



# RELAF

Red Latinoamericana de  
Acogimiento Familiar

## The situation of foster care in Argentina.

*Preliminary Report*

**WORKING TEAM:**

**Coordination: Matilde Luna | Research: Mara Tissera Luna & María Sánchez Brizuela.  
Translation: Freya Lorene Macknight | Design: Luciana Rampi**

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# Section 1

## 1.1 What is alternative care?

According to the field in which it is developed, alternative care can be institutional or family-based.<sup>1</sup> Care in institutional environments is defined as “that which is provided in any group context not based in a family,” including a diverse range of residences in a broad spectrum, ranging from orphanages, which generally include a large number of children; private centres; transit centres in emergency situations; other long- and short-term centres of institutional care; “children’s homes”, small institutions with a format that intends to recreate a family environment, accommodating a small number of children and adolescents who have stable figures responsible for them. In the so-called “children’s homes”, or in other cases which go by the name of “villages”, the carers live with the children on a full-time basis, and the building itself can either be on its own land or in a residential neighbourhood. In Argentina, this variety of residential organisation is recognised as a care residence.

Within the group of children that are in alternative care, the majority find themselves living in institutions. Institutional care in our country is offered in a multitude of different types of establishments. According to the Report “Deprived of freedom”<sup>2</sup> it was revealed that in our country 19,579 children are in institutions, of whom 17,063 were placed in one because of “welfare causes”. Furthermore, it comes to light that these children are to be found in 757 institutions, of which 642 are of a “non-penal” kind. In this same work, it is revealed that the existence of alternative Programmes to “non-penal” institutions has been recorded: 150. Among these 150 programmes reported in the 24 provinces, foster care programmes can be found. Currently, the National Secretariat of Childhood, Adolescence and Family (from now on, “SENNAF”) together with UNICEF Argentina is developing a survey on the number of children in alternative care on a national level. From the preliminary data,<sup>3</sup> it comes to light that in the whole territory there are 13,473 children in alternative care, those of whom in the great majority are found in institutional care (71% in private institutions and 18% in public institutions). Only 11% of the children in alternative care can be found in foster families or similar (9% in public programmes and 2% in private programmes).

Regarding statistics on the number of successful placements in relation to those which do not fulfil the objectives of the measure of protection, we have no information available.

## 1.2 Causes of the deprivation of parental care

The reasons why thousands of children find themselves without parental care were brought to light in the Latin American Report “*Situation of children without parental care or at risk of losing it in Latin America. Contexts, causes and responses*” and the “*Documento de Divulgación Latinoamericano. Children and adolescents without parental care in Latin America. Contexts, causes and consequences of the deprivation of the right to family- and community-based care.*”<sup>4</sup> It is recognised that the causes are multiple and complex, with the principal causes being identified as political factors, such as military conflicts and forced migration due to certain situations; economic, which also generates a different type of migration, as well as those which develop in numerous situations of family

1 For this point, we shall take into particular account the definitions of the UN Guidelines for the alternative care of children. The Argentine Republic participated in its discussion and is in the process of implementing it.

2 Secretariat of Human Rights of the Nation and United Nations Children’s Fund, 2006. *Privados de libertad. Situación de niños, niñas y adolescentes en Argentina*. Buenos Aires: Secretariat of Human Rights of the Nation and United Nations Fund for Infancy.

3 The preliminary data from said survey in progress was presented by Marisa Graham, National Director of Promotion and Integral Protection of the Sub-Secretariat of the Rights of Childhood, Adolescence and Family of the Secretariat of Childhood, Adolescence and Family-SENNAF, in the Sub-Regional Consultation for the production of the Study of the situation of institutionalised children and adolescents in the Americas, organised by UNICEF and the Inter-American Commission of Human Rights in the city of Lima, Peru, in June.

4 RELAF and SOS Children’s Villages. “Latin American Report. Situation of children without parental care or at risk of losing it in Latin America. Contexts, causes and responses”. City of Buenos Aires, June 2010. Both documents are available for free on RELAF’s website: [www.relaf.org](http://www.relaf.org)

vulnerability such as lack of access to healthcare, education and a home, malnutrition of adults and children, which, in turn, are closely linked with social and cultural problems such as domestic violence, addictions, child labour and commercial sexual exploitation, which add to situations of discrimination towards disabilities and ethnic origins.

To describe the situation in the case of Argentina, we can take into account a survey<sup>5</sup> undertaken in 2004 in 12 Zonal Ombudsmen of the city of Buenos Aires (from now on, "CABA"), the members of the Council of the Rights of Children and Adolescents of the city of Buenos Aires (from now on, "CDNNYA") in charge of the fulfilment of the local Law on childhood. It came to light that in these zones, there are currently 217 instances of foster care developing with the mediation of technical groups from the Zonal Ombudsman. These involve 278 children (19% of the cases involved siblings). These children were fostered mainly by family members (75%), among them grandmothers and aunts in the majority; 25% were fostered by foster families, mainly by neighbours and friends.

From the account of situations in which technical teams intervene, accompanying the foster families, biological families and children, it can be observed that the measure of foster care originates in diverse forms and for different reasons: mainly cases of abuse or "negligence"; the temporary absence of those responsible for the home for unexpected reasons; as an alternative to the institutionalisation of children or to avoid them having to live on the streets; as a result of the choice of a place of residence by the adolescent; and, less commonly, the parents' economic problems. Regarding the origin of these measures, the order to carry out the measure of foster care is realised in some cases by adolescents who are looking to live with another carer (chosen by them); by neighbours or public service workers (hospitals, schools, etc.) that were checking in on the "conflictive" situation in the child's home; we can also find cases in which the carers approach the Zonal Ombudsman to legalise the situation of care.

On the other hand, in a survey realised by foster care programmes in four Argentine provinces, which will be discussed later in this report, it was revealed that among the motives of placements the suffering of mistreatment in all its forms was highlighted; "abandonment" by mothers and fathers; children who were institutionalised; children living on the streets; and the absence of a responsible figure in the home for sudden reasons, such as illness, accidents and travelling.

