



**Family reunification and adoption in Argentina in accordance with
“The Best Interest of the Child”?**

A position paper¹

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Children without parental care: a problem that needs to be reviewed.

Are adoption and familial reunification truly options for children without parental care in Argentina?

This paper aims to present a critical examination of the complexities to resolve the issue of children separated from their parents. These complexities relate with the decision of the future of children, whether they will reunite with their biological parents or will be adopted. In the mean time, children are under institutional care or foster care.

Moreover, although there has been much progress on encouraging other forms of care, such as foster care, institutionalization still is the main practice in Argentina. In this regard, 70% of children without parental care are under institutional care whereas only 30% are under foster care (National survey 2011).

In Addition, this decision can be taken either by the Judiciary or by Governmental agencies responsible for protecting children’s rights. Also, the lack of agreement within judicial and governmental system has led to inconsistencies on the reasons and the way this issue is addressed.

From family reunification to adoption: a stopover in child institutionalization. Who’s responsible for protecting children’s rights?

According to a research of the National Secretariat of Children and Family in partnership with UNICEF (National survey)², 14,675 children lack of parental care in Argentina, this is almost 0.12% of child population in Argentina.

This National survey notes that 10.488 of children without parental care are in foster homes or orphanages, whereas 4.240 of children are under foster care.³ This shows the significant amount of children deprived of any kind of parental care, who are living in institutions.

¹ Este trabajo fue realizado en el marco del posgrado *Niñez, Juventud y Desarrollo/ Children, Youth and Development*, del International Institute of Social Studies. La Haya, Países bajos. 2013.

² “Situation of children and adolescents without parental care in Argentina. National survey” (Situación de niños, niñas y adolescentes sin cuidados parentales en la República Argentina). P.20. http://www.unicef.org/argentina/spanish/C_Parentales_final.pdf

³ Ídem 1. P.26



Within the country, two modalities of alternative care coexist: one is “Institutional care” (Hogares de niños), where children live in institutions, until they are adopted or reunite with their families; the other one is “Foster cares” (Familias de abrigo), where the child lives for a certain period of time with another family until adoption (this family is not allowed to adopt this child, is a temporary family). However, 30% of children without parental care are under foster care and 70% are under institutional care⁴. The distribution of these figures is uneven among Argentinian provinces, since not every province has regulated foster care as an alternative care form.

Family separation and reunification

National Law for the Protection of Children’s Rights, states: “Regarding the Best Interest of the Child, exceptional measures will be taken, separating the child temporarily or permanently from his/her family. The aim of this measure is to preserve and/or recover the exercise and enjoyment of his/her rights, which have been violated and to repair its consequences. This separation should be for the briefest period of time”.

As reported by the National survey, main causes for children to enter in home care institutions are violence and abuse (44%), followed by abandonment (33%), sexual abuse (13%) and other causes (11%).⁵

On the other hand, principal causes for children to exit care institutions are family reunification (54%), adulthood without autonomous project (20%), adulthood with autonomous project (8%), adoption (7%), program abandonment (7%) and other causes (4%)⁶.

These figures show that familiar reunification is the main reason for children to exit Institutions. While this number may be interpreted as a respect for the best interest of the child to grow up in his/her biological family and his/her right to have a family, in some cases this reunification is decided without considering the child’s opinion and without considering the familiar situation that puts the child at risk, infringing his/her rights.

Argentinian Psychologist, Alicia H. Ganduglia, affirms that in severely abusive families, reunification is a “false option or a tramp -the bond or the child-, and the possibility of offering a bond that allows the children to develop properly in an environment that respect their rights⁷ is not taken into account”(2001:142). In this respect, the decision of the familiar

⁴ “Situation of children and adolescents without parental care in Argentina. National survey” (Situación de niños, niñas y adolescentes sin cuidados parentales en la República Argentina.
http://www.unicef.org/argentina/spanish/C_Parentales_final.pdf

⁵ Ídem 1. Pag.31

⁶ Ídem 1. Pag.32

⁷ Ganduglia, Alicia H. “Reunification: A new opportunity for whom?” in Volnovich, Jorge, “Sexual Abuse in Childhood (...)”, Ed Lumen-Humanitas, Buenos Aires.



reunification goes against the “best interest of the child”, to live in a violent and abusive family environment.

Even in worst-case scenarios, family reunification is the first and main response to a child deprived from parental care. It's frequent to learn that judges and their professional team won't study each case properly, and much effort and time is spend to reunite the child with his/her family. Children could spend from one week up to several years in these institutos or “children's homes”, until the adoptability status is declared. Children suffer psychological and emotional consequences for being institutionalized. In addition, their right to live in a family environment is infringed. As some studies points out: “Due to its regimented nature, high child-to-caregiver ratios, multiple shifts and frequent changes of caregivers, institutional rearing almost inevitably deprives children of reciprocal interactions with stable care-givers. In this respect, institutional care implies structural neglect. A considerable number of studies have shown that children growing up in orphanages are at risk in various domains of functioning, including their physical, socio-emotional, and cognitive development (Chapter I; The St. Petersburg-USA Orphanage Research Team, 2008)⁸.

