary for the welfare of the child;

Desk Research Commentary

This may include cases where adoptive parents abuse or neglect a child. Research on secondary trauma experienced by social workers note that failed placements are experienced by the social worker as a personal failure and the worker can benefit from independent supportive supervision to help them process the failed adoption.

Article 36

Effects of Termination

Termination has effect only for the future. When a Court terminates the adoptive relationship, it shall have the same effect as termination of adoptive relationship before death;

Upon termination of the adoption, the relationship of the child and his descendants and previous relatives based on the adoption, is terminated together with rights and obligations created thereof;

At the same time the relationship between the child and his descendants and the blood line relatives together with the rights and obligations arising thereof are revived, with the exception of the parental authority which is dependent only on the right for custody;

The Court shall return the custody to biological parents, if and as far as it is not contrary to the welfare of the child, otherwise it shall appoint a custodian;

The Court shall appoint a temporary custodian in case the adopted child, before the adoption procedure, was terminated the parental right and was declared as abandoned;

If the adoptive parents are a married couple and the termination affects only the rights of one spouse, the effects mentioned in Paragraph (2) ensue only between the child and his descendants on the one hand and the spouse of the latter and his relatives on the other; the effects under Paragraph (3) do not ensue;

Article 37

Effects on the Surname

Upon termination of the adoption, the child loses the right to bear the surname of the adopter as his surname;

The competent court may upon request of the child decide that the child retains the surname he acquired by means of adoption, if the child has a justifiable interest in bearing this surname;

Article 38

No Proof of Maternity and Paternity after Adoption

After adoption, verification of maternity or paternity of an adopted child is not permissible.

Article 39

Article 203 of the Law is amended as following:

Article 203.

Principles of Alternative Care

1. Every child and juvenile must live in protective, supportive and caring environment which promotes and develops his/her full potential. Children without parental care or without proper care are at special risk of being denied such environment;
2. When the family of a child, even after being provided the necessary support, is not able provide appropriate care to the child, abandon or relinquish their rights over the child, institutions are responsible to protect the rights of the child and to provide suitable alternative care, with or through local competent authorities or authorized subjects such as civil society organizations. Institutions are responsible to ensure a safe environment, wellbeing and development for every child placed in alternative care and to regularly monitor/review such placement;
3. The best interest of the child shall be the prevailing consideration during the entire procedure and actions undertaken for children deprived of parental care;
4. The child shall be consulted and heard, and his/her views shall be considered in accordance with his/her age and maturity;
5. Institutions shall undertake appropriate measures in preventing separation of children from their parents, particularly:
 - a) by providing support to the family, whose capacities are limited by factors such as poverty, incapacity, abuse of medicines, abuse of narcotics, psychotropic and analogue substances and alcohol, ethnical discrimination;
 - (b) to provide the appropriate care and protection to vulnerable children, such as children victims of abuse and usage, abandoned children, street children, unaccompanied and separated children, displaced children and children of refugees, children of asylum seekers or children living with or

affected by HIV / AIDS and serious illnesses, as well as any other state that endangers the welfare of the child

Suitability of the family and child having common ethnical, language, cultural and religious origin is preferred;

Desk Research Commentary

It is the intent of Article 39 is to carry out a robust fostering program. CSW and municipalities are

responsible to develop a local plan to recruit, train, support and retain foster parents. All other essential duties related to maintaining a fostering program are expected to be carried out by child protection specialists working for the CSW. A local fostering plan shall be sent to the MLSW who will provide an approved budget to pay for the services. All municipal plans for fostering schemes shall be in line with Kosovo's national fostering standards. Plans may include contracting

with local NGO's. MLSW reserves the right to approve municipal plans and MLSW is responsible

for compliance with the plan and oversight of the budget. MLSW may contract with an NGO (such

as OFAP) who has the capacity to provide national services such as recruiting foster parents and providing services.

Fostering services are but one area of child protection. Areas of prevention of the removal of children by supporting families (family preservation) and use of kin career's and short break respite

are essential, along with intensive reunification services to assure for a comprehensive child protection program. MLSW shall assure for a national plan for child protection and fostering services, this should include a continuum of other child protection services, such as short break or

respite care fostering services.

Article 40

After Article 203, the new Article "203a" is added in the Law as following:

Article 203a

Types of Alternative Care

Types of alternative care are: family shelter with relatives, family shelter with another family, residential shelter and independent monitored living.