It is necessary to mention that, despite the fact that in the large majority of cases families cannot provide care for their children due to causes related with contexts of material poverty, legislation centred on children in various Latin American countries establishes that the lack of material resources of a family does not authorise the separation of a child from his/her family nucleus, extended family or from those with whom they maintain affectionate bonds, nor institutionalisation.

<sup>5</sup> Luna, Matilde (2005). The experience in the city of Buenos Aires. En: Vinculos en la Infancia. Nuevas contribuciones al acogimiento familiar. Buenos Aires: Lumen Humanitas.

## Section 2

### 2.1 What is the common understanding of foster care in your country?

There are different understandings of foster care and also different meanings, given by names of governmental and non-governmental organisations. This is how foster care is defined in practice:

*“Foster care is a practice that makes it possible for a child whose family of origin is unable to care for them to live in a family environment. The foster family is responsible for the care of the child without blood ties but exercising all obligations in the care of the child. In the frame of the public policies of protection of the rights of the child, the administrative and/or judicial authorities mediate the foster relationship, providing support and ensuring that in all procedures all of the rights of the child and his/her family of origin are respected. In particular the right to be heard, to develop their culture and education and to respect their history and identity.”<sup>6</sup>*

Foster care can be defined as a type of care based in a family, into which the child is integrated for his/her care, without significantly altering the family routine. The family continues with its dynamic and daily routine, becoming responsible, for the time period necessary, for the integral protection of the child. Generally, the child remains in foster care until they can be reintegrated back into their family of origin after it has overcome the causes which gave origin to the separation. According to the Guidelines, “family fostering” is realised in the child’s extended family, or with close friends of the family who are known to the child.

In general terms, fostering is applied as a measure of protection for children who have suffered a violation of their rights and/or whose families cannot be responsible for their care for different reasons.<sup>7</sup>

### 2.3 Legislative framework

#### 2.3.1 National legislation

Argentina is a federally organised country, meaning that all public policies (including those directed at protecting the rights of the child) are organised in a de-centralised manner. Thus, there are three levels of design and implementation of infant public policy:

**National:** the implementation authority is the National Secretariat of Childhood, Adolescence and Family, which in turn summons the Federal Council of Childhood, made up by the highest authorities on infancy of the 24 Argentine provinces.

**Provincial:** the highest authorities of each province have different political levels: they may be Provincial Councils, Provincial Secretariats, or Provincial Offices.

**Municipal:** autonomous territories in the provinces. In the whole country there are 2171 municipalities.

In this way, on a national level, the guidelines in relation to alternative care should be given by the SENNAF (specifically, by the National Office of Promotion and Integral Protection of the Sub-Secretariat of the Rights of Children, Adolescents and Family of the Secretariat of Children, Adolescents and Family). Furthermore, each province has its own local organisations in charge of carrying out these guidelines to develop alternative care in their territories. At the territorial level of organisation, the CDNNYA of the city of Buenos Aires can be

<sup>6</sup> Dantas, Erica and Luna, Matilde, 2009. Diversity in the recognised forms of Foster Care: the Latin American View. Electronic Bulletin of the International Social Service. August 2009. [www.iss-ssi.org/2009/index.php?id=79](http://www.iss-ssi.org/2009/index.php?id=79)

<sup>7</sup> Matilde Luna (coordinador), 2006. Informe de relevamiento Prácticas de protección integral para niñas, niños y adolescentes en programas basados en familias. Dirección Nacional de Grupos Vulnerables, Secretaría de Derechos Humanos, Ministerio de Justicia de la Nación..

mentioned.<sup>8</sup>

The Argentine Republic, according to its national Law applicable on the subject<sup>9</sup> should organise its Systems of Integral Protection on three levels, national, provincial and municipal, therefore in this document reference will be made to the practice of foster care in public and private organisations and in the three levels of implementation.

This prevents the possibility of giving just one response and vision of foster care, which should be understood in its diversity according to its implementation in different territories, which in turn presents great diversity in relation to social, economic and political development, in the same way as cultural characteristics.

Before being able to define foster care, it is necessary to contextualise this practice in legislation and in the public policies based on the protection of children.

Foster care as an exceptional measure of protecting the rights of the child is understood in National Law.

In Argentine domestic legislation,<sup>10</sup> the Right to family-based care can be found in article 3 of the National Law 26061 of Integral Protection of the Rights of Children and Adolescents (from now on, "Law 26061"), when it is mentioned that, to the effects of the present law it is understood that the superior interest of the child or adolescent is the most important factor, with the rights and guarantees being simultaneously recognised, respecting:

- a) The condition of the subject of law;
- b) The rights of children and adolescents to be heard, and that their opinions will be taken into account;
- c) The respect of the full personal development of their rights in their family, social and cultural environment. (...)
- d) Their life centre. A life centre is understood as being a place where children and adolescents have passed, in legitimate conditions, the majority of their life.

In turn, in article 4, relating to public policies, special reference is made to the strengthening of the role of the family in the efectivisation of the rights of children and adolescents.

The family is primarily responsible for assuring that children and adolescents enjoy the full and effective exercising of their rights and guarantees. The parents have common and equal responsibilities and obligations when it comes to the care, development and integral education of their children.

The State Organisations should ensure that there are policies, programmes and appropriate attention available so that the family can adequately assume these responsibilities and obligations. (Art. 7)

Articles 10 and 11 mark two extremely personal rights, the right to the intimacy of a family life and the right to identity, in a very broad sense, that encompasses the knowledge of who a child's parents are and the preservation of their family relationships in accordance with the law.

Also, in the last of the articles mentioned, it is set out that State Organisations should facilitate and collaborate in the search for, localisation and obtention of information about parents or other family members of the child or adolescent, facilitating a family encounter or re-encounter. Children have the right to know their biological parents and to grow up and develop in their family of origin, to regularly and permanently maintain a personal and direct link with their parents, even when they are separated or divorced, or under a penal charge or sentence, as long as the said link does not threaten or violate one of the rights of the child or adolescents that is consecrated in the law.

8 Website of the Council of the Rights of Children and Adolescents of the city of Buenos Aires: [http://www.buenosaires.gov.ar/areas/des\\_social/ninez\\_adolescencia](http://www.buenosaires.gov.ar/areas/des_social/ninez_adolescencia)

9 National Law 26.061 of Integral Protection of the rights of Children and Adolescents (2005).

10 Luna, Matiles (coordinator), 2009. Una Mirada latinoamericana sobre el acogimiento familiar, Coordinator. Buenos Aires: Lumen Hvmantas. Page 34.



