

A panorama of adoption practices in South America:

CASES OF COUNTRIES UNDERGOING TRANSFORMATION



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Introduction

Child Identity Protection (CHIP) was created end 2020. Its principal mission is to guarantee the right to identity for every child, and to speedily restore all missing elements of their identity. In this context, CHIP is honoured to contribute to the dissemination of this study, which raises major issues concerning the protection of the right to identity for different categories of children, who have for example been abandoned, ill-treated, living in institutions, as well as those who have been adopted.

However, the first problem often arises prior to the above mentioned situations, and concerns the creation of a family identity for these children. The lack of support for the most vulnerable families and the absence of sufficient preventive measures generate a high risk of abandonment and family breakup following the removal of the child by the local protection services. The right to a legal identity which guarantees a statute and social protection is often made fragile in these contexts because of the lack of documentation referring to the existence of these children, including from birth. The situation is particularly critical for the numerous indigenous populations in South America, who are not accustomed to the western signification of this practice.

Furthermore, the research reveals another common phenomenon: the modification of identity which occurs when the official decision concerning the future of the child is prolonged. The resulting instability and uncertainty for the child, who finds themselves buffeted between different environments, mean that they lose their family origins and are unable to create new bonds.

These periods without identity are aggravated in the majority of cases by long stays in institutions, often until coming of age. Therefore, the child is not guaranteed a permanent life project which would allow them to construct their psychological identity through stable family relations. Without the legal identity which endows them with a statute and citizenship, the child becomes invisible from a social point of view and their fundamental rights are endangered. A modification of the identity of a child can also occur even when a permanent life project is guaranteed through national or intercountry adoption, since the latter more often than not involves a complete rupture of ties according to the legal norms of many countries. The child is therefore totally cut off from their family identity, and often also their cultural identity, forcing them later in life to undertake a search for origins, if they so wish, with all the practical, legal and psychological challenges that arise.

The study also points out the issues of child trafficking and abuse to which children without the protection of a legal identity are particularly exposed. When documents concerning birth are lacking, falsified or destroyed, or are impossible to trace when the child is discovered, the people finding them do not necessarily have at heart to protect and identify them in the eyes of the authorities. The child will more easily fall prey to private adoptions, unofficial arrangements or illegal adoptions; or they will remain in an institution without any possibility of benefitting from procedures aimed at family reunification, and, should the case arise, of being registered on a list for national adoption.

The preservation of the right of the child to access their origins is therefore insufficient in spite of the fact that the countries covered by the study adhere to the principles and guarantees laid down by the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (HCCH 1993 Adoption Convention), which include this aspect. The adoption can remain hidden, especially in those countries where it is culturally taboo, or when it is the result of illicit practices such as the manipulation of consent, or for political reasons. These

types of case dominate the cultural image of adoption in the countries covered by the study. The population, having lived through traumatic dictatorships, often associates adoption with tragic State terrorism and the appropriation of children by the proponents of the regime, especially in Argentina and Chile. The actors encountered during the study bear witness to the fact that the development of a culture of adoption which is safe and respects the rights of the child in the eyes of society is limited and obstructed by this history, when the objective is to mobilise society to protect children and promote options for family placement at the national level. In fact the good implementation of the principle of subsidiarity of intercountry adoption (ICA) in relation to national adoption includes the development of national family solutions, which, where possible, allow the child to remain in their cultural environment. A further limit which will be discussed later concerns collaboration between sectors and between professionals, and the training of key actors involved in placement (actors, judges).

Finally we assert the right of the child to grow up in a family environment¹ and their right to identity, particularly where their family relations are concerned, and both these rights must be taken into account and a fair balance found in the complex decision-making procedure relative to their life and protection.

Summary

This publication covers the results of a field study and includes the testimonies of adoption professionals (national and intercountry) who are concerned by the situation of children abandoned and in alternative care placement in five South American countries (Colombia, Peru, Chile, Bolivia and Argentina).

Objective

The objective of this study is to improve understanding of the new reality of adoption within the context of these countries, which, like others throughout the world, have chosen to limit or to stop ICA. Several transformations are influencing laws and practices, encouraging families to adopt locally and thus allowing a better protection of the cultural identity of the adoptees, while reversing the tendency of previous years to send massive numbers of children abroad for adoption. Our mission has been to draw up a picture of these transformations and their effects from the point of view of these countries and their actors.

Methodology

We have carried out 33 semi-structured interviews with key professionals in the fields of child protection, including adoption between 2014 and 2017 during field trips in the five countries. When analysing this material we have used a grounded theory approach to reflect the thinking of the participants in action. We asked questions concerning the demands of their work, the changes observed in recent years, their collaboration in the field of adoption and the practical challenges, what facilitates and what limits the development of systems of protection, and especially national adoption, in their environment.

¹ In the sense of the preamble to the Convention on the Rights of the Child – CRC (1989) which recognizes “that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.”

Results

The principal themes which emerged from our analyses enabled us to identify several issues and concerns, mainly:

1) several obstacles in the field for the implementation of new norms for the protection of children, and long-lasting problems which delay or block the procedures for the adoption of children in need;

2) the necessary revision and consolidation by the actors of their collaboration in their respective fields, in order to improve the standardisation of their response and their alignment with the principles of the HCCH 1993 Adoption Convention;

3) the rapid increase in severe social problems affecting families and then their children, aggravated by migration, massive urbanisation, the loss of social support networks and endemic poverty, which in turn result in alcoholism, substance abuse, domestic violence, ill-treatment and severe neglect. These are the main causes of placement;

4) poor availability of access to competent and preventive psycho-social services, and their concentration in charity or private sectors (religious), rather than these services being provided by government agencies, and there is a lack of preventive policies for families and single mothers;

5) a large split observed between the sectors concerned with the systems of child protection: child protection and adoption, administrative and legal problems, which thus affects the quality and efficiency of the solutions put in place for the children;

6) a blatant lack of public investment in children and the prioritization of their rights, despite the principles covered: this has a negative impact on the adequate application of new laws and policies covering alternative care and adoption, in spite of the fact that these laws and policies reflect the recommendations of the Hague Conference on Private International Law and the Committee on the Rights of the Child.

In the face of these important obstacles, the professionals we met try to create and reinforce alliances within their communities, and sometimes between countries, in order to have an improved response capacity. The challenges observed during the thematic discussions show how the rights of these children are still compromised: the right for the child to grow up in a stable family environment which can meet their needs, and associated with this right, the right to a legal identity and statute which provides social protection.

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Key words: national adoption, intercountry adoption, the HCCH 1993 Adoption Convention, South America, child protection, right to identity.

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The current situation

of countries of origin confronted with the changed norms for intercountry adoption



ICA is in the process of being re-defined with the impact of a new world movement to regulate and improve the practices of protection for the children concerned. Since the beginning of the years 2000 there has been a radical reconfiguration of adoption practices, combined with new laws, policies and practices in both countries of origin and receiving countries. These changes reflect the global tendency towards less ICA, already noticeable as from 2004, and since then a drop of 77% of this type of adoption has been observed (Selman, 2018). As a result the different actors involved in adoption and child protection have been obliged to adapt their interventions, policies and methods of collaboration between sectors very rapidly and sometimes in a context of conflict.

The actors all have the same mission, to protect children who have no family support. However, in reality, they convey various representations of adoption which result in different, sometimes contradictory practices of alternative care placement, as can be seen in the tension between a more salvationist or charitable approach (adoption is to save children from social poverty and lack of care); an approach strongly anchored in the preservation of families with priority given to the blood relations; or an approach which gives more emphasis to the protection of children and the complexity involved, while recognising that the interests of the child cover several concurrent needs and rights (Piché and Vargas Diaz, 2019; San Román and Rotabi, 2017).

In several countries where the State structures for child protection are being modernised attempts are made to give priority to national adoptions as opposed to ICA. Since the ratification of the HCCH 1993 Adoption Convention and in particular the adherence to the principle of double subsidiarity, the best interest of the child is defined around their right to identity. As far as possible the option of maintaining first family ties should be privileged when intervening or placing a child. If re-integration within the family is impossible despite interventions or because of abandonment, national adoption should be encouraged rather than ICA, in order to preserve cultural identity and links with their community during the child's development. New adoption laws have been enacted in these countries in order to incorporate this principle when placing children.

However, decisions concerning the environment of a child do not always guarantee the “right to family”, even though this is clearly stipulated in several legislations.² The majority of children, mostly in institutions, are deprived of this right and the right to identity (RELAF, 2016). As a result many children are without a statute and are virtually invisible in the eyes of the State, which makes it very difficult to have access to adequate protection. Furthermore, both the private and the public institutions which receive these children, and which act in accordance with the new norms to protect rights, are faced with several challenges: financing the services, adequate training for carers and professionals, and efficiency in the interaction between the psycho-social, administrative and legal work which would lead in the first place to re-integration in the family, if possible, or an adoption. At the same time countries try to establish preventive measures in support of vulnerable families and to prevent abandonment and ill-treatment, and to protect the different rights of children. A large amount of this work falls on charitable organisations and civil society rather than on government initiatives.

Several factors can motivate the momentum of several countries to reinforce their capacity to care for and protect children without family support: an awareness of the subsidiarity of the principles; a desire to limit ICA and the potentially illicit practices associated with it, such as child trafficking and ICA for the wrong motives or under pressure (Roby and Ife, 2009; Rotabi and Gibbons, 2012). The problems linked to massive ICA were aggravated by the structural imbalance between rich and poor countries, and it became the wrong and often false solution for helping the poverty of families. Several incidents of irregular adoptions covered by the media provoked public outcry and led to the demand for better, local, care for these children without support.

The awareness of the dramatic effects of ICA on the loss for these children of family, identity and cultural bonds has also contributed to the importance of finding local solutions. The countries of Latin America have somewhat drastically changed their attitude towards ICA since the 1980s. In 2006 only one country out of the five covered by this study, Colombia, was included among the ten principal countries of origin for ICA (Selman, 2009), whereas these countries contributed to more than 90% of adoptions in the 1980s (Kane, 1993 in Selman, 2009). Since then these countries have enormously reduced ICA and some have even virtually stopped altogether, in order to concentrate on the development of local systems of adoption via protection systems.



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² The “Derecho a la familia” is mentioned as such in all the legislation of the countries of South America we have visited, although the term is debated elsewhere or is primarily referred to as the spirit of the law. (in the CRC and the HCCH 1993 Adoption Convention).

The new social, political and legal context: the countries of South America turn to national adoption

The situation of certain South American countries is similar to that of several countries which practice adoption: they suffer from great poverty, aggravated by social inequalities and a cumulus of collective traumas caused by dictatorships and State terrorism, together with natural disasters which seriously affect infrastructures and separate families. The population of these countries also experiences the after-effects of social change, with the growth of neo-liberalism, privatisation and individualism, and major migration of families to urban centres in search of work and better living standards, which creates new social problems or worsens existing ones (Rojas Villagra et coll., 2015). Children are the prime victims of these social conditions through the isolation of their families, problems of domestic violence, substance abuse by parents and the increase in mental health issues in the families, as well as the low level of education, etc. When already vulnerable families (for example single parents) are affected by a combination of these problems the children run a grave risk of ill-treatment and being subject to abandonment or negligence (Salazar La Torre, 2011).

These social phenomena also imply distance from or loss of essential support from the extended family and community, putting heavy pressure on the families for the care of their children. The result is that often children are abandoned by their parents, frequently at a very young age, either literally or by gradual withdrawal of care, and need to be taken away by the authorities. Other children will run away from their family who ill-treat them or do not care for them, and they find refuge in the street, and in doing so lose their family bonds and a part of their identity. They are generally recuperated by public or private institutions, rather than by members of their family, and it then becomes very difficult to find another family environment to meet their needs, such as keeping a trace of their identity. As a result of the lack of concrete public investment in child protection, it then falls on private organisations to spontaneously take responsibility for the care of these children, and sometimes even to organise adoptions as in the past.

This imbalance of public-private investment is a characteristic of child protection and adoption in Latin America, despite the fact that these countries are committed to the major conventions on the rights of children (the 1989 Convention on the Rights of the Child (CRC), the HCCH 1993 Adoption Convention), to adapt their laws to recognise these rights and to apply them by forming adequate professional entities of protection, etc. They are also bound to make available all the necessary means to tackle the roots of social problems in the communities in order to better prevent, or at least supervise cases of neglect, abandonment and ill-treatment. International organisations raising awareness of children's rights within their family have for many years made several recommendations to these countries to abolish "orphanages" and improve support for vulnerable families through

social programmes and the development of a permanent local system of placement for children (RELAF, 2016, UNICEF, ISS, etc.). This has motivated us to explore the present situation in the field of adoption in South America, in order to know how it is evolving, the main issues of concern and the form that they are taking in various countries.

Objectives of this study

The general aim of this study is to trace a global panorama of the transformations of the phenomenon of ICA, based on the concept of social field (Bourdieu, 1980) as it applies to adoption (Ouellette, 2005) in a comparative context of the previously numerous countries of origin for ICA in South America (Bolivia, Colombia, Peru, Chile). The specific objective was to draw up a picture of the present situation from the point of view of the key actors in the public space of child protection and adoption in these countries (organisations, institutions and the actors involved) who are implicated in national and ICAs, and at the same time to analyse the obstacles which thwart their recent adoption reforms. This study has taken the example of certain countries in South America which have undergone this major transformation in the years 2000, in order to document the impacts and processes of adjustment involved, and also to reflect the situation in the countries which are trying at the present time to adhere to the HCCH 1993 Adoption Convention. The fundamental rights covered by the Convention, and which were the object of special discussions, pinpointed the right to a family (to live in a stable family environment, which is secure and affectionate) and the right to identity (to have a protective statute and to preserve a link with family and cultural origins).

This qualitative and exploratory study aims to

- 1) **Understand** the new challenges and concerns of the public actors in the field of adoption in South America;
- 2) **Identify** what motivates these actors at the present time, their questions, areas of agreement and disagreement concerning the procedures and methods of organising adoptions;
- 3) **Confront** these different representations of adoption (as protection – adoption is a meticulous social intervention governed by laws, which must be carried out after evaluating “best interests”; the salvationist approach whereby adoption saves children, at all costs, from their social circumstances; and the abolitionist approach to adoption, a historic form of oppression of people in the third world [Rotabi and Gibbons, 2009, 2012; Robi and Ife, 2009]);
- 4) **Connecting** the actors working in adoption on the continent with the international organisations involved in the defence of children’s rights, through an in-depth analysis of the current challenges in the South American continent, and those specific to each country concerned; and
- 5) **Make known** the possible solutions proposed by these countries.

Methodology

We have chosen a qualitative approach, based on interviews with key actors, discussion groups, and the study of documentary sources during and after field missions.