Article 41

After Article 203a, the new Article “203b” is added in the Law as following:

Article 203b

Principles on Family Shelter

The placement of a child in a foster family is an organized social form of children’s care within another family;

Children without parents or without parental care and children whose development has been impeded by circumstances in their family, are placed with another family to ensure necessary conditions of development, education and their preparation for an independent work and life;

Educationally neglected children as well as children, whose development has been impeded, may be placed in another family;

The financial situation of parents shall not be a reason for a placement in a foster family. The family shall be firstly supported by all means of social welfare;

Rights and obligations of parents and custodians of the child, in respect of the provisions of this part of the Law, are limited for the duration of placement with a family;

Desk Research Commentary

To meet the full intent of alternative care general fostering and specialized fostering services need to be developed and supported. Specialized fostering services such as Multidimensional Treatment Foster Care (and now referred to as Treatment Foster Care by the Oregon Social Learning Center) require specialized training and “manualized” support to the child and foster parent by the fostering team (Treatment Foster Care, 2019). Other forms of fostering such as infant foster care leading to adoption, short term foster care, long term foster care and respite are needed. Child with special developmental challenges have a right to foster care. Children need to be assessed for the appropriate level of care by skilled professional social workers. MLSW should review data from municipalities to determine the need for each form of care to determine the numbers of foster parents to be recruited to align with needs.

Article 42

After Article 203a, the new Article “203b” is added in the Law as following:

Article 203b

Family Shelter

“(1) Family shelter is an alternative form of social protection for children without parental care, mistreated, neglected and for children whose parents for whatever reason have been prevented in exercising their parental rights;

(2) Family shelter is a form of children protection representing temporary placement of the child in a host family when the remaining of the child in his biological family is made impossible;

(3) Shelter families are alternative families which are selected, assessed, trained by the municipal SWC and approved by the central administrative body working within the MLSW, which are ready to provide care for the children without parental care for a certain period of time;

(4) Shelter family shall mean foster parents who shall be selected, trained, approved, monitored and regularly supported, as well as specifically trained on children without parental care: the new-borns and infants; children with disabilities; victims of domestic violence; abused, mistreated, neglected, unaccompanied children; victims of trafficking in human beings (with no risk); children whose parents have been impeded in exercising their parental rights;

(5) Family shelter shall include family shelter with relatives, family shelter in another family.

Desk Research Commentary

Among the forms of foster care Kosovo needs to implement is respite fostering, also known as short break foster care services for families parenting children with disabilities. At the very least, families with a child with disabilities find the demands of caring for the child with disabilities very taxing, with little time to care for self, other family members, and time to complete chores of daily living. Respite services can assist. In sum, short break or respite has been found to be a positive resource for families on the edge of abandoning a child a disability. These services assist in preventing family breakdown and out of home care placement (Webb & Aldgate, 1991).

If respite is provided to birth families, the long-term expenses of government care in small group homes and eventually institutional care for the adult disabled person may well be reduced or eliminated. Respite care is but one service to protect the rights of the disabled child. Wider social change is needed by promoting inclusive care as defined in the UNCRC. The development of the child with disabilities needs to be seen in a broader social context and not as a “problem” with the child. “The human rights approach to disability has led to a shift in focus from a child’s limitations arising from impairments, to the barriers within society that prevent the child from having access to basic social services *such as respite*, developing to the fullest potential and from

enjoying her or his rights. This is the essence of the social model of disability (Innocent, 2005, p.14).”

Article 44

Article 204 of the Law is amended as following:

Article 204.

Placement

Children without parental care, less than 18 years of age, are guaranteed placement in family shelter until another solution or another form of long-term protection is made;

Exceptionally under the provisions of paragraph 1 of this Article, placement in family shelter may continue even after reaching 18 years of age in cases when the child is attending regular education and when the child has obstacles in psycho-physical development and is not able to look after himself/herself and is not able to protect his/her rights. Article 290 and 291 shall be referred to;

Children in family shelter shall be guaranteed care, protection, schooling, education and support towards developing skills for an independent life;

Placement of the child in a host family with two or one parent is possible;

Upon placement of the child in another family, the Custodian Body undertakes immediately all necessary measures to address and eliminate in the future all circumstances which necessitated such placement in family shelter;

Placement of the child in a host family shall be conducted when the host parent fulfills all the provisions specified under this Law. Article 205

Upon placement of the child in the host family, the hosted child becomes equal member of the family with the other members of the hosting family;

Desk Research Commentary

As noted, process for permanency planning needs to be developed for the well-being of the child. As foster care services expand in Kosovo, the development of a document articulating the rights of the foster parent should be developed. Foster parents need to be respected and seen as a valued member of the child protection team. Their rights should be articulated in a Foster Parent Handbook provided to prospective foster parents during their preparation training.