Adoptability status

It seems that the specific criteria of when the “state of adoptability” should be declared is interpreted in different ways by judges. Moreover, according to National Law of Adoption (Nº 24.779), “Consent shall not be required when the child was in a care facility and parents have totally unattended them for a year or when the moral or material abandonment result obvious, clear and continuous, and this situation has been checked by the judicial authority. Nor will be necessary when the parents have been deprived of parental rights or when they have specially expressed judicially their express wish to give the child for adoption”. The law seems clear and objective; however, for the judges, It is difficult to determine when the “moral or material abandonment is obvious, clear and continuous”.

Stereotypes and realities: re-considering family types and adoption.

This notion of family as a closed group formed by a mother and a father, and the idea that best environment for a child is this group has caused many complications for children without parental care.

While considering whether the child would be better with their birth parents or with adoptive parents, the possibilities to consider new forms of families and new forms of adoption are missed.

In this regard, psychoanalyst author, Jaques Lacan (1958), has stated the difference between parental roles and parental beings. In this sense, he explains that parental functions don't

⁸ Bakermans-Kranenburg, M. J., Steele, H., Zeanah, C. H., Muhamedrahimov, R. J., Vorria, P., Dobrova-Krol, N. A., Steele, M., van IJzendoorn, M. H., Juffer, F. and Gunnar, M. R. (2011), III. ATTACHMENT AND EMOTIONAL DEVELOPMENT IN INSTITUTIONAL CARE: CHARACTERISTICS AND CATCH UP. *Monographs of the Society for Research in Child Development*, 76: 62–91. doi: 10.1111/j.1540-5834.2011.00628.x



need to be fulfilled by birth parents⁹. I believe this is a good starting point to consider that “ideal parents” as we think may not always fulfil their responsibilities (to respect children’s rights, to provide what is necessary for them to develop properly, to offer a safe and loving environment for them to have quality bonds). On the other hand, parents that don’t fit in this “picture” of family such as single parents, ensemble families can fulfil parental functions.

In this sense, as author Tabitha Freeman states: “(...) it is the quality of parenting that is of primary importance and not the gender or sexuality of the caregiver. Once untied from gender and sexuality, involved parenting is no longer deemed the exclusive property of the biological mother, with the oedipal triad being potentially overturned by a multiplicity of parental relationships that transcend the naturalized roles defined by the traditional nuclear family”.¹⁰

Why is it that this “clean cut” system still remains? Children can be adopted and still be having a relationship with their birth parents.

When children have divorced parents and their parents have started new families and children are well treated, aren’t there many fathers, mothers and siblings?

We may have to think new family forms, where children can have important figures that fulfil parental roles and enable a safe environment where children can develop, instead of trying to impose our family model.

BIBLIOGRAPHY

Bakermans-Kranenburg, M. J., Steele, H., Zeanah, C. H., Muhamedrahimov, R. J., Vorria, P., Dobrova-Krol, N. A., Steele, M., van IJzendoorn, M. H., Juffer, F. and Gunnar, M. R. (2011), III. ATTACHMENT AND EMOTIONAL DEVELOPMENT IN INSTITUTIONAL CARE: CHARACTERISTICS AND CATCH UP. *Monographs of the Society for Research in Child Development*, 76: 62–91. doi: 10.1111/j.1540-5834.2011.00628.x

Carabajal, Mariana “A perverse deafness” (Una sordera perversa) for Pagina 12 newspaper. 2012. Buenos Aires, Argentina.
<http://www.pagina12.com.ar/diario/suplementos/las12/13-7327-2012-06-22.html>

Gelles, Richard J. (2000): Controversies in Family Preservation Programs, *Journal of Aggression, Maltreatment & Trauma*, 3:1, 239-252. Pag 248.

Freeman, Tabitha Ph.D. (2008): Psychoanalytic Concepts of Fatherhood: Patriarchal Paradoxes and the Presence of an Absent Authority, *Studies in Gender and Sexuality*, 9:2, 113-139. Pag 131.

⁹ Jacques Lacan (1957-1958). “The formations of the unconscious”. Jacques Lacan seminar, book 5.

¹⁰ Tabitha Freeman Ph.D. (2008): Psychoanalytic Concepts of Fatherhood: Patriarchal Paradoxes and the Presence of an Absent Authority, *Studies in Gender and Sexuality*, 9:2, 113-139. Pag 131.



Ganduglia, Alicia H. "Reunification: A new opportunity for whom?" in Volnovich, Jorge, "Sexual Abuse in Childhood (...)", Ed Lumen-Humanitas, Buenos Aires.

Lacan, Jacques (1957-1958). "The formations of the unconscious". Jacques Lacan seminar, book 5.

Lipovich, Pedro (2006): "A obscure judicial scheme around the crime of a girl. The dramatic martyrdom of Abigail" (Una oscura trama judicial en torno del crimen de una nena. El dramático calvario de Abigail). Pagina12, Argentina.

National Law 26.061

National Law 24.779

Scherer, Fabiana: "Searching for my home" (En busca de mi hogar). LANACION newspaper 2012. Buenos Aires, Argentina. <http://www.lanacion.com.ar/1462958-en-busca-de-mi-hogar>

Unicef: "Situation of children and adolescents without parental care in Argentina. National survey" (Situación de niños, niñas y adolescentes sin cuidados parentales en la República Argentina). http://www.unicef.org/argentina/spanish/C_Parentales_final.pdf