Participants

The choice of these countries was based on the presence of recent changes in the laws concerning adoption, and on the feasibility of carrying out field research (geographic location, available collaboration), even though others have also put in place systemic transformations which are pertinent to this analysis. Face-to-face interviews were carried out with 33 participants in the four countries covered by this study (Colombia, Peru, Chile, Argentina) during our field study over a period of 10 months altogether (including one month spent in Bolivia in 2014, and 9 months spent in the other countries between May 2016 and April 2017). Our field mission was therefore spread over two years, followed by remote updates until the writing of this publication, concerning the evolution of statistics and norms for national adoption in each of the countries of the study. The objective was to identify and undertake interviews with several types of actors who are involved in adoption procedures, in order to pinpoint their concerns, find what motivates them to continue their mission to help children and families and their analyses of what has changed or evolved since the end or reduction of ICAs. Ultimately, the central question was to find out how national adoptions were being developed in each country, since this is the principal argument for States to reduce ICA, and also the leverage that should allow this change of policy concerning placement.

Officials of the Central Authority, of the approved adoption organisations, pre- and post-adoption professionals, associations promoting adoption or the rights of children in their community, and researchers in the field of adoption, were among those interviewed. This was the case in each country visited, with a variation in the diversity of the sample, according to the recruitment possibilities in each country.

We carried out this recruitment via internet searches and personal contacts in the country, and then by snowball effect. We also contacted organisations working for children's rights. We sent an information letter by email and proposed the possibility of meeting in person, in writing or by video conference. However all the sample participants chose to meet in person. We then conducted semi-structured interviews with the participants of an hour to an hour and a half, guided by an initial, fairly wide-ranging interview chart, covering the present reform situation, while remaining open-minded. In certain cases we also visited hostels so as to observe the context and discuss with the employees.

In Chile we had two group meetings to gather information, the first during a university conference by invitation which we proposed in Santiago, and the second during a meeting of professionals. Both were analysed in "focus group" mode. We were able to further contextualize the testimonies of participants through the analysis of documentary sources, either from literature or from the participating organisms and actors (leaflets, books, internet sites, government reports). We used reports, leaflets, books written by the professionals we met, statistics, the legal framework, as well as our email communication with participants, to bring up-to-date our analysis after the end of the field research, the latter continuing until the final production of the research study in 2021.

The strategy of data analysis

The chosen methodology made it possible to arrange thematically the concerns of the actors. By using the Grounded Theory (Corbin and Strauss, 2008; Charmaz, 2014), it was possible to deconstruct the testimonies of the actors working in adoption by illustrating the contexts and social and geographic positions, in their comments. The Grounded Theory, an iterative approach, enabled us to produce analyses throughout the data collection in the field, and thereafter to produce new questions and thoughts while we took the measure of the phenomenon as experienced and represented by each actor interviewed, in each country visited, and then to have an overall picture.

The analysis was structured by stages of codification, which involved organising and re-organising the comments of the participants around descriptive categories, comparing them and then deconstructing them in order to produce strong analytical categories which best describe the perceived reality (stages of initial coding, then axial and focus coding, according to the method described by Charmaz, 2014) The initial categories selected were:

- 1) **the perception of the roles carried out by the actors** within the framework of their respective context in their country;
- 2) **the practical and political challenges encountered** when accompanying children for placement;
- 3) **the discourses around adoption** within the context of adoption reform.

During this comprehensive and comparative exercise we were first of all plunged into the systemic and cultural specificities of each country. Then, during a second part of the exercise, this data was compared with other fields following the three stages proposed by Vigour (2005):

- 1) gathering and putting into perspective the information;
- 2) interpreting the similarities and differences; and
- 3) drawing up the results of the comparative research.



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Analyses

a difficult harmony between the HCCH 1993 Adoption Convention and the local resources with the potential to adhere





The following sections are the synthesis of our observations and the testimonies of participants in each country: Colombia, Peru, Chile, Bolivia and Argentina. For each country we will introduce the context of adoption reform and its specific social characteristics, before giving the testimonies of our participants.



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Colombia: a difficult change towards national adoption

L'Instituto Colombiano de Bienestar Familiar (ICBF) is the Central Authority (under the terms of the HCCH 1993 Adoption Convention) of Colombia and it implements the Programa de Adopción (ICBF, 2016) through its eight authorised institutions spread over the country.

Colombia began to limit ICA in 2006 and has continued to do so since then. The limitation is partial, but persists, of children proposed for so-called "standard" adoption, that is children considered to be without special needs. For decades Colombia had proposed thousands of children for adoption (more than 14,000; ICBF, 2016) in several western countries (Canada, the United States of America, France, Italy, Spain, etc.). The change came about with the new law on adoption, within the framework of the protection of the rights of children and adolescents: the Código de la Infancia y la Adolescencia (Código, 2013; Law 1098, 2006). Adoption is represented in this Code as a means to restore the rights of a child or adolescent from the moment their legal situation is defined by a Defensor de la Familia from the ICBF, and they are declared eligible for adoption and the consent of their legal representatives or the authorisation for adoption are obtained. This change was reinforced in 2013 when criticism emerged in the national media concerning the ease with which Colombian children were available for adoption by foreigners, and even child trafficking in some cases. The lack of transparency in relation to costs involved in these adoptions was also questioned by the Committee on the Rights of the Child (Colombia, CRC/C/COL/CO/4-5, 6 March 2015; Baglietto and Piché, 2017). Over a period of 20 years adoptions from Colombia fell from 2596 in 1997 to 1390

in 2019 (ICBF, 2019). This could be the result of an important change in the profile of the children proposed for ICA, and also, as we will see, the duration and scope of the search for biological family bonds, obligatory before the declaration of adoptability, and the multiplicity of procedures between sectors.

The strict application of the principle of double subsidiarity

Article 4 of the HCCH 1993 Adoption Convention stipulates that any contracting country must show that, when the biological parents are unable to care for their child, it is impossible for a member of the extended family or for an adult in the community to take responsibility for the child, before allowing adoption by a person not linked to the child, or who does not share a biological bond with them. This principle aims to protect family relationships while at the same time establishing an identity in continuity for the child. A link with the community is also a priority in order to preserve at least a cultural, geographic and symbolic connection, should there be family separation. If it is impossible to guarantee these options within a limited period, then the institution of child protection must envisage national adoption. ICA therefore becomes a back-up option, an absolute last resort, since it breaks family and cultural links – especially because of its all-enveloping effect and the breakdown of links caused by the adoption laws of foreign countries (Ouellette, 2008). Several interpretations of double subsidiarity are possible and its application can take different forms and different degrees (Vaughan-Brakman, 2019). Colombia has the specificity of having tightened its regulations in two ways: in the search for solutions at the first level of subsidiarity (an adopter or guardian from the family), and in the classification of children for adoption by foreigners, according to its rules.

Adoption therefore reflects not only the respect of this principle but also the importance given to “blood relations”, the biologisation of parentage. This obliges social workers from the protection services, when they are faced with a child who is abandoned, to carry out intensive searches for the parentage of the child all over the country, up to the 12th degree of parentage, in order to justify adoption outside the family by the absence or refusal of family members to care for the child. Although this norm aims to protect the family relationships of the child, it has negative effects, such as keeping many children without a family environment, and without a statute, which worsens their situation and violates their rights. The actors we met decried the excessive duration of these searches, with the diffusion of the child’s portrait in the media, because it goes well beyond the maximum period required by law for the final report on the recommendation of the life project for the child to be submitted to the judge. This limit is established at 6 months (ICBF – Law 1098, 2006), which respects the principle of time for the child waiting for a bond and marks the end of the intervention period before the lapse of parental rights, after examination of the procedures of support for family reintegration. According to the actors interviewed, months, even years can pass while these searches are carried out, and the children run the risk of losing their declaration of adoptability, if that is in their best interest, as well as their potential for adoption, since they will have grown up in an institution and will often have lacked adequate care and education in these environments.

In other words, a local, non-family adopter could wait years before being able to adopt the child, even though no family member has claimed them, and an adoption would have the advantage of making stability for the child more rapidly accessible. The delicate balance which needs to exist between the protection of family bonds, the original identity of the child, and the respect of their fundamental rights, in particular that of growing up in a family environment and developing bonds, is not at all achieved while these decisions are being reached.

An insufficient evaluation of rights: the invisibility of social orphans

The lack of evaluation of the rights of these children as soon as they enter the institutional system was a problem which concerned our participants. Even though this important measure for the preservation of the rights of the most vulnerable children is enshrined in Law (Código, 2006), because they are without a name and without a statute (mainly children who are abandoned), this forward-looking measure does not function in a satisfactory manner because thousands of children do not benefit from it. According to our participants, the legal professionals mandated to carry out a complete evaluation for each child on their arrival in an institution do not do so, or only partially. There is a lack of rigor and therefore many children are never seen and so remain without a statute. The possible reasons for this void put forward by our participants are lack of time or diligence on the part of the Defensores, the lawyers who have been specifically trained and accredited by the ICBF to initiate the search for identification (name, family relations) and to define the best interests of each child. When this approach towards children in institutions is missing these children do not exist in the eyes of the State and remain invisible, without a statute,

deprived of identity. The child will therefore be unknown to the services of protection, will not benefit from an evaluation of their family and social situation, and will never be able to reintegrate their family or be declared eligible for adoption, which is the essential step for finding a family for them. He will also be very vulnerable to trafficking and exploitation. The inspectors of the institutions subsidised by the ICBF do not always detect the presence of these children. Certain participants link this to a phenomenon of corruption of subsidies, in other words certain institutions would keep the largest number of children possible, while preventing them from benefitting from a possible adoption, often in order to keep their government quotas and funds from donors.

The actors we interviewed and the literature quote various figures to give the scale of the number of Colombian children and adolescents living in institutions at the present time. In 2019, the organisation La Casa de la Madre y el Niño counted more than 25,000, only 6,300 of them being declared eligible for adoption.

The drop in “standard” adoptions³

Like many countries involved in ICA in the years 2000, Colombia tightened the criteria required from adopters, while modifying the profile of children in need of ICA. This occurred in order to prioritise the placement of children for whom it is difficult to find a solution as well as care within the national system. In fact the adoption of children with special needs is, since 2006, the only possibility for non-Colombians. Children over 6, or with special needs, or siblings of two or three children including one over 6 years of age, are the only children available for ICA. As very few prospective adoptive parents apply for children of this age group and/or with important care required, the accredited adoption bodies (AABs) which have links with Colombia are closing one after the other, or by default specialise in this type of adoption. Only Colombian families living abroad can from now on have access to so-called “regular” adoptions, and certain organisations have refocused their actions by helping Colombians who have immigrated to adopt children from their country. Programmes to rebuild links with their cultural origins have also been developed for these children post-adoption by the ICBF.

As a result less Colombian children have been adopted internationally in the last few years (1390; ICBF, 2019), which can also lead to improved respect for the right to the cultural identity of these children, on condition a family solution has been found which corresponds to their needs.

However, the participants do wonder if that really helps those who are the most difficult to place, either in national or ICA, such as older children, and those who have a disability, suffer chronic illnesses and/or part of sibling group. By trying to place

these children more rapidly in ICA, those countries which limit drastically “standard” adoptions available to foreign prospective adoptive parents do not take into account the enormous problem of finding adoptive parents for this category of child, either nationally or internationally. If the underlying logic is that children with special needs will have better access to care, operations and treatment in receiving countries where the health service systems are more readily available, this is not always the case. Adoptive families have great difficulty accessing professional psycho-social support and have to turn to the private sector for specialised paramedical care (Piché, 2011). Some argue that this massive orientation in fact delegates the responsibility for the care of these children with special needs to foreign countries through ICA (Chicoine, Germain, Lemieux, 2012). However, it was even more difficult to place these children with special needs locally, before the implementation of the reform. An important decrease in this type of adoption was observed by the ICBF. In fact, the adoption of children “con características y necesidades especiales” fell from 608 in 2006 to 131 in 2016 (ICBF, 2016), a major drop which cannot be explained only by the drop in the number of children who are abandoned. However this type of adoption increased by 18% in 2019 (ICBF, 2019). Among these special adoptions it is important to mention those for older children at the time of placement (children of 6 or more in Colombia) and for siblings. In these cases the effects of the loss of identity can be multiple: the loss of bonds with parents and also with the brothers and sisters they have grown up with, and an even more drastic breakdown concerning their culture and their relational, geographic, linguistic and sensory points of reference. The breakdown of identity is even greater in the case of ICA. The challenge involved in this type of

³ The so called « standard » adoptions refer, for Adoption Accredited Bodies, to any adoption of children who do not have special characteristics such as « special needs », older children or siblings.

adoption is not only delicate where health and treatment are concerned, but also includes the continuity and coherence of emotional bonds, the feeling of belonging and the construction of identity.

The applicants from abroad who do not have Colombian nationality must first of all comply with the international norms and regulations on adoption (HCCH 1993 Adoption Convention), then follow all the administrative, procedural and legal steps required by their country of normal residence and by the Colombian government, which can take several years according to our participants. However, the truth is that many of these children who could be placed in these foreign or local families are not identified and have never appeared on the adoption lists.

The present situation: acceleration of procedures

A second problem has arisen, while trying to solve the first. The principle of the fastest access possible to a family environment, thus allowing permanent bonds, as laid down by the Code (2006) is, according to the actors, short-circuited by the very strict norms for the search for family links. This search, which aims to respect the right to the identity of origin, makes little sense when the extended family is disinvested, has never been invested or is not accessible for the child, or cannot be found for months or years. The delicate balancing of rights is broken and in fact no rights are guaranteed for the child during these long, unsuccessful searches. They remain without a statute, without a family environment, and in the end becomes less and less eligible for adoption by a family. The bureaucratic obstacles and problems of collaboration between sectors slow down and block access to an evaluation of the child's statute, which is essential and constitutes the starting point in the search for an adequate environment for the child. The rigidity of the new norm therefore has paradoxical results contrary to the desired objective. This reveals a misunderstanding of the value of adoptive bonds, while remaining committed to the ideology of the superiority of blood ties, which is not synonymous with, nor a guarantee for the construction of a positive identity in the development of an individual.



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Since the beginning of the ICBF adoption programme in 2006, more than 40,000 children have been adopted, locally and internationally (ICBF, 2016). After a long period of development, the number of adoptions has remained stable since 2013, with a slight constant increase (from 1,125 in 2013 to 1,390 in 2019; ICBF, 2019). There has been a small increase in national adoptions compared with ICAs during the same period, and a gradual increase in the number of special needs children accepted locally, due to the new regulations which apply to foreign adoptive parents (ICBF, 2019). However, there is still a wide gap between the ever-higher numbers of prospective adoptive parents for “standard” adoption from abroad, compared with the Colombian adoptive parents on the waiting lists, even if these lists are getting longer.