Article 45

The new Article is added to the Law as following:

Number of Children Placed in a Foster Family

The number of children that can be placed in a foster family is maximum 3, so that the total number of children, including the children of the foster family, shall not be greater than five;

Exceptionally, under the provisions of paragraph 1 of this Article, more than three children can be placed in a foster family only when children are brothers and sisters among themselves;

The foster family having under its custody three fostered children, shall provide care only for one child with disabilities;

The foster family with only one parent shall provide care for a maximum of two children, and one of them may be a child with disabilities;

Exceptionally, under provisions of paragraph 4 of this Article, foster family with relatives, with one parent, can provide care for a greater number of children, provided it meets the requirements set forth under Article 205.

Desk Research Commentary

With the development of specialized fostering services, the Article governing the number of children placed in a foster home might be reviewed to allow for the placement of up to six children if the CSW social worker with the approval of the MLSW determines there might be the need for more children in a placement, for example young people preparing for independence or large sibling groups. MLSW should provide for a waiver process and review requests from a CSW social worker to expand the number of children in a foster home. Due caution is needed if a waiver is sought to expand the foster homes ability to care for additional children.

Article 46

Article 205 of the Law is amended as following:

Article 205.

The Rights and Obligations of Foster Parents

Foster parents shall be licensed in providing family shelter services; exceptionally, no license is required when family shelter is with relatives;

Based on the completed trainings, the respective Authority shall issue a license to the candidates capable to provide family shelter services on which occasion the licensed family is recorded correctly in the register of the respective Authority as a licensed foster family;

Foster parents shall fulfill successfully contracted obligations, especially in respect of health care, social welfare, proper education and training of the child for an independent life;

Foster parents shall provide full care for the entire duration of family shelter of the children, both in his/her short-term or long-term placement;

Foster parents shall at any time cooperate in partnership with Social Work Centre's, with biological parents of the child when possible, with NGOs and other necessary services involved in advancement and re-integration of the child in his/her biological family;

Foster parents shall accept advice from the competent authority regarding children care, they shall seek assistance when necessary and shall be capable to act promptly in case of emergent situations;

Foster parents are under the obligation to notify the competent monitoring authority on issues related to health condition, education, schooling as well as any other circumstances of importance for the development of the child;

Foster parents shall be entitled to continuous professional support in providing care for the children;

Foster parents that the child was placed with, are entitled to payment for their services provided in children care;

Foster parents shall be reimbursed for the health cost and services of the children placed in family shelter;

Provision of family shelter should be recognized as work experience of the foster parents as a profession recognized within the pension and tax scheme;

Desk Research Commentary

Fostering services need to be developed with a primary focus on the foster parent being an honored part of the protection of children. This statement defines the importance of the role of the foster parent as a valuable resource. Kosovo is at a key point to determine if foster parents are only volunteers reimbursed for the expenses of caring for a child or if a foster parent is an employee of the state with the rights of a civil servant or if foster care system may have both volunteer foster homes as well as professional foster parents.

Article 47

The new Article is added to the Law as following:

Foster Parent Cannot Be:

The person whose parental right was terminated by a court decision;

The person whose capacity to act was temporarily or permanently terminated;

The person who does not guarantee implementation of obligations for a proper growth, education and training of the fostered child;

The person who suffers from a diagnosed psychological illness or mentally retarded, as well as the person that suffers from an illness that may endanger the health and life of the child;

The person who has been convicted of a criminal offence pertaining to the chapter of criminal offences against family, marriage and sexual integrity;

The person must not be a consumer of alcohol or narcotic substances;

Desk Research Commentary

The care and protection of children should be part of the placement and approval of a foster parent. The assessment process should address the above noted areas and make decisions based on evidence obtained in the assessment process. Using an evidenced based model of assessing a family to foster should involve the foster parent providing key documents marriage licenses, divorce documents, health records, birth certificates, and statements concerning the adults in the home not having a criminal record.

Article 48

Article 206 of the Law is deleted.

Article 49

Article 207 is amended as following:

Article 207

Legal Competence

Custodian Body is responsible for the protection of children without parental care and for their placement in family shelter;

The Custodian Body of the municipality in which territory the child resides or is domiciled, decides on placement of a child in a shelter family with relatives or another shelter family;

SWC shall recruit, assess and train potential shelter families;

Before making a decision on placement of the child outside his biological family, the Custodian Body provides full documentation on all data which is important for the child and for the foster family;

Upon deciding on the placement of the child with a foster family, the Custodian Body is under the obligation to exhaust all possibilities of placing the child with a foster family within the municipality it operates in;

In cases when there are no suitable families available at that time in the respective municipality, the Custodian Body shall then cooperate with Custodian Bodies of other municipalities to screen the possibilities of placing the child with a foster family in another municipality.