In the law we can find the “measures of integral protection of rights” (Arts. 33 and following) “applying as a priority those which have as a final purpose the preservation and strengthening of family ties.”

The lack of material resources of the parents, the family, the legal guardians or those responsible for the child or adolescent, whether circumstantial, transitory or permanent, does not authorise the separation of the child from the family nucleus, extended family or from those with whom the child maintains an affectionate bond, nor does it authorise institutionalisation.

Likewise, the law establishes adoption of “exceptional measures” when the child or adolescent is temporarily or permanently deprived of a family environment or if their superior interest demands that they do not remain within said environment.

These measures are limited in time and can only be prolonged if the causes that gave them origin persist (Art. 39). The Regulation of this article offers interpretative and operative concrete guidelines, for example, establishing what the causes of separation can be.

To make these measures effective, in article 41 criteria are established which are thus applied:

- a) When a temporary stay in a family environment considered alternative exists. The measures consist of the search and individualisation of people linked with them, through kinships or affinity, or with other members of the extended family or community, according to local customs, keeping in mind in all cases the opinion of the children and adolescents;
- b) Only in exceptional circumstances and for the briefest lapse possible should an alternative form of living be turned to rather than life within the family group, the return of the child or adolescent to a family environment or to their community should be brought about through fast and agile mechanisms;
- c) The measures will be implemented under non-substitute forms of intervention of the family of origin, with the objective of preserving the family identity of children and adolescents;
- d) The exceptional measures of protection that are taken in relation to groups of siblings should preserve the coexistence of brothers and sisters.

Before deprivation of parental care practices should be set in motion which permit the providing of a family environment for children whose families have difficulties in assuming their care. The options are foster care, in cases where the expectation and the work is put into the restitution of the child with his or her family of origin, or the search for another definitive solution; and adoption, in situations where the provision of a family is necessary after the child has been proven to be in a “situation of abandonment.” This is established in Art. 39 “Exceptional Measures”, in particular in Art. 41, “Application”, in its criteria “a) Temporary stay in family environments considered alternative” of Law 26061 and in the application of the Adoption Law, Law 24779.

Within public policies, temporary alternative care mechanisms or mechanisms leading to permanent measures, such as adoption, should be programmed and prepared. The quantity of children and adolescents who are in need of alternative care is a relatively small portion or minority within the population of Argentine citizens under the age of 18. The country has advanced with the prevention of separation through the application of public policies of universal coverage, such as the Universal Allocation of the Child for Social Protection, created by Decree no. 1602/09.<sup>11</sup>

### 2.3.2 Legislation on foster care of the City of Buenos Aires

In relation to the legislation, the points of the valid regulations on children in the city of Buenos Aires can be mentioned, which are concerned with the provision of alternative care. This law is the Law of Protection of the Rights of Children and Adolescents of the city of Buenos Aires (114/2008):

**Art. 25 - the Right to Community- and Family-Based Care.** *Children and adolescents have the right to grow up and*

<sup>11</sup> This is a subsidy awarded to those people responsible for the care of children and adolescents (father, guardian or relative up to third grade or kinship) for each child or adolescent under the age of 18 years in their care, or without age limits in the case of disabled people. As a consideration, the carers must be responsible for the attendance at education establishments and medical controls of the children and adolescents under their care. For more information, visit [www.anses.gob.ar/autopista/asignacion-universal-hijo/](http://www.anses.gob.ar/autopista/asignacion-universal-hijo/)

*be cared for by their parents and to live with their family group of origin, in a residence sustained by affectionate and community bonds and relationships.*

**Art. 26 - Preservation of the family group.** *The lack or insufficiency of material resources of the father, mother or guardian does not give cause for the separation of the child or adolescent from their family group.*

*The coexistence within other family groups constitutes an exceptional situation.*

In the “Second Chapter, Measures of Special Protection of Rights”:

**Art. 42 - Alternative forms of residence.** *When a lack or deprivation of the family group is detected, measures of protection consist of the search and individualisation of alternatives so that the children and adolescents live with people linked to them, through blood relationships or affinity, or with other members of the extended family or members of the community, according to local customs, in all cases and keeping in mind the opinion of the children and adolescents.*

*Any one of these alternative forms of care, orchestrated by the **competent organisation** created by the current law, configures a provisional guardian.*<sup>12</sup>

As well as this legal frame, it is necessary to also cite Law 2213 of the Creation of the Foster Care System. This Law is in force exclusively in the city of Buenos Aires, and it has not yet been regulated nor has it advanced in its application. Among the prominent characteristics of the Law no. 2213/L.CABA/06, the following can be found:<sup>13</sup>

1. The Law creates the “Foster care system” in the frame of Law 114 of the city of Buenos Aires and of Law 26061, both laws are adapted from the Convention of the Rights of the Child, National Law 23849, passed by the Convention of the Rights of the Child.
2. In general terms, therefore, the principles established in said local and national regulations are adjusted to the principles of the integral protection of children and adolescents.
3. “System” is understood in a double sense: on one hand in the sense of pursuing the joining of different institutions (CDNNYA; Judicial Power, Office of Childhood of the Social and Human Rights Ministry of the Government of the city of Buenos Aires) and on another it seems to speak of the fact that “each case” conforms to one system (see Article 13).
4. In every case of foster care the intervention of the CDNNYA is required (Article 5).
5. The Authority of Application is the General Office of Childhood and Adolescence, dependent on the Ministry of Human and Social Rights of the Government of the city of Buenos Aires (Article 14).
6. Fostering is defined as transitory. A placement of 3 months is established, which can be renewed. It is on a level, therefore, with the application of exceptional measures, Article 39 of Law 26061.
7. Although that which is understood as “family” is not defined, it is a broad concept and relative to adults who should carry out protectoral functions for the children they foster (Article 3. Similar to the regulation of Article 7 of 26061).
8. It establishes a limit of one child fostered per family. The exception to this rule is with groups of siblings.
9. The residency of the candidate family in the city cannot be less than two years but there is no minimum time established for the residency of children, who should also reside in the city of Buenos Aires.