According to the most recent report of the Colombian institution, several improvements have been made to the procedures for placement (the actors we interviewed had criticized this aspect), bringing them closer to the objectives of the reform. The procedures progress more efficiently since applications for adoption can be made via an online platform, according to the ICBF:

“An increase of 10% for adoption of children and adolescents, and of 18% for adoptions of children with special characteristics. This is accompanied by a decrease in the duration of the adoption procedure from 24 to 9 months...” (ICBF, 2020).

It remains to be seen how the other problems discussed above evolve, at the intersection of cultural representations of family bonds, the legal aspects and how they apply to legal and family identity, and the development of national adoptions.



Chile: a new adoption law within a divided system

In Chile, the practice of adoption has undergone changes at several levels over the last few years, like other countries which have adhered to the HCCH 1993 Adoption Convention (in 1999 in the case of Chile; Law No. 19.620). More generally, child protection actors have pointed out the low implication of the State in the protection of children's rights. The challenges still exist of the care for children who are abandoned provided by religious or private institutions, together with the neo-liberalism which is increasing rapidly and which dominates the model of adoption services and runs through all institutions. In Chile, the right of the child to grow up in a family and to maintain links with their origins is enshrined in the law, and has been the object of many discussions, together with the fight against private and illicit adoptions (Galleguillos, 2015).



Organisation of the protection/adoption system

"Chile is the only country in Latin America which does not have legislation to guarantee the complete protection of children and adolescents" (UNICEF, 2020). The country possesses different legal authorities which rely on a system of protection and adoption. However, many of these laws are several years old, such as the Ley de Menores, 1967, and can be in contradiction or at odds with the principles to which Chile adheres since its ratification of the Convention on the Rights of the Child (UNICEF, 2020). In spite of the recent changes to the SENAME (Servicio Nacional de Menores) - which came to fruition in October 2021 through the establishment of the "Servicio Nacional de Protección Especializado a la Niñez y Adolescencia" (named Servicio Mejor Niños) - a law covering complete protection is still missing, which limits the effect of these changes on the whole system of child protection in the country.

The authority for the protection of children - SENAME at the time of the present study - acted as the Central Adoption Authority in Chile within the meaning of the HCCH 1993 Adoption Convention, and updated its law on adoption the same year it came into force (Law No. 19.620, 1999). The SENAME was the principal entity which oversees three distinct services: child protection, the adoption services and young offenders. The main role of this body was the administration, control and regulation of the Organismos Colaboradores Acreditados (OCAs), private adoption agencies which are subsidised by the State to take responsibility for procedures. The SENAME intervened directly for 2% of the children, while the OCAs handled 98% of the remaining children (Informe Jeldres, 2014⁴). These institutions must participate in the call for tenders with projects, in accordance with the law 20.032.⁵

4 Informe de la Comisión de Familia Constituida en investigadora para recabar información y determinar responsabilidades en las denuncias sobre hechos ilícitos ocurridos en hogares del Servicio Nacional de Menores. Available at: <https://www.camara.cl/verDoc.aspx?prmTipo=SIAL&prmID=10254&formato=pdf>.

5 SENAME established a tendering system to which the financing of collaborating accredited institutions is subject. This «aims to regulate the form in which

The protection section within the SENAME was responsible for the evaluation of the violation of children's rights, and implemented interventions for these children and their parents and placement in temporary foster families, or an institution, the latter being the predominant solution statistically. The children in placement who cannot be reunited with their nuclear or extended family of origin have only one permanent option legally, adoption, since alternative family placements (for example in long-term foster families⁶) do not exist in this system. Only temporary foster families can take in a child during the period of evaluation and attempts to reintegrate the child's family. In 2020, SENAME carried out 17, 886 online services for alternative care placements, of which 56.8% were in specialised foster care and under direct administration, with a smaller percentage in residential care (SENAME, 2020).

Up until now SENAME's adoption service functioned separately from the protection system, while relying on accreditation from the OCAs, which cover the majority of adoption procedures. The three OCAs⁷ come under a coordination centre (GAP). These bodies, together with SENAME's adoption service, organised the placements, gave support to the families of origin as well as to the adoptive families, supervised the preparation for adoption and the psychosocial follow-up of the families. More recently a section concerned with the search for origins has been developed (Salvo-Agoglia and Marre, 2019). During our study criticism was levelled at the lack of continuity between the protection and the adoption services. In this regard, it should be reiterated that, in 2021, the announced modifications to Chilean legislation and to SENAME were implemented.

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SENAME transfers resources to collaborating accredited bodies and establishes new subsidy lines. The objective of this law is to operational the transfer of public resources in the new programmatic lines within the framework of the rights of children and adolescents» (SENAME, 2005).

⁶ For example, in Quebec there is a form of permanent placement in the child protection system that does not break the filiation's ties which is called « Famille d'accueil à majorité » (foster family until the majority). This family must as far as possible be known by the child (Famille d'accueil de proximité) since the Law on youth protection of 2007.

⁷ Fundación Mi Casa, Fundación San José para la Adopción, Fundación Chilena de la Adopción

In order to initiate a declaration procedure (called "adoption eligibility" in Chile) the child must have been removed from their family for one of the following reasons: parental incapacity to care for the child on a physical or moral level, negligence in supplying basic care during at least two months (30 days in the case of a child under the age of one), actual abandonment of the child, who has been entrusted to an institution or a family member with the obvious intention of giving up parental responsibility (art. 12 of the Law 19.620; SENAME, 2018). In 2017, a total of 538 cases treated by the SENAME covered motives which justified the opening of adoptability procedures: 29% for all three reasons, 25% for parental incapacity and 17% for incapacity combined with abandonment. The age of these children varies between 0 and 8, the majority under the age of one. 83% of these cases were referred to the regional units of SENAME (Unidades Regionales de Adopción), and the others were referred to the OCAs (SENAME, 2018). These extreme family situations pinpoint the necessity to promote support services throughout the country for families in distress, and where possible to help towards family reintegration, so that separation only occurs when necessary, and the identity of the child is not marked by a breakdown of bonds.

The present situation: a sizeable increase in the number of national adoptions, and a new profile of children for ICA

Until 2021, with the adoption service being regulated by Law No. 19.620, which incorporated the principles of the HCCH 1993 Adoption Convention, which resulted in reducing ICA and increasing national adoptions. ICA still exists and the principal receiving countries are Italy, which has five Accredited Adoption Bodies (AABs) represented, as well as Germany, France and Belgium. According to Bacchiddu (2016) a wave of adoptions to Italy took place in the 1980s, linked to the presence of Italian religious communities in Chile which facilitated adoptions. For this reason Chile was the sixth South American country of origin at the time (Selman, 2009).

However, since 2005 Chile has carried out more national than ICAs (Selman, 2012), with improved respect for the principle of subsidiarity and for the right of the child to preserve their cultural identity. This is a significant reversal of the situation when taking into consideration that this country was one of the large contributors to ICA, especially during the dictatorship of the 1980s and following years (83% of these adoptions were intercountry; Selman, 2012). Some people have linked this reversal of the flow of adoptions to the application of the principle of double subsidiarity covered by the HCCH 1993 Adoption Convention (Galleguillos, 2017).

Chile is one of the countries following the international tendency to give priority for ICA to children with special needs (Berastegui, 2011), and has recently focused on the adoption of older children (in this case, aged 7 on average) and siblings. These children were also proposed for national adoption (23% were adopted in 2017) even though it is difficult to find families for children over 4. Therefore ICA is often their sole opportunity. The increase in the age of children proposed for adoption is the result of the late intervention of the systems of protection in situations of negligence and other ill-treatment, and also of excessively long procedures to document parental incapacity (Salvo Agoglia, 2017). This lack of diligence on the part of the systems of protection also prolongs their time in institutions, which remains the principle option, or it increases the risk of abuse, of not benefitting from adequate care and of being deprived of the possibility to form lasting bonds, essential for the construction of their identity.

The challenges involved in these late adoptions are certainly important. Building up new bonds can be complex (Piché, 2011), and the loss of significant emotional roots is greater for these children on a family and a cultural level, with repercussions on their overall development. Our participants gave priority to the specific evaluation of the best interests of the child when faced with these difficult decisions for adoption, where loss is inevitable.

A fracture between sectors: child protection and adoption

The actors very often mentioned the division that existed between the sector of child protection and the sector of adoption within the SENAME. Two very distinct institutions, and with very different resources, must take responsibility together for children who are abandoned or ill-treated. Their financial and human resources are not proportionate to their needs. Child protection has more available resources, even if they are not sufficient to guarantee the services and are not well represented outside the central regions. Indeed, SENAME's adoption services are concentrated in the capital affecting the possibility of organising adoptions in a comparable way and with the same services in the regions.



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It was also mentioned that there are differences of qualification and professional training between the sectors, where more recent skills for working with children and families are concerned, the actors in the protection sector being considerably less well trained. Adoption professionals in Chile are very well trained on a clinical level and have access to positions in adoption only after a specialised university programme, thanks to the implementation in partnership with SENAME of a certification in adoption (the Diplomado de adopción offered in conjunction with the local universities).⁸ The child protection system, on the other hand, tries to reduce costs by employing educators, who only have a basic college training to accomplish highly specialised tasks, such as evaluation and intervention. The same applies to staff in residential hostels. Their precarious working conditions mean that there is a high turnover of staff and a lack of commitment.

Child protection and adoption function together but in a fragmented manner, with little dialogue and collaboration between the professionals of the two services responsible for the same children. The actors criticised the lack of fluidity that this causes, especially during the decision-making procedures that occur between the protection services and the recommendation for adoption. This often delays the declaration of “adoption eligibility”, the first legal step in Chile for a child on the path to a permanent family (to be confirmed later in a second, further procedure, a declaration of adoption):

“So the decision becomes diluted over time and potential adoptions are lost because no one has taken a decision” (Participant).

From the point of view of many professionals in the protection sector, adoption, even national adoption, is a “last resort”, and the participant says this is because of a lack of confidence in this option.

“If we were convinced that adoption could be considered as an alternative, in the same way as other forms of receiving children, but it is not seen as an option” (Participant).

Often any collaboration is beset by tension around legal disputes over the situation of children, blocking the conclusion of a potential adoption. All these limitations raise doubts as to the real capacity of the system to guarantee a permanent life project for the children, which would give them stability, the necessary care for their development and respect for their rights to identity. These challenges will undoubtedly be at the heart of the implementation of the new Chilean legislation on protection and adoption, as well as the operation of the new government entity in charge of these issues as of the end of 2021.



Peru: development of a new adoption system

In Peru, the services for protection and adoption are under the Ministerio de la Mujer y Poblaciones Vulnerables (MIMP). They include a General Directorate of Adoptions (Dirección General de Adopciones) which represents the Central Adoption Authority and is the entity responsible for “proposing, directing, articulating, implanting, supervising and evaluating policies, norms, project planning and programming concerning all adoptions, and must be the only institution responsible for treating administrative applications for adoption of children and adolescents legally declared as abandoned”.⁹ Before proceeding to an adoption, it must be demonstrated, in line with the principle of double subsidiarity, that every possible attempt has been made to preserve the families, or to give priority to national adoption, out of respect for the right of the child to their family as well as their cultural identity. When we visited the MIMP and the Dirección General de Adopciones in Peru in 2016, they had a team of 57 persons (97% of whom were professionals, lawyers, psychologists and social workers). They are scattered in Lima and throughout 10 regions in the Unidades de Adopción. The Dirección General de Adopciones comes under the MIMP, and in 2011 became the first body in Peru for proposing, directing, implanting and supervising public policies in adoption, as well as applying norms and creating psychosocial programmes for adoption.

A few years ago, the Ministerio de la Mujer y Desarrollo Social (MIMDES) reported that there were more than 16,000 children and adolescents without family support in institutions (INEI and UNICEF, 2008, p. 124), not including children living in street situations. It was at this time that a national plan of action was drawn up (PNAIA 2012-2021) with the objective of reducing the number of children in institutions, either by helping them to reintegrate their families, or by placing them in adoption according to their needs. It is difficult to obtain more recent statistics, covering all the placement environments in the country. Where institutions managed by the State (public) are concerned:

“The CAR (Centros de Atención Residencial) at the present time accommodate 6,860 children and adolescents, called “residents”, without making a distinction between the different reasons for their arrival in the Centre (Guardianship Survey, Judicial Resolution of Abandonment or Convenio). Of this total, 6,307 children were under a protection measure and 553 live in the CAR under agreement with their parents.” (PNAIA, Permanent Multisectoral Commission, 2017, p.200)



⁹ MIMP, <https://www.gob.pe/7350-ministerio-de-la-mujer-y-poblaciones-vulnerables-organizacion-de-ministerio-de-la-mujer-y-poblaciones-vulnerables> consultado el 6 de febrero de 2020.

Increase in national adoptions

Lima, the capital, is in first place for the number of adoptions carried out, followed by the smaller towns, with adoptions in rural areas minimal (barely one per region; MIMP, 2019a). Therefore public and private institutions are the main environment for children who have lost parental care.

Between 2013 and 2019 (MIMP, 2019a) national adoptions finally out-numbered ICAs for the first time: 636 compared with 107 in 2013, a very considerable increase. This figure includes expatriate families with at least one Peruvian citizen, which is in line with an enhanced transmission of the cultural heritage of the child. Adoptions by foreigners fluctuated slightly and are decreasing (from 74 to 55 between 2013 and 2018). The main countries adopting Peruvian children are Italy and the United States of America. In the 1980s, Peru, together with several other countries, participated massively in ICA (Selman, 2011). Local prospective adoptive parents approved for adoption were even more numerous than international prospective adoptive parents in 2019, a reversal of past trends (207 Peruvians for 94 international prospective adoptive parents, MIMP, 2019a), thus falling in line with the objective of encouraging national adoption and the principle of double subsidiarity for the first time in the country.

National adoptions of children with special needs have increased to a certain extent during the same period. In 2019 they mainly included children and adolescents with a disability (38%; MIMP, 2019a), groups of siblings (32%), adolescents (15%), children with health problems (10%) as well as children aged over 6 without these conditions. Foreign families adopted twice as many of these children between 2013 and 2018 (MIMP, 2019a), but this figure is increasing for Peruvian adopters, in line with the objectives of double subsidiarity and greater respect for the cultural identity of the children, without any discrimination linked to their profile.