Desk Research Commentary

This article articulates the legal role of the Custodial Body in carrying out fostering services. As discussed, the municipality/CSW needs to develop an annual plan for foster care to assure foster care resources exist in the municipality.

The annual plans should address the implementation of professional child protection services, including experts in assessing trauma and allied professionals to support the foster child in placement. A comprehensive plan from family preservation through adoption needs to be developed.

Local municipalities need to respect the foster child's right to access visits with the family but also the foster child's right to inclusive care where others in the community (teachers, sport coaches etc.) have played a role in their life. Inclusive care respects the child's right to significant relationships.

Placement out of the community should not be the first option. However, on occasion the needs of children may exceed local resources, or the child needs to be placed out of the community for

safety. Borrowing of homes between municipalities should be with the permission and knowledge of the MLSW as clearly defined in policy.

Article 50

Article 208 of the Law is amended as following:

Article 208.

Written Contract

(1) On the basis of the decision for the placement of the child with a foster family, the Custodian Body enters into a written contract with only one foster parent or both foster parents of the family in which the child shall be placed;

Article 51

After Article 208, the new Article 208a is added to the Law as following:

Article 208a

Right of Visitation

Foster parents of the family where the child is placed, in agreement with the Custodian Body, is under the obligation to facilitate visitations of the child's parents and of other members of his biological family or wider family, unless the Custodian Body decides otherwise on behalf of the best interest and welfare of the child.

Article 52

Article 209 of the Law is amended as following:

Article 209.

Termination of Placement

(1) Placement with a foster family terminates:

1. by agreement of the contracting parties;
2. by withdrawal from the contract;
3. by the time the child reaches full age, with exception to cases specified under Article 204;
4. when the child is able to lead an independent life, reunite with his biological family or when the child is emancipated;

5. upon adoption of the child;

6. upon death of the child or death of the foster family member who was a party to the contract on placement with foster family;

(2) In case of death of one of the parents of the foster family from Paragraph 1 of this Article, the contract for placement with a family remains in force if the other parent, within one month, informs the competent Custodian Body of the continuation of the child's placement with foster family and provided that it is guaranteed that the foster family in future fulfils the conditions determined by this Law.

Article 53

Article 210 of the Law is amended as following:

Article 210.

Termination of the Contract

(1) Foster Family the child has been placed in may withdraw from the contract within the terms provided for in the contract;

(2) The Custodian Body may terminate the contract for placement with a foster family in the event the child returns to his biological family, as well as in cases when circumstances in the foster family have changed and do not correspond to the best interest of the child;

Article 54

Article 211 of the Law is amended as following:

Article 211.

Rescission of the Contract

(1) If the family where the child has been placed ceases to fulfill any of the conditions of Article 205 of this Law, respectively if the purpose of the placement has not been achieved, the Custodian Body may decide to revoke the contract for placement with a family.

(2) The decision of Paragraph (1) of this Article determines the day of cessation of the placement of the child

(3) The Custodian Body which has decided on the rescission of the contract for a placement with the foster family, shall ensure further protection, care and education of the child until another alternative solution has been made;

Desk Research Commentary

Particularly in the case of long-term foster care the disruption of the placement needs to be reviewed with caution. A prevention approach to the disruption of the long-term placement of a child should include those services used in family preservation. The foster child and foster family should be afforded all necessary services to prevent disruption. This may include the use of respite foster care and family therapy.

Sublegal action is needed in cases of disruption and MLSW should develop a statement on foster family preservation and the needed services for these cases.

Article 55

Article 212 of the Law is amended as following:

Article 212.

Supervising

(1) The Custodian Body supervises the child's development, ensures that protection, care and education of the child is conducted in conformity with the provisions of this Law, and with the provisions of the contract on the placement of the child;

(2) The Custodian Body is under the obligation to provide the foster family where the child was placed, with essential and necessary information on the causes that lead to such placement of the child;

Desk Research Commentary

All foster children, birth parents, and foster parents have the right to a care plan that is mutually developed defining the developmental needs of the child and those areas the birth family needs to address to assure for family reunification.

The UK developed a recording process called Assessment and Action Records. This care planning process has been developed in several countries and meets a standard for best practice.