<sup>12</sup> The Competent Organisation is the Council of the Rights of the Child and Adolescent (CDNNYA), its professional teams are those who have attributions to award this “Guardianship”. We would like to highlight once more that this is not a judicial organisation, but an administrative one.

<sup>13</sup> Luna, Matilde, 2007. Executive report and comments on the Law of fostering of the city of Buenos Aires (CABA). Available at: Legislation section of RELAF’s website: [www.relaf.org/leg1.html](http://www.relaf.org/leg1.html) [19th July 2011].

10. The signing of an agreement between the parties is necessary (Article 15), mentioning in the first place the children as participants in the agreement.
11. With respect to the economic help for the foster family and the family of origin: it remains at the discretion of the necessity and evaluation of the authority of application (Art. 16).
12. A single technical authority is established in charge of both families, the family of origin and the foster family, and the child (Art. 17, "Control and Follow-Up").
13. Impose the production of a Register of families by the authority of application (Art. 17).
14. For the implementation of the System of Foster Care the conformation of a specialised technical team must be established (Art. 18).
15. The judicial and administrative situation of the family with respect to the child is not specified, according to the current tools, the granting of a guardian by the CDNNYA remains at the discretion of each case, according to Art. 42 of Law 114 or a judicial guardian if judicial intervention occurs. The level of formalisation proposed by the Law in all cases of the agreement can be viewed above, in point 9.
16. Fostering by the extended family and community is prioritised (Art. 7 point 1 and 2).

### *2.3.3 Legislation on foster care in the Province of San Luis*

Other specific legislation that exists in Argentina is the "Law of Supportive Families. Register." Law No. IV-0093-2004, of the Province of San Luis, Argentina.<sup>14</sup> In this Law, without naming "foster care", the creation of a system of integral protection is prepared through the location of people in supportive families when they find themselves in a threatening situation or situation of violation of human rights.

There is no Ministry or organisation specialised in deciding and carrying out the processes of foster placements. This depends on the Secretariats and provincial organisations of protection of the Rights of the Child, on which the application of other types of alternative care also depends, such as placements in homes.

## *2.4 Foster care in relation to other types of alternative care*

### *2.4.1. Relationship between fostering and institutionalisation*

Regarding other forms of alternative care, foster care is seen as an alternative to a placement in an institution, which allows the reduction of the quantity of children accommodated in institutions and which allows for the possibility of carrying out processes of deinstitutionalisation. Some foster care programmes are based on this objective.

This affects the practice of foster care in the sense that these programmes created with an objective of deinstitutionalisation are limited to providing care for a group of children who carry the same characteristics derived from stays in homes, along with which can be found the weakening of the link with the families of origin and the impact on the psycho-social development of the child that goes hand in hand with institutionalisation.

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<sup>14</sup> Law No. IV-0093-2004, of the Province of San Luis, Argentina. Available at: [www.proteccioninfancia.org.ar/node/49](http://www.proteccioninfancia.org.ar/node/49) [19th July 2011]

### *2.4.2. Relationship between fostering and adoption*

Regarding the relationship between foster care and adoption, two points can be identified. Firstly, foster families do not take in children with the aim of adopting them, rather they should provide alternative care for a temporary period of time; in exceptional circumstances, in cases where the state of adoptability of a child who is in foster care is changed, the judge in charge can keep the foster family in mind as a possible adoptive family, without necessarily meaning that this family should realise the adoption. Secondly, the practice of foster care can be applied in cases in which the child has been declared in need of adoption and the child is awaiting an adoptive family. The objective of this measure is that during this period of waiting the child is cared for by a foster family, avoiding institutionalisation.

## Section 3

### About the measure of foster care

#### 3.1. Choosing the measure

There are certain criteria used to orientate the inclusion of a child or adolescent in a foster family, guided by the legislation previously mentioned:<sup>15</sup>

- Exceptionality of the measure: the separation of the child or adolescent from their family of origin and their inclusion in a foster family is a measure planned to be applied once all other intents at strengthening the family have been tried, and the situation of a violation of the rights of the child in the domestic environment calls for separation.
- Temporary: it must be a temporary measure and parallel to a process of reconnecting with the family of origin. Consequently, for those children and adolescents whose parents have rejected their paternity and who therefore need an alternative, definitive family, foster care is not an appropriate measure.
- Periodic revision of the measure.
- Preference in the application of alternative care based in families above institutions, especially for children under the age of 3.
- Preference in realising fostering in the extended family rather than in a family with no previous links to the child.

#### 3.2. Revision of the measure of foster care

Regarding the evaluation of the situation of a child who participates in fostering, as the Law orders that the measure of separation of the child from their biological family and their inclusion into a foster family is an exceptional measure that should continue for the shortest amount of time possible and while the causes which gave rise to the measure persist, we can take from that that it is necessary to evaluate the measure of fostering periodically and also evaluate the evolution of the rebuilding of bonds between the child and his/her family of origin to determine the necessity or discontinuance. The measure of placing a child in a foster family is revised by the state power (judicial or administrative) that ordered the realisation of this exceptional measure.

#### 3.3. Foster families

##### 3.3.1 Characteristics of the foster families

In the Argentine Republic, a wide variety of types of families are recognised and legitimised. Therefore, any given family, of whichever formation in relation to ages, gender, etc. could be legitimised as a foster family.<sup>16</sup> This is reflected in the regulations of Art. 7 of Law 26062, which demonstrates a broad concept of the family:

<sup>15</sup> National Law 26.061 of Integral Protection of the Rights of Children and Adolescents (2005) and Law 2213 of the Creation of the System of Foster Care (2007)

<sup>16</sup> As an example, Law 22618 of equal marriage allows people of the same sex to get married. It was approved in 2010, and it can be viewed in its entirety at <http://porlaley.blogspot.com/2010/07/texto-completo-ley-22618-de-matrimonio.html>

ARTICLE 7: "Family or family nucleus", "family group", "family group of origin", "community family", and "broad family", will be understood as, as well as parents, people who have bonds with the child or adolescent, through biological ties or ties of affinity, or with other members of the extended family. Also assimilated to the concept of the family are other members of the community who can represent the child or adolescent, with significant and emotional links with the child or adolescent's personal history as well as with their development, assistance and protection. State and community organisations that give assistance to the child and his or her family should make known to all those assisted the rights and emerging obligations of family relationships.