In the 1980s Peru was involved in massive global adoptions (Selman, 2012) and terrorism hindered the development of institutions, whereas there have recently been several cultural, political, social and economic transformations, together with the ratification of the HCCH 1993 Adoption Convention, which includes the principle of double subsidiarity and limits ICA in the country:

“In the decade between 1980 and 1989 Peru was among the first eight countries of origin for ICA, a situation which has not re-occurred. On the other hand, we think that the decrease in ICA in recent years is linked to a series of socio-economic phenomena. On the one hand, in receiving countries the number of applications for adoption has gone down, particularly during the economic crisis in Europe between 2010 and 2015, and on the other hand, countries of origin have established more adequate policies concerning the principle of subsidiarity. They are trying to find a solution for children and adolescents with families on a national level, before turning to foreign families. In this way the culture of adoption is less a source of discrimination in relation to biological families.”
(Participant)

According to this observer, various factors influence this decrease in ICA both in receiving countries and countries of origin: a drop in demand (this could be linked to the end of the supply of "standard" adoptions or of children without "special" needs, knowing that children classified as such in Peru are aged over 9 and have problems finding a family, apart from others with different characteristics). From a national point of view, this change of policy in relation to the principle of double subsidiarity included in the HCCH 1993 Adoption Convention has meant that priority is given to national adoption and its valorisation as a family solution for children.

Domestic and family violence as the main source of vulnerability in children

The main source of vulnerability for children who have been abandoned, or risk being abandoned, is, according to the Dirección General de Adopciones, a delay in overall development caused by exposure to the social problems which lead to family separations, family poverty, discrimination and exclusion, also sometimes called "toxic stress" (Shonkoff, 2012).

"The vulnerability already present in the development of these young people is only increased, when, for different reasons, they cannot rely on care from their parents or risk losing it. These situations expose them even more to poverty, discrimination and exclusion, and the risk of becoming easy prey to abuse, exploitation and abandonment." (MIMP, 2019)

Violence towards children is very often the reason for institutional interventions, which aim to give improved support to families and prevent the effects of violence on family relationships and the identity of children. According to the documentation violence towards children is either direct or indirect (towards their mother or siblings for example). The Peruvian authorities did not possess many statistics on the phenomenon, except for the violence of mothers towards their children between the ages of 0 to 5 (INEI and UNICEF, 2008). It is thought that the number of children who are victims of their parents or family is underestimated, due to the fact that the majority of women do not report domestic violence to the municipal authorities. According to the national survey ENDES (2009), 76% of mothers of children aged 0 to 5, whose situations were finally reported, had never denounced their spouse (MIMP). Adolescent mothers are very frequent in this catholic country where abortion is forbidden and contraception very rare. 15% of adolescents in Peru (15-20 years of age) have already been pregnant, and the percentage is even higher outside towns, around 30% (MIMP). All these conditions render the children more liable to be abandoned or to lack of care.



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The new paradigm of “complete protection”

This change of perspective put forward in the new policy, based on the CRC, which every adult should take into account, aims to consider the child as a subject of law and not as an object, a possession. A wide-ranging awareness of the developmental needs of children as separate beings is still necessary, and must bear in mind the right of every child to express their desires. Once again the actors of the Peruvian system we interviewed criticized their own system, which is in contrast with their guiding principles. The obstacles are the prolonged internment of children after they have been removed from their families, and their abandonment. The actors also spoke of the complexity and conflicts, often ethical, that are involved when trying to find a balance in the rights of children when choosing a placement.

“States must guarantee the elaboration of a permanent life project in the shortest possible time for the child deprived of parents. At the same time they must encourage the preservation of the family and solutions on a national level. However, when there is a lack of adequate adoptive families or other persons able to provide permanent care for the child within the country, it is not good enough to keep them waiting in an institution, when the possibility exists of finding a suitable, permanent family abroad.”
(Participant)

Another participant explained that cultural pressures, in particular the biocentric preference for the “blood” family, are also obstacles to national adoptions, and sometimes favour reintegration in the family of origin, without questioning whether it is appropriate. It becomes an option which is virtually automatic. The historical appropriation of children, abducted or given over too rapidly for ICA, especially from indigenous families (documented in the years 2000 by Leinaweaver, 2008), is another reason still today for hesitating to place children in adoption outside the family.

It is a paradox that the procedure of the search for the biological family and the immediate placement in an institution are problematical interventions in that they harm the development of these children, when they should help them to find stability and continue their development more rapidly. Not so long ago the problem existed of adoptions carried out without prior, thorough verification of the alternatives, and so now there are long waiting periods before declaring a child eligible for adoption, which then makes it more difficult for them to be adopted as their profile no longer fits the projects of prospective adoptive families. In addition the moratorium which allows foreign adopters to adopt only children over the age of 9 (in 2016; today over 6) renders the adoption of these children almost impossible, even when they should have priority. They do not correspond to the profiles sought by either by Peruvians or foreigners.

“An important problem is the prolonged institutionalisation of these children during the pre-adoption period. The guardianship investigation process and the protection arrangements which consist in placing the children in institutions as a general rule are what most harm the rights of the child.” (Participant)

Here, once again, the faulty application of the new international and local policies for adoption is apparent, when the system confuses child protection and the protection of “elements” of society (children) considered undesirable. In this way the rights of these children are violated: their being shut away, cut off from normal life and the rest of society, punished for the incapacity of their parents to look after them, and neglected by the authorities, who should set aside massive resources (professional, financial and material) at every stage of protection, in order to improve and accelerate the decision-making procedures when the time counts double for each child. In fact the children remain invisible, without identity, unable to make their voices heard, for lack of efficiency and a real consideration of their rights when decisions are taken.

“When the system of protection bases its policy on “irregular situations” and continues to shut away children, as a way of protecting society from those who will later integrate that society, considering them as dangerous elements, we are then preventing the child from freely exercising their rights with equal opportunity. The gap between institutionalised children and those living with their parents widens all the more. It is essential to begin with access to education, health, quality of life and the free expression of their desires. It is a mistake to think that the best way to free society of their presence is to isolate them.” (Participant)

According to another participant, a new decree in 2020 has suddenly changed the norm concerning placement, probably in reaction to the over-institutionalisation of children, with the objective of moving them closer to a family environment. Although the law on adoption in Peru was revised in 2016, its final version has still not been approved by the congress of the Peruvian government. Moreover, the latter has changed several times since then. The last government has not issued a new law but has issued a modification of the legislative decree (1297¹⁰) in a context of emergency and with very little preparation. It applies in a very general manner to any situation concerning the protection of children without family support or “running the risk of losing it”, but does not cover adoption. However, it does include the possibility of recognising the community of the child as “family”, linking their well-being to ties of identity, which is important for the indigenous communities, who have a wider definition of the family.¹¹

10 Decreto de urgencia que modifica el decreto Legislativo n° 1297: Decreto Legislativo Para La Protección de niñas, niños y adolescentes sin cuidados Parentales o en riesgo de Perderlos: “La presente Ley tiene por objeto brindar protección integral a las niñas, niños y adolescentes sin cuidados parentales o en riesgo de perderlos a fin de garantizar el pleno ejercicio de sus derechos; priorizando su derecho a vivir, crecer y desarrollarse en el seno de su familia.» (Emergency Decree amending Legislative Decree No. 1297: Legislative Decree for the Protection of children and adolescents without parental care or at risk of losing them: «The purpose of this Law is to provide comprehensive protection to children and adolescents without parental care or at risk of losing them in order to guarantee the full exercise of their rights, prioritizing their right to live, grow and develop within their families).

11 “En el caso de niñas, niños o adolescentes procedentes de pueblos indígenas u originarios, comunidades campesinas, comunidades nativas o cualquier otra forma organizativa, donde la niña, niño o adolescente haya desarrollado identidad cultural y sentido de pertenencia, se entiende como familia de origen o extensa a los integrantes de éstas, de acuerdo a sus costumbres y bajo un enfoque intercultural.» (In the case of children or adolescents coming from indigenous or native peoples, peasant communities, native communities or any other organizational form, where the child or adolescent has developed

Apart from this decree, political transformations have resulted in the modification of a large number of the professionals who until then were responsible for adoption in the country, so that since this modification many professionals who are untrained or who have no experience in adoption have influenced interventions, and are not implementing established practices. This new norm implies that children are systematically placed in temporary foster families until an adoptive family is found. These families are selected very rapidly, after basic evaluation and verification, but are not prepared for the challenges facing these children, in particular concerning communication on their origins. A lot of these families would like to transform the fostering into adoption of the child who has integrated their family, submitting an application for adoption, even though a reciprocal attachment has already been formed, which raises some difficulties when each modality has a different purpose. The initial motivation of the adults towards the child does not seem to be adequately explored at the beginning of the placement. It is important that the transition from foster care to adoption, whether by the same family or by another family, is determined and carried out in accordance with the best interests of the child, on an individual basis.

There are therefore contradictions and an important regression in the treatment of children through edicts issued possibly without taking into consideration the past history of the child and their needs. Approaching temporary foster care and adoption as very distinct interventions, each with a different purpose, related to the unique needs of each child, it is essential that the process be conducted on the basis of the best interests of the child. Furthermore, without any explanation, the

maximum age for a prospective adoptive parent wishing to adopt has passed from 55 to 62, no rationale to justify it being given. Psychosocial evaluations which were in the throes of being revised, so as to be more rigorous, have been left to professionals with little experience on adoption, or can suddenly be reversed by a management authority detached from the service, etc. The contact-linking stage, the first step in adoptions (empatia) is also skipped over, since it is now permissible for this to be performed by a third person, and not the adoptive parent if they live in a different region to the child, or can even take place virtually. Although this decision was made by a directorial resolution in the framework of the health emergency due to the COVID-19 pandemic (Directorial Resolution No. 098 -2020-MIMP/DGA of June 24, 2020), it is not clear how far-reaching it could be beyond this period. It was explained to us earlier how important it is to verify this first contact before confirming the matching. In the years since our study, according to a professional who has witnessed the evolution of this system, it would appear that decisions have too often been taken in a random manner, not in accordance with adoption procedures and prior experience:

“We must place the children but not just in any way whatever or at any cost whatever (...) – the cost of what that will imply for the life of children.”
(Participant)

As is the case in Chile and Colombia, adoption in Peru still does not have a sufficiently strong image to be valued by the systems that take in children. The alternative systems of placement are not envisaged in terms of distinct interventions, organised around the best interests of each child. As mentioned above, foster families are instrumentalised to take children out of institutions, but the child placed in a foster

cultural identity and sense of belonging, the family of origin or extended family is understood as the members of these, according to their customs and under an intercultural approach).

family is not seen within the continuity of their emotional and identity development. The Legislative Decree 1297¹² put an end to private placement, replacing it with a public system. Three types of family are available, the extended family (familia extensa), a family not linked to the child (tercera), and professionals who are trained in the care of children with special health needs.

Recently the systematic use of temporary foster families has interrupted the life project of children, has not taken into account their needs, and has not envisaged adoption as a positive option which favours their developmental recovery. Instead adoption is seen as the last stage in a series of placements. Furthermore, no "pool" of temporary prospective foster family exists to guarantee rapid availability, which for the moment leaves many children in institutions.

In order to improve the general situation of vulnerable children, including, but not exclusively, those without family support, Peru drew up an action plan in 2012 (Plan Nacional de acción por la infancia de los países de América Latina or PNAIA 2012-2021), which has just ended. According to a participant this plan did not reinforce the specific system of protection for children in alternative care. A great deal still needs to be done to reach a system pinpointing different levels of action (prevention of abandonment and serious family problems, alternative care or family reintegration and follow-up). The present system lacks leadership from an adequate, competent authority, and there are gaps in the clear organisation of multi-sector work. The issues of protection and prevention are therefore spread out over the different authorities and diverse social problems (violence, health; etc.).



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¹² Decreto Legislativo para la Protección de niñas, niños y adolescentes sin cuidados parentales o en riesgo de perderlos. Available at: <https://busquedas.elperuano.pe/normaslegales/decreto-legislativo-para-la-proteccion-de-ninas-ninos-y-ado-decreto-legislativo-n-1297-1468962-4/>

The creation of an entity and services dedicated to adoption

At the time of our mission, pre- and post-adoption workshops were beginning to be organised, offered by the Dirección General de Adopciones, with an online format to help the largest possible number of prospective adoptive parents and adoptive families on a national level, as from 2015. The stages of the adoption procedure begin with the participation of prospective adoptive parents in an obligatory information session available remotely, then a month-long workshop, followed by an application for adoption and the evaluation (legal, psychological and social). If the prospective adoptive parents pass these stages, they are registered on a list of national adopters (Registro nacional de adoptantes), after which an indefinite period will begin before the matching proposal. The matching for adoption would in principle be decided in the best interests of the child, and this is clearly mentioned on the platforms (MIMP, 2019) and affirms the protectionist nature of adoption. Afterwards the Consejo Nacional de Adopciones carries out an evaluation of all the propositions, national as well as intercountry.

"I consider that the most important stage is the evaluation and selection of the adoptive families. The psychosocial and legal criteria which can influence the approval are evolving. For example, two years ago common-law partners could not adopt and today they can, according to the new law." (Participant)

The Dirección has added a stage, after the matching proposal has been accepted, that of family integration or pre-adoptive fostering. According to our discussions with actors, this has proved necessary in order to reveal the true value of the evaluation in real life situations, once the prospective adoptive parents meet and take care of the child assigned to them. This also allows preventive screening of integration and bonding problems. Psychological, longer-term follow-

up services are also offered by the institution itself, still a rarity among countries object of this study. As mentioned earlier, as a result of the Directorial Resolution of 2020 within the framework of the COVID-19 health emergency, this matching stage can now be carried out remotely, as even the presence of the adopters is no longer obligatory. It will be necessary to evaluate its justification, implementation and scope in the medium and long term after the end of this period.

Community collaboration and raising awareness of adoption

At the time of our mission, there were consultations and dialogue between the regional branches of the MIMP throughout the country. The private organisations helping children were included, and the collaboration was described as positive, and there was a shared objective of promoting the culture of adoption, through awareness raising activities, with a special focus on the adoption of children with special needs:

"It is above all the case when civil society contributes together with the community workers to support campaigns for the culture of adoption, and to promote the adoption of children with special needs as a priority." (Participant)



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“We have a good relationship, maintaining inter-institutional consultations in all regions, including with public as well as private institutions involved in the procedures of adoption, and specifically coordination between the far away Centros de Atención Residencial (CAR), which enables us to visualise details concerning the health of a child. With the Judicial Power (Poder Judicial) the same applies, but the follow-up of cases means we can obtain the complete report of the declaration of abandonment, together with the necessary procedural documents to facilitate progress towards the declaration of adoptability. This helps the principle of speed and access to complete information of the past history of the child.” (Participant)

This collaboration between sectors is thus essential for the establishment of the identity of children, the preservation of information on their life story, and respect for their right to identity, which gives them access to their other rights, including that of finding a family. One participant explained that this communication helps to establish a profile, which thereafter helps to understand the motives behind the abandonment of the child by their family (or separation), their state of health and the conditions and circumstances of the separation, or the institutionalisation, which can then have an impact on the quality of their life.