There are six age-related Assessment and Action records for children and young people looked after. They provide a detailed and structured assessment of a child's progress in relation to seven developmental dimensions: Health, Education, Emotional and Behavioral Development, Family and Social Relationships, Identity, Self-Care Skills, and Social Presentation. It is recommended

that an Assessment and Action Record is completed every six months for children looked after under five years of age and once a year for children and young people looked after over the age of five.

Walker, Shemmings, Cleaver,

n/d

The completion of the record is conducted between the social worker and the child and as appropriate with the foster care and/or birth parent. ARRs were developed as a face to face paper process and is now available digitally. This is but one example of good practice when developing a care plan.

MLSW needs to develop a care planning process for uniform care plans across municipalities and implemented by the Custodian Body. This may well include the development of digital care plans and records storage. This should reflect a child's right to participation in their care plan as found in the UNCRC.

Article 56

Article 213 of the Law is deleted and joined with Article 205:

Article 57

Article 214 of the Law is amended as following:

Article 214.

Reciprocal Information of Competent Bodies

(1) If placement with a family has been decided by one body, whereas supervision is exercised by another body, the supervisory body is under the obligation to inform on the child's development the body that decided on such placement;

(2) If the supervisory body from paragraph 1 of this Article concludes that one of the conditions mentioned in Articles 209-211 for the dissolution of the contract have occurred, the body that is responsible for the placement shall be informed of this fact without delay.

Article 58

After Article 214, the new Article 214a is added to the Law as following:

Article 214a

Residential Shelter

1. Residential Shelter is a form of protection of children without parental care which includes specialized services, provided in whatever group environment. Residential care is considered as a

form of formal care, regardless of whether it is provided by public institutions, public-private institutions or by the civil society sector;

2. Residential shelter provides a safe environment for children and teens, that are not able to live in a family environment or in other environments of alternative care;

3. Environments providing residential shelter should be small and organized with respect to the rights and needs of the child in environments resembling most to the family environments.

Their general purpose must be provision of temporary care which contribute to the family reunion, and when this is not possible, until the custodian body decides on another form of alternative care;

4. Residential shelter shall include: safe locations for emergent care, transit center's in emergent situations and all the environments of short-term and long-term residential shelter, including houses in community setting;

5. The forms and environments provided by residential shelter and procedures on establishing the same, are governed by bylaws of the respective Ministry on Social Welfare;

Article 59

After Article 214a of the Law, the new Article 214b is added as following:

Article 214b

Shelter in a Community Setting

Shelter in a community setting is an organized open type of care that includes integrated and systematic psycho-social services of care;

Shelter in a community setting is provided by public institutions, public-private institutions or by the civil society sectors licensed to provide social services and family care for children without parental care, maltreated, neglected and children whose parents for whatever reason are prevented in exercising their parental rights;

The purpose of the Shelter in a community setting is to create conditions for a full integration of children and teenagers in the community life; to enable the development and promotion of their skills, interests and their further preparation for an independent life by way of acquiring skills in education, profession and social life; (Text for a bylaw)

Article 60

After Article 214b in the Law, the new Article 214c is added as following:

Article 214c

Placement

Placement of the child in residential shelter shall be on the basis of evaluation of the needs, personal opinion of the child, the needs for primary care and the behaviors of the child;

Placement of the child shall be made on cases when such an environment is particularly suitable, necessary, constructive and to the best interest of the child;

Placement and provision of services, which includes specialized service, care, protection, education and support towards the development of skills for an independent life, shall be guaranteed to the child and the teenager (TO INTERRELATE IT ALSO WITH CATEGORIES ABOVE --- UNTIL 26 YEARS OF AGE)

Placement of the child in Residential Shelter shall be done for a time interval up to 6 months. Subject to evaluation of a competent body, this time interval may be extended as necessary.

Article 61

After Article 214c in the Law, the new Article 214ç is added as following:

Article 214ç

Legal Competence

The Custodian Body of the municipality in which territory the child resides or is domiciled, decides on placement of a child in residential shelter;

Before making a decision on placement in residential shelter, the Custodian Body provides full documentation on all data which are important for the child;

Desk Research Commentary

The UNCRC allows for forms of care beyond that of foster care, however from a rights-based perspective the use of residential shelter should be a last resort and if used only for short time periods with a specific goal, such family finding, specialized assessment, extraordinary protection needs etc. Children have the right to live in a family and the goal for all children in need of care and protection should be family-based care. MLSW needs to exercise its oversight role in monitoring the use of residential care. As MLSW develops the procedures for the use of residential shelter and there needs to be a reporting process concerning the use of residential shelter by the CSW, reasons for the use, and the number of days of care. MLSW in this role needs to take an active role with the municipalities to recruit foster parents.