In spite of this, each programme defines the profile of families that they wish to sign up, influenced by the family model that society and institutions accept.

As previously explained, foster care can be realised both in the extended family (grandparents, uncles, aunties, neighbours, friends of the family, etc.) or in a different family (without previous links with the child or adolescent).

Foster care exists as a response to different problems, but in general there are no specialised programmes. Rather, the programmes receive children and adolescents with a variety of problems, as specified in the statistics offered through the qualitative survey of Programmes of alternative care based in families realised by the Secretariat of Human Rights and UNICEF, mentioned previously.

It is necessary to clarify that there are no professional families, in other words there are no families that are classified as strictly foster families who receive a wage in recognition of the children or adolescents under their care.

Furthermore, as mentioned previously, foster care can be paid or voluntary.

The challenge is to improve the specific preparation of families who receive children with various needs.

### *3.3.2. Selection, training and evaluation of foster families*

Foster care programmes have mechanisms of evaluation of families.<sup>17</sup>

The evaluation is realised by interdisciplinary groups, generally psychologists and social workers. General protocols are not applied, rather each programme has its own criteria. A much-used example is the one designed by Jorge Giglio based on case-studies of the national programme "Familias Cuidadoras",<sup>18</sup> a widely-used work.

Another question is that of the requirements of admissibility. We can use those established by the Law of the City of Buenos Aires as an example, as although it has still not been regulated nor is it in practice, it unites the formal requirements of the majority of the programmes.<sup>19</sup>

The same occurs with the so-called "training" of the families. Each programme prepares a particular system. We can use as an example a complete training programme used by the programmes of the NGO Ieladeinu, of the city of Buenos Aires.<sup>20</sup>

The programmes that are currently running have their own mechanisms of training and follow-up, meaning there is no homogenous criteria on a national level nor just one application of a training programme for families.

17 Matilde Luna (coordinator), 2006. Informe de relevamiento Prácticas de protección integral para niñas, niños y adolescentes en programas basados en familias. Dirección Nacional de Grupos Vulnerables, Secretaría de Derechos Humanos, Ministerio de Justicia de la Nación.

18 Giglio, Jorge, 2001. Selección de Familias. En: Luna, Matilde (comp.). Acogimiento Familiar. Respuesta social y de Estado en el cuidado de la infancia. Buenos Aires: Lumen Humanitas.

19 Article 7 "Requirements" of the Law 2213 of Creation of the Foster Family System.

20 Arditi, P., Bieniawski, G., Chaul L. y Miculitzkily, Debora, 2009. Las familias de acogimiento: ¿son o se hacen? Capacitando a las familias para la protección de niñas y niños. En: Luna, Matilde (comp.). Una mirada latinoamericana sobre el acogimiento familiar. Buenos Aires: Lumen Humanitas.

Each programme evaluates and decides the method of training the families, but there are certain characteristics shared by all. Training is realised after the selection of families takes place and it is a requirement to carry out the placement of the child. In general, the training consists of group meetings between the candidate families, in which workshops take place during which the teams transfer knowledge to the families in relation to the child's legal situation, tools to help them understand the situation in which the child finds himself/herself, the accompaniment they are going to receive in the process by the technical team, and in which their role and function is made clear, as well as the expectations they should have in relation to the experience. Also, the temporary nature of the measure of foster care is made clear, as well as the necessity that they promote ties between the child and the family of origin.

We can also quote examples from non-governmental organisations such as Camino del Sol or Emmanuel, who have their own systems of training and follow-up, as well as providing courses for personal training.

The foster care programme "Familia del Camino" of the Fundación Caminos del Sol<sup>21</sup> provides assessment and follow-ups of the foster families through a technical team formed by professionals. The aim of this is to help families in difficulty to develop their strength to favour the raising of their children; to favour the construction of community networks for families of origin (prevention of fostering) and for the foster families (development favourable to the process of fostering); evaluate the future foster families and prepare them for the experience; accompany them so that they can facilitate the link of the foster child with his/her family of origin. They also organise spaces to reflect upon the things experiences and to agree upon, when facing a conflict, mediator solutions and group meetings between foster families to exchange experiences.

The Fundación Emmanuel<sup>22</sup> has a foster care programme in which teams work both with families of origin and foster families. Regarding the latter, they provide information about the rights that foster care maintains of those involved, they evaluate the coordination of the possibilities and necessities of the child, their family and the foster family and realise a follow-up of the situation of the child in the foster family during the process.

### *3.3.3. Legal status of the foster family*

The foster family may or may not have the legal guardianship of the child. In general, if the case is judicialised, the judge in charge summons a Judicial Office requesting the fostering of the child or adolescent, which is why the responsibility for the child is that of the authority of the foster programme. Said authority signs an agreement with the foster family, delegating said responsibility of care. In non-judicialised cases, the signing of said agreement administratively is realised.

<sup>21</sup> Caminos del Sol website: [http://www.caminodelsol.org.ar/obra/obra\\_3\\_4.htm](http://www.caminodelsol.org.ar/obra/obra_3_4.htm)

<sup>22</sup> Foster care section of the Fundación Emmanuel's website: [www.emmanuel.com.ar/nuevositio/acogimiento-familiar.html](http://www.emmanuel.com.ar/nuevositio/acogimiento-familiar.html)

## Section 4.

### Examples of foster care programmes and their characteristics

Foster Programmes<sup>23</sup> provide alternative care in families who are called, evaluated, selected, prepared and supervised to assume the care of a child, or families who, when they assume this work, already have a connection with the child of whom they will be made responsible. Furthermore, and keeping in mind that it should always be the first option evaluated, the Programmes generally realise in the first instance the search of a family in the environment of those connected to the child, always trying to include the extended family or those with previous bonds with the child and/or their family. It is in this way that foster care is configured in “a different family” or in the “extended family or community” as part of the public policy of the protection of rights.