Producing an inter-sector communication is part of the strategy of the ministry, in order to improve coordination in the procedures for placement and to solve problems rapidly. It would also accelerate adoption procedures, avoiding too long a period in an institution, when the statute of abandonment has been clearly demonstrated, thanks to this information. This mechanism of access to information on the complete development of the adopted child and the passing on of this information to their new adoptive family is considered essential, and it will also serve as clinical support for the professionals in local organisms who will help the family.

“I believe that there are several strategies, but those which produce the most results are the consultations between sectors, for they optimise our efforts at coordination and allow us to solve problems more rapidly. There is still the subject of the continuing education of human resources, not only adoption staff from the MIMP, but also all the actors who participate in the process: staff of the Centros de Atención Residencial (CAR), the RENIEC workers or the civil registers, immigration, the Public Ministry, judges, the police.” (Participant)

The reorganisation of care for children without family support by the State and Peruvian communities in a relatively short time enables us to observe the various mechanisms which have been developed in an inter-sector spirit. The strategies to lessen the problems which have been observed (institutionalisation, loss of identity and other rights) have taken into account what impacts the development of these children in the implementation of new policies. It remains to analyse the scope over several years, especially when measuring the effect of these mechanisms on the increase in stable, national adoptions, and the establishment of the identity of children. The new norms issued by the government and by the entities detached from the services of adoption and placement have however greatly weakened collaboration and the consideration given to the specific needs of children.



Bolivia: create a culture of adoption and rights of the child

The number of children abandoned or deprived of parental care has increased at an alarming rate in Bolivia in the last years. The government prohibits the establishment of accredited adoption bodies (AABs) from other countries and so ICA has almost entirely disappeared. Local community organisations try to develop a culture of national adoption and services to support it, since thousands of children are living in overcrowded foster care. Some have developed expertise in child development and identify and support the Bolivian families who take in the children. However their work is hindered by the lack of collaboration and awareness of State and legal institutions, which alone have the power to make decisions concerning adoption. We met charity organisations working for children without family support in the region of Cochabamba in 2014, in order to have a better understanding of the context of their actions, and the challenges raised by the ending of ICAs.



As from 1989 Bolivia was involved in the preparatory work, and ratified the HCCH 1993 Adoption Convention in 2002. Although Bolivia ratified the Convention (it was not obliged to do so) it has not authorised the presence of ICA AABs from other countries on its territory since that time.

The ICAs agreements between Bolivia and western receiving countries have therefore expired one after the other during the years 2000, despite the ratification of the Convention in 2002 by Bolivia. At the time of our study in 2014 Bolivia did not authorise any ICA AABs on its territory. The central authorities of the countries which adopted widely in Bolivia in the years between 1980 and 1990 (France, Canada, the United States of America) have for years informed interested prospective adoptive parents that the country is closed for adoptions, that no AAB can become established there for the moment, and that no adoption without an intermediary (private) is allowed. It is impossible to adopt a child there without becoming a permanent resident of the country and submitting a local candidature.

According to developments reported in the media in the years following our study (2014) the Bolivian government established new legislation in April 2019 (Ley de abreviación procesal para garantizar la restitución del derecho humano a la familia de niñas y niños y adolescentes, Bolivia) in order to increase efficiency when treating the files of children (more than an estimated 8,000 children and adolescents who were abandoned according to the Bolivian State). This new legislation aims to better guarantee the "right to a family" for children in Bolivia, already incorporated in the Código del Niño, Niña y Adolescente de 2012 (Bolivia, Law 2026, 2012; article 59 of the Protocolo de adopción nacional, 2017¹³). It is mentioned

13 Protocolo de adopción nacional, Dirección General de Niñez y Personas Adultas Mayores, Ministerio de la Justicia, 2017. Available at: https://www.justicia.gob.bo/cms/files/protocolo_adopcion_nacional_usxma8qb.pdf.



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therein that the time spent in an institution by an abandoned child should be made considerably shorter, from several months (the participants spoke of years in many cases) to 24-72 hours, by decreasing the amount of time involved in administrative and legal proceedings (La Prensa Latina, 2019). Furthermore the right to identity of these children should be guaranteed, giving them a name and registration on the civil register in this short period, thus allowing them access to the list for adoption if that is the option which best meets their needs.

Although the legislation is praise-worthy, it is essential for its implementation that psychosocial, administrative and legal resources should be available in sufficient numbers and be closely coordinated with each municipal authority, which is far from being the case according to our participants in 2014. There is also the problem of certain hostels which keep the children hidden, without declaring them, thus preventing the process of nomination and respect for their rights, in the case of “found” children.

Furthermore, this legal adjustment decreed that the time allowed to parents to entrust their child to an institution for temporary care went from 76 to 26 days, failing which the child would automatically be placed in adoption. The creation of one register for adoptions on a national level, managed by the Supreme Court of the country, was also established. A certain re-opening of ICA is planned, with a preference for intercountry agreements with Europe. The State links these new norms to the principles of the HCCH 1993 Adoption Convention, as prescribed by the Código. As the organisations that we met pointed out, the lack of political stability and its impact on the functioning of social services constantly hinders the establishment of an efficient system of cooperation with civil society, and the development of policies in

favour of national adoption. Finally, it will be necessary to evaluate the most recent legal provisions on adoption (Law 1371, 2021), and their scope in order to respond to some of the gaps mentioned.

Doubts were also raised as to whether the preventive support offered by the State, and the aid given to the organisations of civil society, both of which were absent during our mission in the field, can really prevent abandonment. The announced punitive approach to parents unfortunately did nothing to stop the immense problem of abandoned children and the rapid increase in social problems in the country. The rights of children are therefore very limited in spite of a tightening of interventions, very late in the proceedings (when the child is already left in an institution by parents who can no longer take responsibility for their care). UNICEF had already pointed out several significant delays in submitting reports on the situation of children by the State authorities (2016), during the implementation of the CRC. The problems of infant mortality, access to education, poverty and child labour continue to be of great concern.

The problem of abandonment aggravated by urbanisation and social problems

Bolivia is one of the poorest countries in South America, with women, children and indigenous populations in rural areas being the most vulnerable, despite the fact that the overall index of poverty has gone down (from 38% in 2005 to 17% in 2017; World Affairs Canada; 2020). The rate of infant mortality in Bolivia of children aged 0 to 5 years was 26.8 deaths for 1,000 births in 2018, a significant decrease compared with the figure of 121.9 registered in 1990 (UNIGAME, 2019¹⁴), even if this figure remains among the highest figures in South America. Bolivia undertook a social reform in 2008 impacting various aspects of the quality of life of children and young people, including health, education and social protection. However, observers have pointed out an increase in serious social problems linked to poverty and social inequities: domestic violence, sexual abuse, alcoholism, abandonment and child homicide (Aldeas Infantiles Bolivia, 2017, UNICEF, etc.).

These preventive policies have been criticised by various local NGOs for the fact that they generally remain theoretical, and are not sufficiently implemented in the communities (Salazar La Torre and coll., 2011). The last report of UNICEF (2016) indicated that 43% of Bolivian children still live in moderate multidimensional poverty.

An external report revealed the existence of around 32,000 children who were abandoned throughout the country (UNICEF, 2014). A few years later, of this number more than 8,000 children and adolescents were living in institutions (UNICEF Bolivia, 2018a), or at least those who are/were officially registered, with thousands of others living in the streets. These children are subject to a serious violation of their right to identity, because of the conditions of anonymity and lack of family relations in institutions. According to the same report, although these young people are without family support for their care, at least 80% of them are social orphans who certainly have an existing family, but which does not take care of them. Only 76% of abandoned children are registered on the register of births at the registry office (Registro Civil, UNICEF, 2018a). According to a report (2017) of Aldeas Infantiles Bolivia giving different figures, with at least 30,000 of these children living in hostels, and in many cases not being registered there, the number is going up, in spite of the reforms and the inclusion of the right to identity in the Bolivian Code.

¹⁴ United Nations Inter-Agency Group for Child Mortality Estimation (UN IGME), Report 2019

Abandonment and negligence are the predominant causes of the placement of children in Bolivia, compared with other countries where the reasons for placement are more often reported to be the withdrawal of the children by the authorities for ill-treatment. For example, in 2018, the Defensoría de la Niñez in La Paz registered 51 cases of children in a situation of abandonment, only 10% of who reintegrated their family (La Razón, 6 Sept. 2018). The circumstances of these abandonments are often tragic, with each year dozens of children found alone, very young, in squares and public markets or even in rubbish, and in hospitals. These cases are particularly damaging for the establishment of origins as the children are never able to know their identity once they have been abandoned, because the parents are very often impossible to trace. These anonymous abandonments seriously violate the right of the children to have access to their origins, by depriving them of knowing the identity of their parents. More must be done to prevent them in order to respect the right of the child to know their origins.

The Defensoría de la Niñez deplores the fact that after their placement in a public or private hostel, no child was adopted in a family because of the bureaucracy which exists in the State services. Institutions are over-flowing with abandoned and found babies and young children, something we also noted when we were in the field in Cochabamba. It is reported that 512 of these children were placed in hostels in the region of La Paz/El Alto that year. The publication refers to a lack of policies and resources to deal with these situations, which have lasted for years, as have the serious social problems affecting families:

“We can no longer say that we do not know how to deal with these situations. What is missing is the establishment of a State policy applicable over time, and the promotion of improved opportunities for education and employment in the most vulnerable sectors of society. That is for the long term. In the short term emphasis must be given to campaigns for family planning and sex education, specifically for adolescents and those who live in the streets.” (La Defensora in La Razón, 6-09-2018).

The actors we met often referred to domestic violence as a reason for young people fleeing their environment, as does also the literature documenting these situations, which are very prevalent throughout the country. Family violence, fuelled by heavy alcohol consumption on the part of the parents to escape their precarious existence and their frustration at not finding employment, takes the form of physical, psychological and sexual abuse, homicide and suicide. Many children living in the street are there because they would rather learn to be independent than return to their family environment (Salazar La Torre and coll., 2011). Alternative care in a hostel does not break the circle of violence and addiction when the time comes for the young person to leave the placement at the age of 18. This observer points out the systemic elements which contribute to the vulnerability of these young people (including the loss of identity), and links them with the dominant discourse of the Bolivian State when it emphasises the “education and responsabilisation” of these individuals as the solution:

“They “throw them out.” The adolescent who has grown up in a hostel, without really receiving help, finds himself in the street where he does not know what to do. It is a very critical age when young people need guidance. When they do not find support, they are alone in the street and can begin to drink, and become street adolescents (en situación de calle) and the cycle begins again. A girl falls pregnant, the child ends up in a hostel, it is a cycle. This is why we do not think hostels are the solution.” (Participant)

Since the beginning of the years 2000, urban centres in Bolivia have grown fast with the migration from rural areas where there is no work (previously there was employment in the mining sector and the production of cocoa). According to UNICEF the four large towns concentrate at least half the local population. Mothers would frequently leave or abandon their child to go and search for work in neighbouring countries (CARITAS, 2014), leaving them in over-crowded hostels. Bolivian law does not condemn the abandonment of children (Salazar La Torre and coll., 2011) and forbids abortion except in cases of rape or serious illness of the mother, which increases the number of abandonments.

According to what we heard during our stay, the blame for abandonment and ill-treatment is often laid on the parents in the eyes of the State, as well as on families and their lifestyle in Bolivian society, whereas the organisations we met emphasise the lack of support for the most vulnerable families as the dominant problem.

“Adoption is not the solution. Sometimes we are accused of wanting all children to be adopted but this is not the case. Not all children must be adopted. All children must have a family, and the first should be the family of origin or the biological family. Children leave their family because of ill-treatment, economic questions, because one cannot control their education etc., and so they end up in hostels. The government must work towards reintegration, collaborate with the hostels to obtain professional reinsertion. It is not just a question of saying to the mother: “it is your child, you must raise them, look after them”. It must be a professional process. Within this framework it is essential to work with the parents, the church, the NGOs, the family, to find support.” (Participant)

The response from the NGOs is often late, once the child is already living in the street having fled a violent family environment, or the mother has abandoned them for lack of an alternative solution. The actors believe the government should assume its role of providing social protection to prevent abandonment, which is not the case at the moment, because the social policies are not applied and public services of support for families are lacking.

Responsibility for social and family problems undertaken by civil society organisations

The present situation means that most children will stay in an institution until the age of 18 or will live in the street, through lack of resources, lack of knowledge of child development in the institutions, and especially, according to observers, lack of political commitment (RELAF, 2016, Fuentes and coll., 2012; Salazar La Torre and coll., 2011). NGOs working with children have tried for decades to fill the gaps or make up for the lack of state intervention to care for abandoned children. These non-profit organisations have few resources, mainly donations from the public and international catholic communities. They have to take into account complex social contexts when intervening, with the every-increasing social problems which have a major impact on families and provoke the majority of abandonments (violence, alcoholism or drug abuse of the parents, isolation due to urban migration, de-responsibilisation of parents, etc.).

Some of these NGOs have taken on professional staff to deal with these issues (from social work, psychology, law), who apply the most recent knowledge concerning the development of children who have been abandoned, ill-treated or are in placement. They frequently collaborate with representatives from private or public hostels (orphanages) and religious communities, within an associative grouping in the case of the region of Cochabamba (ASHONA¹⁵) in order to defend the rights of children in placement (INFANTE, and international organisations such as UNICEF, CARITAS). They advocate for these children to be guaranteed improved care and conditions, an identity and access to an adoptive family when this option is in their interest. They also try to have a continuous dialogue with the local representatives of the Servicio Departamental de Gestión Social (SEDEGES), through the Defensoría del Pueblo. For some years they have met via regional round tables (Mesa Interinstitucional por el Derecho a Vivir en Familia; UNICEF Bolivia 2020), in order to conduct a joint reflection on these problems and to find the means to promote and protect the rights of children within the current intervention protocols.



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¹⁵ Asociación de hogares, centros y asilos, Cochabamba

The continuing existence of an institutional model of alternative care

Our analyses show that, in spite of the very large number of children in need of a stable placement, very few manage to find a family because of complex factors which are institutional, legal, political and socio-cultural. These factors are due to a lack of coordination among the child support services, between the SEDEGES (representing the State) and the organisations capable of finding adoptive families; a lack of awareness and professional training of staff concerning the needs of children deprived of family; the constant changes in domestic policy on the subject; and the lack of families wishing to adopt because of the negative image of adoption in Bolivia.