Article 62

After Article 214ç in the Law, the new Article 214d is added as following:

Article 214d

Rights and Obligations

The provider of residential services shall be licensed on provision of services and shall have personnel licensed on professional services;

The provider of residential services shall fulfill successfully its contractual obligations, especially with respect to health care, social welfare, education and preparation for independent life;

The provider of residential services is under the obligation to inform the competent body for supervising issues related to health condition, welfare, education and training of beneficiaries of services;

The provider of residential services is obliged to conduct continuous evaluation of the beneficiary's situation in order to enable his reintegration in the family or to determine another form of alternative care;

Licensing of residential service provider and of the professional services personnel is regulated with a bylaw of the respective Ministry of Social Welfare.

Article 63

After Article 214d in the Law, the new Article 214dh is added as following:

Article 214dh

Written Contract

In order to receive services from a provider of residential services, a written contract shall be entered into between the governmental/non-governmental sector and the competent body;

The contract shall include all the parties involved in the provision of such services.

Article 64

After Article 214dh in the Law, the new Article 214e is added as following:

Article 214e

Right to Visitation

The Residential Service Provider, where the child is placed, is under the obligation to facilitate family visitations, except when the Custodian Body has decided otherwise.

Article 65

After Article 214e in the Law, the new Article 214f is added as following:

Article 214f

Termination of Placement

The competent body shall terminate placement of the child in residential shelter when reasons for such placement have ceased existing;

The competent body shall terminate placement with a Decision;

(3) Placement shall be terminated:

1. by placement of the child in another alternative care;
2. by reunion of the child with his biological family;
3. by adoption of the child;
4. upon establishing the situation that staying of the child in the residential shelter is not in the best interest of the child;
5. when the child reaches the adult age, exceptionally (relate it to children of 26 years old);
6. upon death of the child.

Article 66

After Article 214f in the Law, the new Article 214g is added as following:

Article 214g

Rescission from Placement

(1) The Competent Body may decide on rescission from placement in residential shelter in case the residential service provider where the child is placed ceases to fulfill any of the conditions specified under Article 214d of this Law, respectively if the purpose of placement has not been accomplished;

(2) The Custodian Body which has decided on termination of placement in residential care shall ensure protection, care and further schooling of the child;

Article 67

After Article 214g in the Law, the new Article 214h is added as following:

Article 214h

Reciprocal Information and Supervision

The Custodian Body shall supervise the provision of services and the development of the child, and shall ensure that provision of specialized services and protection, care, education and

preparation of the child is done in accordance with the provisions of this law and in accordance with the purpose of the placement of the child;

The Custodian Body is under the obligation to provide essential and necessary information of the Residential Service Provider where the child is placed about the reasons that caused such placement;

Desk Research Commentary

MLSW has an important role in the protection of the child, including the child's right to be placed in the least restrictive environment, according to the needs of the child. Residential and Community Shelters are staffed with persons whose salary is tied to the residential/community shelter having a certain census of children. It is common for staff and administrators to avoid discharging children if they are easy to manage and compliant with the program. For this reason, it is essential that external supervision of the placement be conducted by a party designated by MLSW or through the review of placement using the standards articulated by MLSW. Simply put, keeping small group homes and shelters full is never a reason not to reunify a child with the family or to transition a child to a foster home. MLSW in collaboration with the Custodian Body should develop a gatekeeping process for review of placements in keeping with the national goal of family-based care for children in need of protection.

Article 68

After Article 214h in the Law, the new Article 214i is added as following:

Article 214i

Independent Supervised Living

Independent supervised living is a form of alternative care as a continuance of support for children who have been part of one of the alternative care forms in order to strengthen their skills for an independent life in a safe and supportive environment;

Children that have been part of alternative care forms and for which no solution has been found after a long-term care, upon reaching the adult age, the institutional and social support must continue for at least three following years;

After the period of three years, the support may be extended for another specified period of time, for specific cases following a re-evaluation of the individual's needs conducted by the competent body and it may not be longer than up to 26 years of age.

This support shall be extended up to 26 years of age of the child, provided that the child is continuing education.

In case an adult child is not able to work due to illness, physical and mental deficiencies, and who has not the sufficient amount of financial means to cover his financial expenses, the institutional and social support shall be ensured until such situation ceases to exist;

The competent body shall specify relevant categories of children and teenagers who will benefit from this form of support.