As a result of a qualitative survey of the Programmes of alternative care based in families realised in 2006 by a team from the Secretariat of Human Rights in cooperation with UNICEF in four of the 22 provinces of Argentina, the information we will now summarise was obtained:<sup>24</sup>

- The provinces surveyed were San Luis, Río Negro, Salta and Entre Ríos.
- All four have governmental programmes of foster care implemented in the governmental environments of their organisations of the integral protection of rights.
- The beneficiaries are 587 children and adolescents under the age of 18.
- Among the motives of admittance to the surveyed programmes, the professionals registered various “causes”. They highlight the suffering of abuse in all forms; the “abandonment” of mothers and fathers, children who were institutionalised; children on the streets; and absence of guardians of the home for sudden reasons, such as through illness, accidents or travel.
- The entry route to the identified programmes are: judicial derivations, hospital or other programme derivations, family requests, spontaneous demand, neighbour, church or municipal complaints.
- The exit routes of the programmes: taking the average of the four provinces the options, from highest to lowest number of cases are: firstly the return to the family of origin, then the incorporation into the extended family (when before the child was in a “different family”); adoption and, lastly, a small number of cases through emancipation due to reaching the age of 18.
- The use of different methodologies of summoning foster families such as through publicity campaigns, “word of mouth”, meetings in community institutions.
- The foster families are evaluated, prepared and accompanied in carrying on their role by professional interdisciplinary teams.
- The average number of children per family is two.

<sup>23</sup> In our country, different names are acquired, such as Supportive Family (San Luis, Río Negro, Sante Fé); Substitute Family and Small Homes (Misiones and La Rioja); Foster Care as a component of the Programme of Family Strengthening (Entre Ríos) and Transitory Foster Care (Neuquén). These are some examples of the diverse names of an extremely extended practice in our country.

<sup>24</sup> Matilde Luna (coordinator), 2006. Informe de relevamiento Prácticas de protección integral para niñas, niños y adolescentes en programas basados en familias. Dirección Nacional de Grupos Vulnerables, Secretaría de Derechos Humanos, Ministerio de Justicia de la Nación.



- The programmes apply work strategies to the families of origin to work towards the reinstitution of their capabilities of providing care.
- Three of the four foster care programmes are part of wider programmes aimed at strengthening the family of origin. Through this, it is hoped that foster care can be used as a resource to apply when strengthening strategies with the family of origin are unsuccessful.
- Three of the four programmes have a budget to transfer financial resources to the foster families to cover the costs accrued through caring for the children: it is a monthly subsidy. The remaining programme does not possess a fixed subsidy but the foster family receives material help for specific purposes every time professionals evaluate the necessities of economic help.
- In the framework of the transformation of the practices and in an attempt to reduce the quantity of children in institutional care the four provinces use the foster programmes as an alternative to institutionalisation and as part of the strategies of deinstitutionalisation.
- The four provinces have integrated interdisciplinary teams made up of psychologists, social workers, educators and lawyers, among others.
- The four programmes demonstrate the use of adequate techniques to ensure that the right of children to be heard is respected.

Another example that we can refer to is the Survey realised in the Autonomous City of Buenos Aires<sup>25</sup> on the foster care experience in extended families in the framework of the Council of the Rights of Children and Adolescents institution of the Autonomous City of Buenos Aires. The Survey on the experiences of foster care that we will present was realised with the objective of thinking of a strategy to develop this practice as an alternative to the separation of children and adolescents from their families of origin, in accordance with Law 114, which establishes as a priority the right to live within a family group, implementing favourable measures, reaching the regulation of establishing procedures for the eventual intervention of organisations in the search for protection of children and adolescents in their extended family or with people close to them.

In this way the fulfilment of the CDN is brought into effect, which sets out:

- in the first place the strengthening of support for the family of origin
- when separation is necessary, to firstly approach the extended family
- then investigate the relational environment of the children
- as a last resort approach substitute families (foster care or adoption)
- finally, and in exceptional situations, institutionalisation

Among the conclusions of the survey, it was found that:

- The care of children based in their extended family and community is possible for both sexes and in all age groups. Particularly during puberty and adolescence girls and boys can be active protagonists in the solution based in family care when facing a crisis.
- Within the extended family, the women are those who are generally responsible for the care of the children. Within this group, single grandmothers are in the vast majority. It makes it necessary to think of a specific strategy of support.
- Within non-families, it is still women and in particular neighbours who are responsible and capable of providing a supportive solution.
- Given the discussion of whether foster care should just be transitory or whether it is possible up until the age

<sup>25</sup> Committee for the Rights of the Child of Geneva (with the participation of Matilde Luna as an invited expert). Report for the Day of General Discussion of the 16th September 2005. Foster care and the experience in the City of Buenos Aires [online]. Available at: [www.crin.org/docs/resources/treaties/crc.40/Discussion.asp](http://www.crin.org/docs/resources/treaties/crc.40/Discussion.asp) [19th June 2011] and [www.trabajosindrogas.com.ar/downloads/matilde\\_luns.pdf](http://www.trabajosindrogas.com.ar/downloads/matilde_luns.pdf) [19th July 2011]

of 18, it is demonstrated here that in each case, working in singularity, it is possible to find foster care of short, medium and long-term stays. A foster family, particularly if it already has a previous relationship with the child, can definitively be a good, sustainable, stable and significant place to allow children to develop integrally until they reach the age of 18. It is also a response for shorter periods of time, until a return to the family of origin or another solution is made possible.

- It has also been demonstrated that families can require this type of help both for situations brought about by relational conflicts as well as sudden situations, serious illness, travel, etc.
- The experience of fostering can begin and be maintained with an administrative measure. It is not necessary that it is always brought about by judicial decisions. For this it is necessary to have a professional team mediating, protecting and legitimising all involved, and that judicial mediation is implemented in cases which require it.
- In reference to the above, it is very important to promote the agreement between both parties, preventing the appearance or heightening of any problems.
- The children are capable of giving their opinion during the whole process and are also capable of protecting their "superior interest" that they are listened to and taken into account. In turn, it is a learning exercise in facing their problems, both in their experiences as children and adolescents and in their adult lives.
- It is possible to base a public policy of care of children in the supportive organisation of the community. This is only possible if the system, through professionally trained groups within the community, can activate, encourage and accompany private initiatives with public resources. This requires being part of the community and being attentive to the family's own networks of support.