“We try however to move towards the lesser evil. We know that institutionalisation harms the child. He enters into a system where he becomes a number, where he fills a space. He cannot find personal fulfilment because the hostels have only very recently taken an interest in the problems of children who stay until the age of 18. What happens afterwards? Very sadly, at 18, they find themselves in the street without a family referent.” (Participant)



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At the time of our study, delays were already a problem harming the rights of the child, including the right to identity, thus directly affecting the possibility of integration into a family environment, according to this lawyer, who works to rectify the situation case by case:

“According to our code, this should happen within a maximum of 3 months (in 2014). A child can then be declared without any legal filiation, that is to say that he does not have parents. But because of the bureaucracy the process can take more than a year, the average being a year and a half, which is why when a new-born arrives in a hostel, they are adopted when they are over 2. They explain this by indicating that the documents have been drawn up so that the child is declared “without parents”. For me this declaration is illogical because if what is enshrined in the law was applied, the process would take 3 months.” (Participant)

The right to identity, as already mentioned, is a challenge of special concern, and is a priority for NGOs, in spite of the reforms in line with the HCCH 1993 Adoption Convention announced by governments.

“The main pillar of the Código del Niño, Niña y Adolescente is the right to live in the family of origin. This means that the first thing we must do with a child who is abandoned or in another adverse situation is to try and reintegrate them in their family of origin. If that does not work we must define their legal situation.” (Participant)

The actors who are responsible for these children prioritise and identify the social problems differently, or do not envisage the care for these children in the same way. Although the community organisations should demand and defend the right of children to be placed outside the institution, which ought to be the concern and responsibility of the State, they are often faced with the fact that adoption is not considered as a possible or desirable option when the files of children are presented for eligibility for adoption on an administrative or legal level. Certain civil servants without any training in child development or protection, who are opposed to adoption on a personal level, take discretionary decisions, motivated more by their own convictions than by the Código and the evaluations of professionals, and continue to give priority to biological bonds and family reunification even when it is harmful for the child, or even impossible.

According to the agencies, this has affected their cooperation and limited the number of placements in adoption which could be carried out in the region (according to INFANTE, only 30 children per year out of more than 3,000 who needed placement in 2014, just in the region of Cochabamba).

The complexity and slowness of administrative and legal procedures have also been criticised, as well as the interpretation of the Código by judges and civil servants, who change it from its official intention, which is to guarantee the right to live in an adequate environment, preferably family, of all the children in this situation (Derecho a la familia, art. 59, Código del Niño, Niña y Adolescente, 2012; 2014).

According to the civil society actors in adoption, the Bolivian State has offloaded its responsibility for psychosocial work, in particular the identification, evaluation and preparation of abandoned children and their potential adoptive families, when in fact only the government has the power to carry through this evaluation on an administrative level and take a legal decision.



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Those factors which would improve the situation of children deprived of family in Bolivia are complex, linked to rapid social transformations involving new problems, and they require a major systemic attempt to increase cooperation between the NGOs and the government. For the actors, the solution lies above all with the State which must take responsibility for the support to vulnerable families, for the professionalisation and organisation of child protection, and for accelerating the definition of the legal status of children so as to give them a chance to be adopted. On a more global level, the community must be more receptive to the positive character of care for children without parents and create a positive image of adoption in the country. The hostels which take in children who have been found are first in line to respect their right to identity, according to this actor:

“Certain hostels already have life projects when they receive children, even new-borns. They have already planned their life up until the age of 18. This implies that the hostel will provide food, clothes, education, etc., and if possible technical training or a profession. They are in fact omitting what is stipulated in the law, that first of all it is necessary to try family reintegration. If that fails, the legal situation must be defined.

(...) This is an obligation which the majority does not fulfil. Sometimes they do not feel obliged to obtain the birth certificate. When working to document children who are abandoned, one of the tasks of the tribunal is to give them a birth certificate. Sometimes this work goes no further, and they do not insist on the possibility of having the child adopted.”
(Participant)

The organisation of child protection undergoes frequent changes of direction and protocol concerning adoption, and this has an impact on collaboration. Working relationships have to be renewed constantly with different partners. The organisations we met said that it was long-term work: the institutions which could implement the cases for adoption which they (the organisations) propose on a regular basis limit the scope of their work with children. The fact that they must take responsibility for psychosocial interventions, elsewhere taken by government institutions, puts great pressure on their limited resources. The Bolivian government makes no contribution, or very little, to the financing of the hostels (only US\$ 0,80 per child per day, according to Salazar La Torre et al., 2011).

“For me, it is to be able to work with children to recuperate and give them back their place. These are children who when they arrive are abandoned, are “cancelled”. The lack of affection is very strong for them, and because of that the other priority is to be able, as a team, to analyse what is best for the child, and to give us the power to give our opinion on a child before the judge.” (Participant)



Argentina: the marks left by child appropriation and the paradigm of “illicit practices”

In Argentina only citizens of the country can adopt a child and in fact ICA (official) has hardly ever existed in Argentina, in contrast with the other Latin-American countries. The kidnapping and disappearance of children during the dictatorship (1976-1983),¹⁶ still denounced today by the population and groups who militate for the reunification of families broken up by the forced disappearance of at least 30,000 opponents of the regime (Wikipedia, 2020; in particular the Abuelas de Plaza de Mayo), have had a very strong impact on the population of Argentina. In fact article 8 of the CRC includes the obligation for States to re-establish the identity of the child when they are deprived of certain of these elements, an article which was proposed by Argentina. According to actors we met, the popular discourse in the country still associates adoption with appropriation, an exercise of State violence, because the children who survived the murder or imprisonment of their parents were often adopted by the military, or rich families who supported the dictatorship, and/or sent abroad via irregular adoptions. Even today, whether adoption is local or intercountry and carried out within the framework of controlled practices, there is still the same perception and reticence towards developing this option.

“There is still an overlap (...). The appropriation of children which continued during the military dictatorship in Argentina cannot be dissociated from this logic, these notions of “saving” children in child protection (...). This theme of theft or appropriation is linked to a whole system of beliefs specific to a group in child protection, and contains moral values and beliefs which explain this social context, implying the possibility of a criminal element (...).” (Participant)

Argentina has never become a contracting State to the HCCH 1993 Adoption Convention, since it is only involved in adoptions within its territory, or other types of child movement, which are covered by the same principle of preservation of the best interest of the child. However it is a member of the CRC, and member of the HCCH 1980 Child Abduction Convention concerning the abduction of children since 1991. The Argentine authority in this matter is the Ministerio de Relaciones Exteriores, Comercio Internacional y Culto and not the social services. It is the Dirección Nacional del registro único de aspirantes (DNRUA), under the Ministerio de la Justicia y Derechos Humanos which constitutes a bank of adopters and manages adoption procedures.



¹⁶ See [https://fr.wikipedia.org/wiki/Dictature_militaire_en_Argentine_\(1976-1983\)](https://fr.wikipedia.org/wiki/Dictature_militaire_en_Argentine_(1976-1983))



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A national adoption procedure not easily accessible in a new legal paradigm

Important changes have been introduced in the last law on adoption (Law 26.061, Ley de protección integral de los derechos de las niñas, niños y adolescentes) which dates from 2005. The text shares the responsibility for all children between family, government and the community, and acts as a guarantee of the same rights as those in the CRC (1989; Law 23849, which incorporated the Convention in the Constitution of Argentina in 1994), and considers every child as a subject of law. Among other rights, it recognises the right to protection and identity in the situations where children are ill-treated or without family care. The legislation also recognises the family as the privileged environment for the development of every child, but also as the place to exercise their rights, which is not only a norm, but also a posture which reflects the discourse on the child:

“The new forms of social intervention have been conceived to respect the rights of children, and lead us to think that these alleged innovations, far from being simple, technical challenges, are issues whose roots are political and moral. It is therefore possible to see the current forms of State administration and rhetoric on rights as products – neither finished, nor complete – stemming from long processes, where many different actors have claimed the legitimacy to intervene and have attempted to impose their positions in line with what must be understood as “the best interest of the child”.” (Villalta, 2013, p. 237)

Article 39 of this law establishes its criteria of exception, whereby it only applies in cases of temporary or permanent separation of a child from their family environment (UNICEF, 2016). According to the observations of Cardozo and Michalewicz (2017), it is an important change of paradigm: rather than seeing the situation of young people in difficulty as an “irregular situation”, from now on the violation of their rights and the necessity to offer them a “comprehensive protection” will be taken into account. In other words, instead of children being seen from an authoritarian perspective, which judges them and places them at the heart of the problem, policies bear in mind the respect of their rights. For Villalta (2013), the social category of minor has a stigmatising aspect, used historically to target and classify any child who does not fit socially acceptable norms (socialisation in the family, education, etc.).

Although the rights of the child have been incorporated into the discourse and legislation of Argentina, observers explain that there is a “guardian” logic in the attitude towards children living with social problems (Villalta, 2013; Bertole and Torraba, 2018). This criticism reveals the problem of an adult-centred vision (of “saving children”), or the denunciation of the use of law in an instrumental way (without a thorough analysis of the specific needs of each child in the alternative care decisions). The main problems identified in this field:

“This legal institution of State guardianship (...) is a paradigm which has received criticism (...) because it is accompanied by a Salvationist discourse (“save these children from delinquency or misery”). This Salvationist attitude, this logic, which for years became part of the juvenile justice system, coincided with what was the systematic plan of child appropriation in Argentina.” (Participant)

A previous UNICEF report (2015) noted a certain improvement in the approach to the situation of children, through the control of the legality of adoptions, and a more efficient procedure of deinstitutionalisation of children in alternative care at the Secretaría Nacional de Niñez, Adolescencia y Familia (SENAF), between 2003 and 2014. The number of children legally eligible for adoption in Argentina was however high at 760 in 2014. However this figure excludes the five regions which have not yet compiled the variable of adoption in their intervention data, a problem which still exists in these information systems considered deficient by UNICEF (2016), and which directly affects the accessibility for children to a permanent family. Surprisingly, it is also mentioned that not all adoptions are necessarily communicated to the administrative entities of protection (UNICEF, 2016), as it is the judicial authority which takes the adoption decision (according to the old Civil Code of this period). Furthermore, the new norms to facilitate the administrative passage of files have neither been communicated nor implemented in the regions.

Observers always point out the question of time for the children in these situations. The regional entities for protection have, since the new law, a limit of 180 days (6 months) to complete the intervention of family reintegration and give a recommendation for the care of the child, without which, if the child is still “eligible for adoption”, and no other solution has been found, the exceptional measure must be applied within 24 hours and be endorsed by a judge. Within this procedure, it will fall on the same governmental entity to recommend adoptive parents to the judge, from its list of prospective adoptive parents who have been evaluated and approved (Registro único de aspirantes a guarda con fines adoptivos).

In practice, and since the application of this law in 2005, the waiting time to obtain adoptability and eligibility still had not really changed in 2017, according to the observers we met. The children and the prospective adoptive parents can wait from 4 to 6 years before an adoption is confirmed by a judge, leaving the children for far too long in institutions, with the result that some prospective adoptive parents abandon their projects. Adoption is not given as much priority in the eyes of the governmental entities as it seems to be in the texts of law. As mentioned earlier, apart from the administrative delays, problems of personal interpretation of the law circumvent these measures of permanence. Judges as well as protection professionals allow their beliefs to interfere, and wait too long before removing an ill-treated child or one who has been severely neglected by their family.

“This power of the State has been repealed by a law voted in 2005, a global law on the rights of children and adolescents, the law 20.061 (...) the fruit of activism (...) the result of this law is a reorganisation of the system. It is no longer the tribunals which can separate children from those who look after them, but the administrative bodies, the public policy bodies which have the power to adopt exceptional measures for the protection of rights, including a series of measures to safeguard the rights of children, among which the decision to separate children from their parents to safeguard their rights (...), the latter as a last resort, only when other social options to avoid it have been used. This set of measures is also based on the premise of the deinstitutionalisation of children.” (Participant)

The stages of adoptive care and the uncertain nature of the project

In order to adopt, Argentine prospective adoptive parents must register on the governmental register. Although these procedures are encouraged and recognised, observers we met mention that un-registered adoptions still take place, especially among citizens in far away regions (called “private adoptions” in international debates). This means that there is once again a risk for the right to identity of the child, as information on their biological origins and the circumstances of their adoption are not preserved, thus preventing them from exercising their right to identity. Such practices endanger the respect for the fundamental rights of the child, and, in particular, the guarantee that the modification of their identity involved in adoption is in their best interest, and that the preservation of their origins is assured. This national register (Registro único de Aspirantes a Guarda con Fines Adoptivos) was created in 2004 (Bertole and Torraba, 2018; Law 25.854). The law on child protection

(Law No. 26.061, Protección integral de los derechos de las niñas, niños y adolescentes, 2005) and the law on adoption (No. 25.854, Guarda Con Fines Adoptivos, 2003) govern all adoptions in Argentina.

If the psychosocial evaluation of the prospective adoptive parents is positive, they enter the list of *Nómina de Aspirantes* (art. 600), an obligatory stage before having access to the proposition of a child, but only after all possibilities of reintegration in their family of origin have been explored (art. 607; Bertole and Torraba, 2018). These two conditions are essential if the adoption is to be approved. They also constitute the main barriers to de facto or irregular adoptions. However, the authors noticed that a lack of flexibility when applying these norms, and an interpretation of the principle of best interest of the child which was too lax, could miss the specific needs of children, such as when a more “informal” adoption was being established, with significant people close to the family, and the option is rejected because a follow-up of official procedures does not exist (Bertole and Torraba; 2018). The paradigm of “illicit practices” and the law which then applies can limit the real consideration of the child as a “subject” of law, who must be seen in the framework of their individuality and their history:

“Judges must understand that the complex, flexible, adaptable character of the best interest of the child obliges them to adjust and define it individually, bearing in mind the concrete situation of the child, their context and personal needs.” (Bertole and Torraba, 2018, p. 14)

It is the judge responsible for the adoption procedure who will then do the matching between the adopters and one or more children eligible for adoption. In principle, the judge, according to the law (No. 25.854, *Guarda Con Fines Adoptivos*, 2003), has only 10 days to confirm a proposal. When the “pre-adoptive guardianship” (*guarda preadoptiva*) has been granted, but after a time limit of 6 months (art. 614) following it, the adoption judgement can be issued (art. 316 and 317 of the *Código Civil*, Bertole and Torraba, 2018). It is during this period that families are normally evaluated concerning the bond that is being established with the child. However, the biological parents can still exert their rights over the child, and reintegrate them into the family during the same period.