Desk Research Commentary

Young people preparing to leave care need all forms of support. These young people have the right to family-based care. Currently this is a gap for youth leaving care. These young people are unprepared and often overlooked when considering their need for a family. MLSW needs to carefully review current practices and develop new resources for this population. This will include a shift in practice when considering the right of this group of young people to family-based care. Hearing the voice of these young people is important and a youth advisory system should be developed by MLSW as well as assuring these youth have an appointed Child Advocate.

Article 69

After Article 214i in the Law, the new Article 214j is added as following:

Article 214j

Rights and Obligations of the Competent Body

Competent Body is under the obligation to assign a social worker in the capacity of personal counsellor for every new child or juvenile;

Competent Body signs the contract with the juvenile;

Competent Body is obligated to counsel, assist and support the advancement of the welfare of all the children and juveniles;

Competent Body is under the obligation to maintain contacts and draft an orientation plan with the juvenile who is under its supervision;

The Competent Body shall ensure protection and welfare to the child and juvenile in case they are not fulfilled;

Competent Body shall ensure suitable accommodation;

Competent Body shall provide monthly financial support;

Competent Body is entitled to contact services for fulfilment of juveniles' needs.

Desk Research Commentary

There is a need for clarity of roles related to Consulting Body and Competent Body, describing how they differ? Who is the Competent body? Is Competent Body a CSW or NGO social worker? Without clarity, the success in implementing the standards of care will be difficult to measure. MLSW should have the gatekeeping oversight of Consulting Body in all areas as well as financial oversight.

Article 70

After Article 214j in the Law, the new Article 214k is added as following:

Article 214k

Rights and Obligations of the Juvenile

The juvenile is under the obligation to cooperate closely with the personal counselor and to respect the orientation plan;

The juvenile is under the obligation to continue schooling depending on identification of needs and potential;

The juvenile is entitled to continuous training for professional development;

The juvenile is obligated to manage the money and savings in the function of fulfilling his personal needs;

The juvenile is obligated to abide by the rights and obligations arising upon signing the contract with the competent body;

Desk Research Commentary

Clarity of language recommended to determine if this a distinct category different from an adolescent in need of protection. Is this the young person identified for independent services? Is this a young person involved in youth justice as a delinquent youth? This amendment addresses behavioral expectations of the young person but understanding of the use of the word juvenile is needed.

Article 71

After Article 214k in the Law, the new Article 214l is added as following:

Article 214I

Termination of the Contract

The Contract shall terminate upon agreement between the contracting parties;

The Contract may be terminated by the competent body in cases when the juvenile fails to respect his duties and obligations;

The Contract may be terminated upon the request of the juvenile;

Article 72

From Article 215 up to Article 270 in the Law, the articles are amended and new articles are added as following:

PART SIX

CUSTODY

I. PURPOSE OF AND PLACEMENT UNDER CUSTODY

MOTIONS FOR CUSTODY

The following amendments are made to Article 218 of the Law:

Paragraph 1 of this Article is reworded with the following paragraph as following: “Children are entitled to complain against actions or non-actions of the Custodian, Custodian Body and against other bodies that endanger their interests.”

Article 219, Competencies of the Custodian, is reworded as following:

1. The Custodian may undertake the below actions, but not limited to, only on the basis of the prior permission by the Custodian Body;

1.1 entrust/place/give consent for the placement of the child in family shelter, residential shelter, adoption or health institution with the purpose of providing care, services, education and or medical treatment.

1.2 initiate to change the school;

1.3 selection of profession or exercising of the profession;

1.4 administration of assets;

1.5 undertake other important measures related to the personality and interest of the child;

Desk Research Commentary

All actions should be taken to protect the young person who is having trouble in their living arrangements. Termination of the contract should be a last resort and should offer another alternative living arrangement (foster care placement) for the care of the young person. It is in these situations the role of the suggested Child Advocate might afford the young person support to assure the young person's voice is heard and they are afforded a reasonable placement given their needs. When a contract is terminated the place of foster family preservation services should be considered in the event termination of placement is from a foster placement.

The following amendments are made to Article 220:

The words "Social Centre" in paragraph 1 of this Article are replaced with the words "Service provider". Concretely, paragraph 1 is proposed as following: "The Service Provider, to whom the child was entrusted for care and education, or the health institution where the child is placed for medical treatment, is under the obligation to inform the Custodian and the Custodian Body about all issues important for the life, health and education of the child under custody, and about his/her eventual discharge from institutions and his/her new dwelling place."

In Article 220, the new paragraph 3 is proposed as following: "The Custodian is obliged to visit the child at least once a month, regardless of what form of protection or institution the child is placed in."