In summary, and before the lack of national updated information, the Programmes which we have concisely described are part of the many practices of foster care that Argentina offers its children who are deprived of parental care.

## Section 5.

### Themes in the agenda of the Rights of the Child as regards foster care.

#### 5.1 The rights of the child in decision-making processes

Regarding the respect of the Rights of the Child in the process of making decisions, Argentine legislation on the subject of children incorporates the guidelines of the Declaration of the Rights of the Child. In this way, in the National Law of Integral Protection of the Rights of Children and Adolescents 26.061 previously mentioned, in relation to decision making two articles should be highlighted: Article 24, in which the obligation to listen to and take into account the opinion of the child according to their level of maturity and development in the situation of making decisions is established; as well as Article 27 of “Minimum guarantees of judicial or administrative processes” which establishes that the child has the right to be heard by the competent authority, and that his/her opinion should be taken into account when decisions that affect them are being made, as well as being assisted by a lawyer during the entire process, interceding actively in the process and having the opportunity to appeal against any decision that affects them.

Regarding the application of this law, from experience one can confirm that the persistence of ideas and practices typical of the Paradigm of the Council means that an ignorance regarding children and their rights exists. There is also, within the judicial power, an ideology and practices which include the making of decisions without taking into account the will or opinion of the child.

#### 5.2 Rights of children with disabilities

Regarding foster care programmes which include children with disabilities, there are no specialised programmes which provide alternative care in a family environment to children with disabilities.

There is no reference to this group of children in particular in national state law or in provincial law as these, regulated by the Declaration of the Rights of the Child, are of the same character of universality and should be applied for all children, regardless of their situation.

In cases where foster families have to care for a child with disabilities, the foster care programmes can provide the necessary help to facilitate their work. These families can also be favoured in public policy of the national State that aim to benefit the most vulnerable groups, such as disabled people. Among those are the Universal Benefit for the Child, as previously mentioned, and the free use of public transport for people with disabilities.

#### 5.3 Rights of foster families

The law does not enshrine any consideration regarding the biological children of the family that realises foster care.

The foster families are not considered in employment laws, nor in laws of health or social security, as it does not constitute a professional practice, nor therapeutic treatment.

As mentioned previously, the support for foster families is provided by the technical team from the foster programmes through training and constant support before, during and after fostering. In some cases, as well, families are provided with an economical subsidy.

## 5.4 The biggest challenges for foster care in Argentina

Among the obstacles in the way of placing children in foster families are those mentioned in the answer of the first point of this report, referring to the lack of political decision to carry out programmes of foster care, and the application of institutionalisation of children who find themselves deprived of parental care as a majority resort. These factors derive from the fact that there is not a culture of realising formal foster care, rather in Argentina there is a culture of informal fostering that takes children whose parents cannot take care of them to be cared for by families known to the child, without a state authority legitimisation the situation (a practice which dominates informal foster care).

Regarding the concrete implementation of foster care, having been born in the historic context of the paradigm of “trustees”, it entails a social representation that the children found in foster families are “abandoned” children. It is difficult to reverse this representation and make it common knowledge that children who are fostered have, in the large majority, a family of origin. Even programmes that take in children who are moving towards the judicial declaration of abandonment accommodate children from a very young age who technically still have a family. It is not true that there is a large proportion of children in orphanages.

This makes the work of programmes who aim to make known the characteristics of foster care necessary, as well as the cases in which it should be applied. Adding to this, public figures normally take a position of mistrust of foster care, resulting in their resistance to its application. The same happens with technicians, as in the environments of professional formation foster care is generally unknown, or not included in the curriculum.

All these factors make up a diverse and heterogeneous scene, both on what is understood on a social level and on what decision-makers and technicians know about the measure of foster care.

## 5.5. Debate in favour of the development of fostering and challenges faced

The debate is lead by governmental authorities who are in charge of the planning and application of the public policies regarding children, as well as non-governmental organisations who work for the defence of the Rights of the Child. Although institutionalisation continues to be the usual answer over foster care, there has been an advance towards the recognition of the necessity to promote processes of deinstitutionalisation. This advance became a reality in the creation in 2007 of a Federal agreement in the framework of the Federal Council of Childhood, called “*National Guidelines on the Matter of Children and Adolescents deprived of parental care*”<sup>26</sup> an obligation signed in the frame of the Federal Council of Childhood, Adolescence and Family of Argentina. In light of this, the execution of a National Survey of children in alternative care is being carried out by the National Secretariat of Childhood, Adolescence and Family with the cooperation of Unicef Argentina. In this document, one can find recognition of the necessity to initiate a process of deinstitutionalisation, as well as encouraging help for the families of origin. The challenges are to be found in the deepening of the Federal Obligation, as well as how at an internal level the Recommendations of the Committee of the Rights of the Child are taken into account.

## 5.6. Orientations for the future development of foster care

To specify the direction that policies and practices concerning alternative care should follow in the future, we can look at the observations of the Committee of the Rights of the Child of the United Nations towards the system of protection of the Rights of the Argentine State, taking into account that this should comply with the suggestions of the Guidelines and the criteria of said organisation.

With the Guideline document, it is proposed to support the efforts to ensure that children and adolescents remain under the care of their own family, so that they can reintegrate into it or, failing that, find an alternative solution that is appropriate and permanent, considering adoption and community care practices, sponsorship,

<sup>26</sup> [www.desarrollosocial.gob.ar/Uploads/i1/FamiliaArgentina/8.%20Balance%202007.pdf](http://www.desarrollosocial.gob.ar/Uploads/i1/FamiliaArgentina/8.%20Balance%202007.pdf)

shared parenting and others that, in Latin American countries - in rural areas and in cities; in indigenous communities, etc; - develop frequently and form part of the identity of our Latin American region, and of our country.<sup>27</sup>

The Committee of the Rights of the Child of the United Nations, from the moment in which this new instrument of Human Rights was approved, has analysed Reports of countries on the fulfilment of the CDN, taking into account these Guidelines, concluding with the Recommendations of the States of the region, the necessity of their immediate application. This is what happened with the recommendations in Argentina.