The norm is very precise. However; the observers we met indicated in 2017 that this time limit is often exceeded (by months and even years of waiting). In these decisions the right to identity is as important as the right to protection when determining the best interest of the child, and so it can happen that the judge rejects the professional recommendation for placement in adoption, and decides to focus on maintaining bonds and gives priority to the biological character of the placement. If their decision is in favour of adoption the right to identity can still be respected (the right to know one’s origins) through keeping contact with the family. In any decision, the right of the child to give their opinion on their placement must also be taken into account (depending on the criteria of their age and level of maturity). Their consent must be obtained from the age of 10, for any placement¹⁷. This placement solution is generally criticised because of the uncertainty it implies for the permanent life project of the child, while at the same time attempting to ensure their stability (Bertole and Torraba, 2018). Doubts

concerning this form of adoption and the placement options similar to concurrent planning have emerged elsewhere in the world (particularly in Quebec; Poirier and Pagé, 2015, Châteauneuf and Lessard, 2015, and in Great Britain; Selwyn, 2017). It is a “hybrid” formula for adoption, where motivated prospective adoptive parents for adoption accept the decision of the judge to be the foster family of the child. This option aims to give stability to the child by avoiding a succession of placement environments until their adoption or family reintegration, but remains problematical in cases where the decision drags on over years and the child has already become attached to the family which hopes to adopt them, especially when the legal decision is to return them to their family of origin after all this time.



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¹⁷ See www.jus.gov.ar/registro-aspirantes-con-fines-adoptivos.aspx

Encourage adoption by supporting families

When adoption occurs, a professional, post-adoption programme of support (Programa de Apoyo Técnico y Acompañamiento a Familias) is offered by the Dirección General (DNRUA) in order to help the new families during the bonding period and until adoption. However, observers in the world of adoption have pointed out that these tasks are included in the already very heavy workload of protection professionals, within the same working hours, which is sometimes impossible in the circumstances.

These services are also available unevenly between regions, with rural areas being neglected concerning access to preparation for adoption and post-adoption follow-up provided by specialised staff. There are many professionals wanting to work with adoptive families, but no institution is capable of offering them specialised training or supervision in this type of work. They acquire their experience "in the field", simultaneously with their responsibility for protection. The "School for Parents", an avant-garde initiative, founded in the 1950s by the psychoanalyst Eva Giberti, branched into pre-adoption discussion workshops (Foro de adopción). No governmental post-adoption service is available once the adoption has been pronounced. As soon as the child leaves the system, the adoptive parents must normally ask for support from an organisation or professional, working in a private or community practice. The "Foros", or groups of prospective adoptive parents waiting for adoption, have existed for over 20 years in the province of Buenos Aires, and are centres for raising awareness of the challenges of adoption and the needs of children.

In spite of these encouraging developments, motivated prospective adoptive parents end up abandoning the process because the administrative and legal waiting time is often too long. They also see their project refused by the judge for what they identify as arbitrary personal reasons (preference for married couples, prejudice against single parents, preference for maintaining the biological links, etc.).

On the other hand, others say that it is necessary to be more cautious and to take more time with the evaluation of prospective adoptive parents. Sometimes these evaluations are done too quickly out of a desire to place the maximum number of children, but they should be more attentive to the preparation of prospective adoptive parents, so as to avoid a decision for adoption taken too hastily or not based on a full understanding of the needs of the child, including that of being able to access their origins. In other words, it is regrettable from our point of view that the evaluations and pre-adoption support are too limited, and that good applications can become lost in the administrative and legal delays, which go well beyond the limits set by the law to give children a life project in a family.

Many Argentinians have registered for adoption in recent years. In 2016 the Ministerio de la Justicia counted 5,700 families in the register of "guarda con fines adoptivos". However, as in other countries, there is a discrepancy between the wishes of the adopters, the characteristics of the children and those who are actually available for adoption. According to this authority 92% of prospective adoptive parents ask for a child under 1 year; only 1.3% accept a child over 12. 75% would not accept a child with a health problem or special needs¹⁸. Here again, the discourse and idealisation of biological, normative parenthood is widespread and prevents finding a family for children who are abandoned, especially, as indicated in the UNICEF report (2016), the majority of children needing a family are aged between 6 and 12 and have been subject to violence and ill-treatment. A discrepancy between the way they are represented by certain adopters and their actual state sets a limit on their possibility of finding parents.

Local observers pointed out to us that, on a cultural level, Argentinians still strongly believe in biological bonds and sustaining them, at all costs. They also said that after the dictatorship and other socio-political crises, the population is still very suspicious of institutions in general, and that their negative experiences (allegations of corruption, high levels of bureaucracy) can make prospective adoptive parents hesitate to turn to the public system of adoption. This is true to such an extent that some have taken the risk of illegal, private and monetary adoption, in order not to be obliged to deal with this system, which seriously impacts the right of the child to preserve their identity. As in other countries, there is the false idea in the population that adoption is very expensive, or very complicated, which limits the number of offers for adoption.

In order to encourage adoption, the government promotes children for adoption on their website (without identifying them but giving characteristics so that prospective adoptive parents can imagine them) which allows the public to realise they need adoption. They also present on their website the idea of adoption as a valid, positive option for founding or completing a family. The promotion of the adoption of older children with special needs is also part of the strategy, including during lively discussions in the communities (the charlas adoptivas), when they try to raise awareness among prospective adoptive parents.

¹⁸ See <http://www.casarosada.gob.ar/gobierno-informa/35838-como-adoptar-en-la-argentina-mas-de-cien-personas-participaron-de-las-charlas-orientativas>

Portrait of young people in placement in Argentina: late entry, instability and autonomy issues

In Argentina the majority of young people are aged between 6 and 12 when they enter an institution, much later than in the other countries analysed here. Therefore, in contrast, it is not very often a case of young children who have “grown up in the system” from an early age, but rather young people who have lived through violence and other adversities in their families of origin for longer periods, before ending up in the hostels (Centros de atención residenciales or others) at school age.

In 2016 UNICEF¹⁹ updated its portrait of vulnerable children in the country, and registered an important decrease between 2011 and 2014 in the number of children without family care, from 14,675 to 9,219, a drop of 37%. In the three years, however, the drop varies enormously according to the region (between 7% and 48% decrease of children in placement). According to the same 2016 report, the largest proportion of children in alternative is in the 6-12 age group, and it is even growing (from 29% to 40%) since 2011. These situations indicate a lack of early detection of serious family problems, thus allowing the context to deteriorate and the children to be placed at these later ages. The proportion of the other age groups in placement (the under 6 and over 13) has dropped. The reasons for family separation and institutionalisation in 2016 were mainly violence and ill-treatment (53%), abandonment (23%), sexual abuse (19%).

According to DONCEL, an organisation that we met, and which defends the rights of these young people, they often have to change institution, because they no longer fit the criteria, they have run away, etc. They are therefore deprived of any opportunity to build up lasting bonds which would enable them to develop emotionally and construct their identity, they are prevented from keeping friends and establishing any continuity in a life heavily marked by abandonment, traumatic breakdowns and violence.

“Like a person who is developing ... who grows up with rights ... who grows up with a right to grow up!”
(Participant)

Although the law does not encourage institutionalisation and tries to limit it in time, the organisation says that for the moment this principle is not sufficiently applied. The option of placing a child in adoption is hardly ever envisaged. According to them many judges still base their decisions on negative stereotypes concerning adoption or other options rather than on their own law. Therefore they continue to recommend “guardianship” and institutionalisation. Another participant mentioned a “culture of guardianship” in Argentina, where the “parent” is the State.

¹⁹ UNICEF (2016). Estado de la situación de la niñez y la adolescencia en Argentina. 235 págs.

“(…) it seems to me that an institutional, historic system of guardianship still exists in Argentina and takes up a lot of space. There are several religious, historic institutions in Argentina which have looked after children. These structures, this ideological system, and this paradigm do not change, maybe because the State takes no decision ... because it is obvious that the system not only damages the right of the child to live in a family environment, but also that the impact of life in an institution is not positive.”
(Participant)

The solutions for these young people are too often temporary, rather than giving them permanent options for their filiation, their socio-emotional development and the construction of their identity. No subsidies are given to private systems of foster families, and so not many Argentinians are motivated to exercise their “duty of social solidarity” by taking into their home one of these children at their own expense, and this helps to perpetuate placement in institutions.

According to RELAF a wide variety of foster families is recognised in the country. However they all have one defining feature in that this type of placement enables the child to have access to a family environment when their family of origin is not able to care for them. The foster family (acogimiento familiar) is responsible for the complete care of the child, without a relationship of filiation. It also fulfils all obligations concerning their education and undertakes to respect their rights, including that of knowing their history and protecting their identity, as stipulated in articles 10 and 11 of the protection law (Law 26061; RELAF, 2020). The foster family is considered as a tool of global protection for the child, like adoption, but remains a temporary solution. Normally the child stays in the family until an eventual return to their family of origin becomes possible. There is also a system whereby the foster family can be found among people close to the family of origin (acogimiento por familiares), either adults with a blood link to the child, or significant persons not linked by blood (friends, neighbours) who can take in the child. These options are favoured since they sustain emotional and identity ties for the child, although it is possible to take in an unknown child.

In Argentina the policies for social care come under the Dirección Nacional de Promoción y Protección Integral de la Subsecretaría de Derechos de la Niñez, Adolescencia y Familia de la Secretaría de Niñez, Adolescencia y Familia of the SENAF, but family care is the responsibility of provincial organisations.²⁰ They must be committed to facilitating family reintegration or maintaining ties after placement, whether by research and localising or obtaining information on the family of origin (RELAF). In principle the foster family is a so-called "exceptional" option which should not be a substitute for the family of origin, and should be regularly reviewed. The law gives priority to the foster family over an institution, especially for children under 3. According to RELAF, there is no specific classification of foster families for children with special needs, although that exists. One issue is the lack of preparation for foster families, although they are evaluated by professionals before taking on this role. A model for foster care preparation is available for professional use (Familias Cuidadoras by Jorge Giglio). Each programme applies its own mechanism of evaluation and support for foster families. For RELAF, although there have been several developments to improve the foster family model and adapt it to the different needs of children, and that a system does exist in Argentina of "informal" fostering in communities, a major obstacle still exists in that there is no political decision to make this option formal and systematic. When a child is without family support, or is found, institutionalisation is the chosen option in the majority of cases.

UNICEF and the actors we met during the study have criticised the very weak attempts at family reintegration in a protective context (extended family), adoption or other actions, once the children are in an institution. In fact, the majority of those who leave the institution do so to return to their family of origin (68%), even though the problems of ill-treatment may not have been resolved. The other children leave when they reach the age of maturity (for legal motives; 20%). Very few in fact are adopted (only 8%). UNICEF, when reporting these figures, points out that the new norm which aims to reduce the length of time for the legal decision procedure (Código Civil y Comercial, 2015) needs to be put into practice and applied, in coordination with the organisations of executive power in Argentina, in order to attain the objectives.

²⁰ As stipulated by the - Ley Nacional 26061 de Protección Integral de Derechos de Niñas, Niños y Adolescentes - which organise the protection of children at three levels: federal, provincial and municipal.

UNICEF (2016) also says that child protection is far from equal throughout the country. As is often the case, social determinants have an impact and protection varies according to the social conditions and place of residence of the family. The legal guarantees, the care, the quality of interventions, the legal provisions and the organisational cultures vary according to the region. Sometimes the members of staff follow the new norms, in other cases they do not. The transmission of information, and the application and orientation of new policies for access to adoption is complicated by the double registers for adoption, on administrative and legal levels, instead of having one single register, as should be the case for the national register. A further obstacle is when civil servants do not respect the rights of the child by continuing to give them back to their family in cases of ill-treatment, rather than choosing the other options of a foster family in the extended family or community.

Again according to UNICEF, the protection of the rights of children without family support is not a priority of Argentina at the present time, especially as it allows systems to exist which are disorganised, private and not controlled, and public institutions where supervision and staff training for the care of victimised children are inadequate. Argentina is made up of provinces and this hinders the uniform application of policies, since each province has its own law of protection, which must include the general principles of the national law.

In any case, there are at least three levels of governance (municipal, provincial and national), to which must be added the difficult inter-sector groupings (public, private, charity) which care for children without family support. A structural complexity also exists which makes the diffusion, the application of a law, and the well-coordinated attribution of resources to implement these changes, very arduous.

Attempts at deinstitutionalisation, decentralisation and prevention

*“It is the limit of the institutional system of care ... it cannot imitate the family model, by definition.”
(Participant)*

When it is impossible to find a family placement for a child, and institutionalisation is still the principal option, empowerment programmes have been created and applied in order to facilitate the departure of the young people from the institutions, including that of Doncel Argentina²¹. This is the only civil society organisation which accompanies young people after their long stay in a hostel, and sometimes all through their 20s. According to their observations the young people are too frequently “thrown into the street” at the end of their stay, without being autonomous and without the institution having prepared them for the excessive “freedom” of life outside the system. Long-term placement involves the problem of deprivation of liberties and the lack of opportunities for these young people to learn to exercise their freedom, because of “streamlining” practices which do not take into account the needs of each young person:

“The care system must give young people opportunities to exercise their freedom.” (Participant)

²¹ See <https://doncel.org.ar>

A representative from DONCEL said that there is a culture of “non-belief” in the strength and capacity of these young people in daily life, that there is a distortion of the idea of care, and that even among the adult members of staff, who are their only significant figures, the idea exists that “they do not know, they are not capable”²². The members of staff are afraid to allow them freedom, to become a little more autonomous, to take the bus alone for example. Not only is their right to the continuity of their identity violated by their institutionalisation and lack of access to a statute, but these young people grow up in circumstances where their self-perception is very limited and negative:

“An idea that they are ... ignorant, incapable, not sufficiently responsible ... cuts off any concept of freedom they might have ...” (Participant)

During the training workshops for institution staff, the idea is frequently expressed that there is no point in giving apprenticeship opportunities to these young people, in encouraging their success or giving them responsibilities, because the staff considers them incapable of learning, not interested, and so justifies keeping them in an authoritarian framework, shut up and with no autonomy. This coincides with the ideas of several Latin American authors. In other words, childhood as a social construct is seen as the representation of both vulnerable subjects in need of protection and of “problems” to be controlled (Vallalta; 2013).

Institutional members of staff in Argentina, as elsewhere in other countries of Latin America, are at the bottom of the salary and professional ladder, and have no basic training which would enable them to understand and accompany these young people. Most of the time there are no professionals (psychologist, social worker, educator) to help them in their work. The authorities supervise and inspect the hostels very rarely, or not at all, and additionally the Law 26.061 is incorporated and applied at the provincial level, i.e. in a decentralized manner, and varies according to the resources available.