The following amendments are made to Article 221:

In Article 221, the new paragraph no. 2 is proposed as following: "For termination of custody, the Custodian Body shall issue a separate decision."

1. In articles 80 paragraph 1 and 4, 100 paragraph 3, 128 paragraph 3, 140 paragraph 1, 174, 215 paragraph 1, 216 paragraph 2, 239 paragraph 5, 290, 332 paragraph 1 and 4, 340 paragraph 1, 342 paragraph 1, 348 paragraphs 1, the word "minor" is deleted.

2. In articles 216 paragraph 2, 217 paragraph 1 and 2, 218, 219 para 1, 3 and 4, 220 paragraph 1, 221 paragraph 1, 226 paragraph 1 and 2, 227 paragraph 2, 269, 273 paragraph 2, 326 paragraph 1 and 3... the word "the minor" in Albanian language is replaced with the word "the child".

Entry into force

This Law enters into force fifteen (15) days after it is published on the Official Gazette of the Republic of Kosovo.

President of the Assembly of the Republic of Kosovo

Kadri Veseli

Concluding Comments:

MLSW is expected to provide key leadership to implement a comprehensive national plan for child protection and foster care in Kosovo. MLSW is not expected to act alone but to provide leadership for the significant actors in child protection and foster care.

Seven priority areas in foster care were identified from the research and should be helpful in defining and implementing a national plan. The priority areas are consistent with the proposed amendments to the Family Act/Civil Code. Legal action alone cannot create the needed change for a national system of child protection and foster care. Sublegal actions are needed to direct practice. Practice skills and competencies need immediate attention particularly when considering the specialization of CSWs in child protection and foster care.

There is a research basis to justify action on the seven priorities areas. Research concerning how Kosovo might go forward was detailed in comments on the situational analyses in Kosovo in foster care. The analysis of the proposed amendments to the Family Act/Civil Code was supported by best practice research offered in commentary throughout the Act and its proposed amendments. These comments give depth to the seven priority areas which provide a framework for national action.

Much of the research pointed to the lack of clarity in policy or the need for new policy. Decentralization has led to considerable role confusion which needs to be corrected to achieve the goal of a national system. The important place of the municipality in carrying out the “real day to day protection of children” is noteworthy. KOMF speaking for the significant place NGOs play in child protection/foster care cannot be underestimated, particularly the Organization for Children Without Parental Care (OFAP). The NGO role needs to be fully developed along with a subcontracting process funded by MLSW and articulated as part of the annual local plans in child protection and foster care.

Specialty training is needed at all levels with social work in child protection and foster care seen as an area of specialization. This concept of CSW specialization has consistently been found to be necessary if Kosovo is to make progress in improving child protection and foster care services.

With the proposed changes in Family Law and careful attention to sublegal acts along with the development of national curriculum to develop the skills and competencies needed for child protection and foster care practice significant improvement in the care and protection of children is expected. An integrated approach is needed to achieve a national system in child protection and foster care in Kosovo. At the forefront of this work is the resolution of the United Nations (Nov. 2019) “all children have the right to a family.”

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APPENDIX 1

THEORY OF CHANGE

Change is a dynamic and unending process. To introduce change, policy makers want to know what works and how it works-what is the evidence? Is the change based on evidence and good practice? Is the change reflective of the culture? Given these questions, how does a nation embark on systemic change? The principles of Theory of Change are useful in crafting change.

Fixen et.al. (2005) in a rather exhaustive review of literature notes the commonalities of the change process. Fixen (2005) states there are Degrees of Implementation.

The degrees of implementation are:

Paper Implementation - writing new policy and procedures

Process Implementation - training workshops, new forms, supervision

Performance implementation- is the change helping those who need it

Fixen et al. 2005 p. 6

It is important to recognize that to institutionalize change “there needs buy in for change from the stakeholders (Fixen et al. 2005, p.8). Without the “buy in” resistance makes sustainability nearly impossible. In Kosovo, it is about building a national system of child protection/foster care where all of the stakeholders “buy in” to build capacity and sustain changes.

Kosovo’s Ministry of Labour and Social Welfare, as have other nations are challenged to improve services to vulnerable children. Nations desire to do things better by vulnerable children (see Families First Prevention Services Act, 2018 as an example of wide scale child protection system’s change in USA). Change does not come easy. But the degree of implementation found in Theory of Change (2005) does provide an opportunity to evaluate progress.

MLSW in its vision to improve child protection/fostering services is positioned to move from the paper process to the implementation of actual programs in child protection.