

RIGHT TO FOSTER CARE



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We understand that a child deprived of living with a family is a damaged child because he/she lacks part of his/her essence and it follows that the exercise of his/her rights will also be damaged.

Each member of a family—mainly the child—is part of a human ecosystem in which there is mutual interaction and where the child develops as a person. So to intervene for the child (a subject of rights) when we consider his/her rights are at risk, while at the same time disregarding his/her family, results in the weakening of the chance of the child's rights being exercised and the child becomes vulnerable to losing his/her rights.

The legislatures of most States have ratified and integrated international treaties about human rights and the treaties deem unconstitutional anything opposing or contrary to what they say as well as any behaviour on the part of the State itself which impedes, delays or fails to promote the rights acknowledged by them and the State.

More than 50 years have passed since the Universal Declaration of Human Rights, and more than 15 since the Convention on the Rights of the Child (CRC). During that period, and even closer in time, there have been many and different conventions, pacts and declarations ratifying the family as the natural and fundamental basis for the development and well-being of its members, mainly its children. So the family must be provided with every kind of protection and assistance to fulfill its responsibilities, since it is considered one of the very few collective subjects entitled to the application of international rights.

The CRC conceives the child as a subject of rights within a family which is also entitled to rights. In this view, **foster care should be seen as a right** which allows a child/adolescent a place in a foster family for as long as needed. In this framework, respect

for a child's identity and family attachment are favoured and protected at a time when the child's family is experiencing a difficult situation.

That acknowledgment would avoid the pendulum movement: Birth Family ? State; State ? Birth Family; Birth Family ? State, which supports the conviction that between the State (in its administrative, legislative and judicial actions) and a child's family, there is no other possibility when in fact there are families in the community willing to be foster families.

In the above lineal view, the rights of a family experiencing a crisis are nonexistent, the child is a 'subject of protection' and attempts by the family to exercise their rights are frustrated.

The right to foster care is exercised by the child and his/ her family and the foster family. Although there is a transfer of rights and duties from one family to the other, they are agreed on according to the normative that each State establishes for the rights and duties of parents towards their children.

The implementation of the right to foster care requires organic structures with people and professionals trained to act upon events so that channels are set up to reflect fraternal and supportive dynamics for each other that exist in communities and societies.

In recognizing this right to foster care, we argue that it is necessary to set out exactly what is meant by foster care since terminology leads to instruments and practical approaches that are different between different kinds of care and each is supported by different ethical, philosophical and ideological considerations related to children at risk and their relationship with their birth families.

Thus, we claim that foster care **IS NOT THE SAME** as:

PRE-ADOPTIVE CARE

Many countries include the concept of foster care in pre-adoptive care—a previous period of time before adoption. This is the opposite of foster care, where re-insertion into the birth family and family reattachment are key aspects. Here, the path is to new filiations. The key word for pre-adoptive care is **ANOTHER** (another family, another culture, another community, another country.)

FAMILY PLACEMENT

In a wide sense, family placement is a protection measure whereby the child is withdrawn from his/her birth family at a time of difficulty. In general, the action is centered on safeguarding the child's well-being, minimizing action within the birth family while running the risk of becoming another form of institutionalization. The relationship with the birth family revolves around contact, which may or may not be successful. The importance of family placement lies in the fact that a child is protected by another family in the belief that a new structure will modify the problems leading to intervention. The key word is **PLACEMENT**.

SUBSTITUTE FAMILY

To substitute means 'to change, to take one instead of another one' ... the birth parents are put to one side. A foster family is not a substitute family: Foster parents are not the new parents of the child. On the contrary, in foster care both families interact dynamically and reciprocally to meet the needs of the child. The key word for a substitute family is **REPLACEMENT**.

WARDSHIP

Wardship of a minor by someone who is not his/her legal guardian is providing him/her with material and spiritual assistance with limited room for the birth family. In general, the family welcoming the child is not supported in the complex process of reintegrating the child with the birth family, so uprooting deepens the feeling of emptiness and loneliness that children feel when they are withdrawn from their parents. The key word for wardship is **INSTRUMENT**

TRANSIENT FAMILY

Although the right to foster care is within the framework of transience and temporariness—be it on a short, mid or long term basis—, it is used because of the causes and evolution of the need for care. A transient family is not encouraged to

make bonds with a child because attachment may hinder the passage to the definite/future family. The key word is **PASSAGE**.

Instead, **FOSTER CARE** is a **RIGHT**; it is a cooperative, fraternal answer from one member of a community to another, from one family to another in need, providing a place within a family—for as long as needed—to children and adolescents... The key word is **COMPLEMENTARY**, based on cooperation and fraternity.

The right to foster care is not identified with 'another family', or 'a place', or 'replacement', or a mere 'legal instrument' or a mere 'passage'.

Thus, we state that it is highly important to clarify and to make a distinction, between these different terms which are often confused or used interchangeably leading to ambiguity, vagueness and grey conceptual and operative areas by all concerned in their use. Otherwise the right to foster care is reduced into a mere and simple social assistance, protective, administrative, judicial or institutional alternative, blurred and included in a long list of alternative care and the protection of family rights and the rights of the child are further weakened.

Latin American legislations are not clear on Foster Care, particularly on the Right of Foster Care. Argentina, my country, is included, as is clear from the above and the recently approved 26061/05 Law and its regulation decree 415/06 that abolish the Patronage Law 10.903 of 1919.

The Right to Foster Care lies in a grey and hybrid area of Human Rights and there are other countries (according to Francois Tulkens and Sergio Llebaría Zampes), that are not free from legislative imprecision. However, in those countries, Foster Care is already established in the community praxis, and in the collective unconscious mind.

As we have said, the lack of precision brings with it confusing methodological approaches which impose time limited resolutions without respecting the child and his/her family and without understanding that foster care is a crafted construction, unique and non-repeatable, which takes shape from the interacting dynamics of the child, his/her family and the foster family. The task of the professional teams is to support each construction and its individuality.

Any other approach runs the risk of losing sight of the rights of the child and his/her family, opening gaps so that the chain of operators (State,

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professionals, agencies, associations, etc.) deepen the risk violating the Convention on the Rights of the Child, by omission and action.

So, if we place the right to foster care first, before all other forms of care, we are favouring an

approach which is complementary to the family, promotes cooperation in society and places the family in a position where it can be proactive in pursuing its rights and where the rights of the child can also be upheld.

¹**Fundación Emmanuel:** We are a secular, non-governmental, non-profit organization constituted by families, children and adolescents, professionals and collaborators, which have implemented **Foster Care** in Argentina in 1985, since no governmental or non-governmental organization had applied this model of solidarity action up to that moment. (E-mail: emmanuel@emmanuel.org.ar - Web Page: www.emmanuel.org.ar)

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