Decentralise by standardising quality practices

All the reports and observers mention the importance of decentralising the application of the legislation on integral protection (Ley 26.061) by the 23 provinces, but standardising their capacities, in particular the autonomous city of Buenos Aires, which covers the large majority of children without family support, 45.3% (Ministerio de Desarrollo Social de la Nación and UNICEF, 2015, p. 20). The process of decentralisation of protection legislation towards the provinces and the strengthening of administrative entities are inherent to the desired change, according to the observers. Each region has its own governmental entity responsible for applying the legislation for global protection on its territory. However, the number and the type of “decentralised” services vary greatly in each region (UNICEF, 2015, p. 18), and decentralisation does not have only advantages. It is more difficult to implant standardised service policies, covering all children within their rights, and in equal shares, to be accompanied and defended, when each province can implement what it wishes.

22 «No saben-no pueden»



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There is therefore no systematic application of the protection legislation, nor are the support programmes for the autonomy of young people systematically available. For example, those who are included in the DONCEL programme benefit from support on becoming adult and during the transitional period, receiving a small subsidy in line with the agreement negotiated with the government, in the framework of an employability programme (accepted in the legislation in 2017 – Ley 27.364 de egreso, which also puts the rights of the young people in placement on an equal footing with the rights of those living in their family). However, those who are not involved in the programme (Programa de acompañamiento a jóvenes sin cuidados parentales) were not protected at the time of this study. DONCEL was at the origin of the creation of this law.

As everywhere, the actors emphasised prevention, the necessity to apply preventive measures for serious family problems and traumatic separation, in line with the concept of comprehensive protection. The most frequent measure of prevention up until now is family intervention to support parents in their responsibilities for the care of their children. However, few provinces identify socio-economic support for families as the first factor (UNICEF, 2015), even though it is essential for the protection of the identity of the child within their family relationships.

For other actors, true prevention, once again neglected by the Argentinian government, would take the form of social policies giving access to contraception and abortion²³ for adolescents and young women finding themselves alone with an unwanted pregnancy, and financial support for single mothers who keep their child, so that they are not forced to abandon them. This is a factor which perpetuates the continuing cycle of abandonment/institutionalisation. With this financial support the children would not be deprived of identity.

In general, the UNICEF observers (2015) and others, associate any change in the respect for the rights of children without family support with the following factors: improved organisation between the public entities, decentralisation of protection services on administrative and legal levels, training for the organisations and hostels, the strengthening of administrative powers, and better inter-sector functioning of State and community programmes, both preventive and curative. According to UNICEF, the intensification and support for preventive programmes have helped to reduce the number of exceptional legal measures, which are the main cause of family separation. However, adoption is still problematic, because, according to the authors, there is still a “dissociation” of legal and administrative powers in several regions. Although adoption is seen as a “last resort”, it is here considered as an essential alternative to be promoted in the national strategy of desinstitutionalisation.

²³ Abortion being now allowed under certain conditions since December 2020 although debates on the issue persist: <https://www.bbc.com/mundo/noticias-america-latina-55482291>



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Discussion

the cross-cutting elements of adoption in the countries covered by the study in South America



This study has identified common elements which limit the protection of the rights of children made vulnerable by the loss of family ties. They are related to several systemic factors, the relations between actors, the organisation of actions which aim to guarantee the application of various reforms, strongly implanted cultural perceptions impacting discourse, and the way in which these fragile, complex situations are taken into consideration. We also noted that each country has its own distinct, historic, legal and societal context, with different models of access for children to a protective family environment which guarantees their right to identity.

In conclusion, our analyses have enabled us to identify factors which have marked the on-going transformations of the placement systems in these countries and which point to avenues of improvement in the future.

Decrease in ICA without the corresponding development of national alternatives

In all of these countries, the fact that ICA has stopped or has decreased considerably in the last 20 years, does not necessarily, nor automatically, imply an increase in national adoptions. However, a progression has occurred in some countries (Colombia, Chile, Peru), after several years of government measures to stimulate national adoption, sometimes in liaison with community organisations. It takes time to develop an underlying, essential culture of adoption which is positive, and, above all, community organisations in civil and religious society need to vindicate and promote this option for placement. The efforts at coordination, dialogue and consultation between the central authorities and these different actors have already started to bear fruit. However, the lack of support for these organisations, compared with the resources for institutions, was criticised as a major obstacle to the improvement of the situation of children.

These countries of origin in Latin America have therefore had much less recourse to ICA, which is, to a certain extent, a sign of their respect for the principle of double subsidiarity, a pillar of the HCCH 1993 Adoption Convention. However, actors in the field complain that the change has sometimes been too rapid, without obtaining adequate conditions which respect the best interest of children. These problems exist at several levels in the continuum of care for children who have been abandoned, neglected or ill-treated by their family. Many children have been subjected to the violation of their fundamental rights, unable to benefit from the necessary care for their overall development, and staying in institutions in spite of the wide-ranging reforms promoting their rights. This leads to the conclusion that the "moratoriums" or decisions to stop ICA should be more spread out in time, and alternative family-like placement environments should be made secure as a priority. Furthermore, the primary intention behind the principle of double subsidiarity, which is to guarantee the continuity of identity to each child, is not truly implemented when he is not attributed a legal statute and identity. The difficulty for indigenous families to access civil registers in order to register their children still persists, and doubts exist as to the respect for the continuity of origins in the cultural and linguistic sense for these children, even when an adoption is national.²⁴

Weak systems of protection and absence of policies for the global development of children

The root of the problem in all cases is the fact that these families have only very little access to social protection, either from the State or from their communities, and they remain in a situation of precarity and high vulnerability. The system does not identify the families with the greatest need for support until a repeated breach in the right of children occurs, resulting in abandonment or ill-treatment. The professionals in the systems of protection are faced with extremely complex, difficult situations and benefit from limited resources (economic, staff, training and supervision). The lack of State investment, and the absence of policies for the global development of children both have repercussions on the quality of life of families, on the quality of preventive services, and finally on the rights of children, since it is a question of principles without the legislation to safeguard their application. This state of affairs is contrary to the 2009 UN Guidelines for the Alternative Care of Children, which promotes the prevention of family separation and compliance with the principles of necessity and appropriateness of the measure.

²⁴ As foreseen by Art. 20.3 of the CRC

Several countries covered in the study have adopted a neo-liberal form of governance, delegating almost all responsibility for protection and prevention to the religious/charity or private sectors. With the subsidiary logic of the State, investment has continued to focus on curative interventions and so preventive services have been seriously neglected, and are ill-equipped to offer the thorough, qualitative service necessary for these children. Very large numbers of children who cannot be reunited with their families because they are abandoned, neglected or living in family situations which are impossible to improve in the short term, remain without a statute, without protection and with no alternative life project. In spite of the reforms concerning national adoption, the bureaucratic, legal and inter-sector mechanisms are so complex and slow that very few national adoptions actually occur, and the majority of young people in each country reach adulthood still in an institution and with their rights violated.

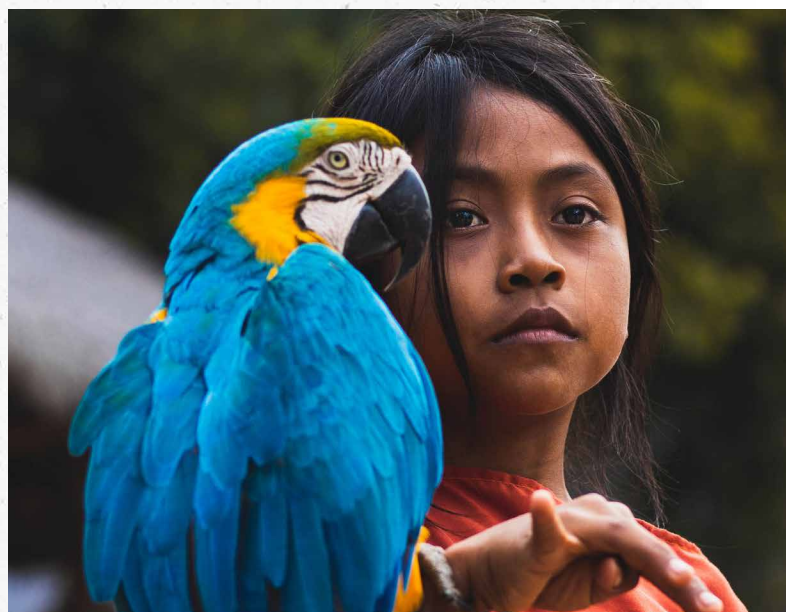
Our participants mentioned several underlying, ideological factors which contribute to this state of affairs: the continuing idealisation of the biological bond (without, however, giving importance to the bond of identity); collective traumas linked to the numerous cases of child appropriation and State abuse in the recent past; a culture of guardianship and devaluation of young people who do not live up to expectations (including those with special needs).

At the same time, however, round tables exist (in Peru) and contacts are established between the institutional services of adoption, associations and researchers (particularly in Chile), which make it possible to nuance perceptions and to work together in interventions of adoption placement, with greater respect for the various rights of children.

This is in response to another factor frequently observed by our participants: the fragmented nature of the sectors involved in child protection and the difficulties of communication and collaboration between the services. Provision of alternative care is made fragile by the lack of unity and by inter-sector problems (between prevention-protection, and protection-adoption), between central and distant regions, between professionals (social, administrative and legal) and between the public and private sectors. The actors we met underlined the need for massive and definitive investment on the part of governments to finance these services, but over and above the questions of budget, the necessity for governments to assume responsibility for coordination, resource sharing and training for professionals, with investment in family support (families of origin and adoptive families). Efforts have been made along these lines, without being systematic everywhere, through associations, collaboration between certain circles and groupings of professionals or with hostels.

A systemic fragility still exists in all the countries because of the lack of alternative environments to institutions and to adoption, and these two elements can harm the rights of children (to grow up in a family, to have access to their identity of origin). Permanent foster families, such as the model of foster families wishing to adopt (“concurrent planning”) are conspicuous by their absence, except for some projects in the private sector or programmes which have not been fully developed. These families fulfil the objective of providing security and stability to the child who is in the process of family reintegration, without having recourse to an institution as a life environment. Therefore if the decision of adoption is considered to be in the best interest of the child, their life will not be perturbed yet again in a temporary family and they will finally be able to integrate the same family, which then becomes their adoptive family²⁵. However, this form of adoptive placement can be problematical in certain countries where foster family placement is virtually non-existent, with the result that a “parallel way” has been created to avoid the more complex procedures of adoption and to facilitate access to the latter. When plans for intervention do in fact exist, their objective is either family reintegration (very unlikely in many cases, or with little help from specialised services to deal with the traumas involved) or adoption. Both options receive little support from a thorough analysis of the needs and specific interest of each child.

Family reunification implies the risk of the rights of the child becoming vulnerable once again through ill-treatment, whereas adoption means a total severance of family ties since, in all such cases, it is a question of full adoption. Which option should be chosen to avoid violating even more the rights of the child? This leaves little room for manoeuvre, for example, for children who could all the same benefit from the preservation of certain links with their family or community of origin, while at the same time being guaranteed quality care and a continuity of secure emotional ties until the age of 18 and beyond. Among the solutions to be proposed would be a greater awareness among the actors of the importance of the evaluation and determination of the best interest of the child, based on objective criteria which take into account the specific situation and needs of each child.²⁶



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²⁵ See the English model of Concurrent planning, and in Quebec the programme of “adoption Banque-Mixte” that does exist since the 80s in child protection (Pagé et Poirier, 2015; Selwyn, 2017 en G.B).

²⁶ The Guidelines of the UNHCR on the determination of the best interests of the child, recently updated, are a key tool on this point: <https://www.refworld.org/pdfid/5c18d7254.pdf>.

The issue of pursuing ICAs, while at the same time systematically protecting the best interest of the child, remains a source of questioning. This solution is a last resort for all the countries which have adopted the HCCH 1993 Adoption Convention, and its principle of double subsidiarity. However, this must not be at the expense of policy development, adequate, accessible actions of protection, or investment in a system to prevent serious family problems. According to everyone we met, decisions concerning the future of a child should be subject to evaluations which are more rigorous and/or in consultation, and should not depend on the discretionary, ideological power of certain judges and actors. Maintaining ties and the continuity of the identity of a child should not be confused with the unproven superiority of blood ties.

In a nutshell, it is more than ever necessary for the principles of the HCCH 1993 Adoption Convention to be put into practice. Although several countries have tried to align themselves rapidly with these principles, this study has shown the importance of joint efforts to guarantee the adequate conditions for the implementation of these principles, not only within adoption, but also child protection, particularly in relation to respect for the double principle of subsidiarity.

Our analysis, which was structured by the notion of social field (Bourdieu, 1989), also aimed to take into account the construction of narratives on vulnerable children and adoption in a determined social space: South America. In the history of a social field we are confronted with crucial periods which bring about great transformations. The present period is an example of this phenomenon. These transformations are impacted by asymmetric powers, by conflicts of recognition between actors and sectors (administrative, clinical, associative and legal). The great imbalance in resource allocation and the lack of State investment, or the need to re-distribute this investment, accentuate the effect of societal problems on children, and collaboration.

Over and above these explanatory, surface factors (facts, decisions, stated principles, etc.), it is necessary to bear in mind all this under-lying dynamic present in these socio-professional environments. This is the case in each country and of course is not limited to South America. Every country has its own social and cultural history, its distinct representations of childhood and the role of actors in improving the situation of children.

Finally, what is the approach to the origins of the child?

It is as if the developmental needs of children are compartmentalised, whereas they are all essential and function one with the other. The need to grow up in a secure, stable, affectionate, family environment cannot be dissociated from the need for identity, to be able to retrace the thread of one's existence, to know where one comes from culturally, to find the history of one's bonds, why they are broken or far away. The principle of best interest recurs in the new laws of adoption in these countries, which were previously countries of origin, and these laws strive to reflect the spirit of the CRC and the HCCH 1993 Adoption Convention. However, their application is too fragmentary, either because of ideology (giving priority to one interest compared with another), or lack of median alternatives of placement which would meet all these needs at the same time. Adoption, local or intercountry, is only envisaged in terms of a total break in ties. Its full legal implication does not protect the right to cultural identity and does not favour the maintenance or even knowledge of links with the family of origin. No alternative is provided, such as an open adoption with maintenance of contact, or simple adoption which at least recognises legally the existence of the first filiation. Certain other countries in the region have initiated debates on these options, in particular the post-adoption contact with the family of origin, either in the legislation, or in practice.

Having to choose one right rather than another is heartbreaking for any child, and in fact it is an absence of choice, imposed by systems which function still today, in spite of all these reforms, in a linear, binary spirit of extreme decisions, rather than taking into consideration the complexity of the development of the child. It is also possible to conceive that prevention is already an option in the past and is inaccessible, because the situation of children in distress has received attention so late in the process of vulnerability, and that the needs of these children who are abandoned, found or withdrawn from their families for extremely serious ill-treatment, attract the attention of the authorities primarily for reasons of security. In this perspective, the right to identity appears as a more secondary, even symbolic element, whereas it is the foundation of the social, legal and psychological existence of the child as a person, as a citizen.



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