In effect, the recommendations realised by the Committee of the Rights of the Child, after examining the presentation of the Report on Argentina in May 2010, realised specific recommendations regarding **alternative care** and its prevention in light of the suggestions of the Guidelines.<sup>28</sup> We transcribe the following:

*4. Family environment and other types of guardianship (articles 5, 18 (paragraphs 1 and 2), 9 to 11, 19 to 21, 25, 27 (paragraph 4) and 39 of the Convention).*

*Family environment.*

*51. The Committee encourages the State to continue its efforts to help families to fight effectively against poverty, and to ensure that families are prepared in their parental functions, in particular single-parent families and those who have more difficulties in gaining access to State services, such as in remote areas, indigenous families, migrant families and those who have children with disabilities. The Committee also encourages the State to ensure that all families have access to psychological, social and legal services offered in both local and community environments, helping them to strengthen family relationships and to allow children to receive attention during the day and to adopt other measures to effectively prevent the placement of children in institutions.*

*Other types of alternative care*

*52. The Committee celebrates institutional changes introduced by the Law no. 26061 regarding the assistance and protection offered to children, public orientations published by the Federal Council of Children, Adolescence and Family relating to children deprived of a family environment;<sup>29</sup> in particular the recommendation of avoiding the placement in institutions and the elimination of “mega institutions”, as well as the study carried out by the National Secretariat of Childhood, Adolescence and Family. The Committee confirms with concern:*

- a) The insufficiency of data and information supplied about children under other types of alternative care, especially the lack of a clear differentiation between correctional establishments for offending children and homes for children who are placed outside their family environment for their own protection, as well as between different types of alternative care for children;*
- b) The lack of common definition of the different types of alternative care and of a methodology taking into account data on institutions and placement in care homes, as well as the lack of information about mechanisms of supervision and evaluation;*
- c) The lack of supervision and preparation of caregivers and that the State does not have uniform regulations about the different types of alternative care, such as the placement in care homes or in the extended family; and*
- d) The lack of special budget allowances to strengthen the family ties and promote alternatives to institutional placement.*

*53. The Committee recommends that the State:*

<sup>27</sup> Publication of the Guidelines in preparation, Coordination Matilde Luna, National Office of Vulnerable Groups, Secretariat of Human Rights, Ministry of Justice of the Nation, 2011.

<sup>28</sup> Examination of the reports presented by the States in virtue of article 44 of the Convention. Final observations: Argentina. CRC/C/ARG/CO/3-4.

<sup>29</sup> The CRC makes reference to the “National Guidelines for Children and Adolescents lacking parental care” an agreement signed in the framework of the Federal Council of Childhood, Adolescence and Family of Argentina, in 2007.

- a) *Ensures that in the whole territory uniform regulations on the placement of children in foster care and extended family care are adopted and applied and that the methodology of collection of data in all provinces continues;*
- b) *Realises a study on the conditions of the placement of children in foster care to adopt corrective measures and supervise the conditions of said placement through periodic visits;*
- c) *Finalise the study to evaluate the situation of children placed in institutions and include in its objectives the evaluation of the living conditions, the services provided and the duration of the stay, as well as the measures adopted to find an appropriate family environment, that sufficient resources are assigned, follow-up is carried out and adequate measures are adopted to apply the conclusions of the study;*
- d) *Continue adopting all necessary measures, including in the provincial environment, so that children placed in institutions return to their family when possible or are placed in family homes, and consider the placement of children in institutions as a last resort and for the shortest amount of time possible;*
- e) *Ensure that special budget assignments are put aside to strengthen family ties and promote alternatives to placement in institutions, such as assistance aimed at children and their psychological and social support;*
- f) *Establish clear regulations for alternative care, provide support so that existing institutions fulfil these regulations, establish an integral mechanism of reports for children placed in institutions and realise a periodic revision of the measures applicable to these children, taking into account that available in article 25 of the Convention and the Guidelines on the different types of alternative care of children, that appear in the annex of the resolution 64/142 of the General Assembly; and*
- g) *Ensure that the right of the child to be heard is respected when deciding upon the questions related with the different types of alternative care.*

## Section 6

### 6.1 Investigation on foster care

As mentioned previously, the subject of foster care is not included in university degrees, meaning that professional ignorance on the subject results in a lack of investigations into the practice in this country. The most important theoretical productions are referenced in this report, whose author is Matilde Luna and which have been published by the Editorial Lumen Humanitas. These publications are the result of investigations in academic and administrative circles. All articles have been cited and can be found in the bibliography. The main areas of investigation are in relation to the surveying and analysis of foster care experiences.

Furthermore, we can cite unpublished investigations:

1. Bialek, Tessa, 2008. *"Crece en familia es fundamental". El acogimiento familiar en la Argentina en el contexto de los derechos del niño: un estudio de caso de la organización leladeinu*. Unpublished thesis of SIT Argentina, Social Movements and Human Rights Seminar. Thesis supervisor, Matilde Luna.
2. Ocampo, Omar Daniel, 2010. *Propuestas Terapéuticas en la Práctica del Acogimiento Familiar*. Unpublished masters thesis in Family Law, Universidad del Salvador. Thesis supervisor, Matilde Luna.
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- 2 Blanco, G; Comerci, A; Campelo, P; Rubinstein E y Luna, M., 2005. Niño huérfano espera vacante. En: Sorokin, Patricia (coordinator). . *Jurisprudencia Argentina VIH/ SIDA en la jurisprudencia y en los medios de prensa* (Nº IV). Buenos Aires: Lexis Nexis.
- 3 Dantas, Erica y Luna, Matilde, 2009. Diversity in the recognized forms of Foster Care: the Latin American View. *Boletín del Servicio Social Internacional* [online]. Available at: [www.iss-ssi.org/2009/index.php?id=79](http://www.iss-ssi.org/2009/index.php?id=79)
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- 5 Luna, Matilde, 2004. Acogimiento familiar en América Latina: un estudio comparativo internacional. *Presentación en el Seminario Internacional de Acogimiento Familiar, IFCO 2004, Prague, Czech Republic*.
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- 7 Luna, Matilde, 2006. Lazos, roles, diferencias y semejanzas. Los lazos de hermandad en el acogimiento familiar. *Revista de PROSED, Programas de Servicios Educativos de la Universidad Católica Argentina*, (Año 3. Nro 5). Buenos Aires.
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