

**The Legal Value of Affection in the Construction of Parenthood
and the Protection of the Rights of the Child.**



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DECLARATION STATEMENT



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A person is a person
through other persons.
(*'umuntu ngumuntu ngabantu'*)¹

¹ Motsamai Molefe, Motsamai. *Ubuntu Ethics: Human Dignity, Moral Perfectionism, and Needs*. 1st ed. Oxford: Taylor & Francis Group, 2024. doi:10.4324/9781003514213., p. 20.

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OVERVIEW OF MAIN FINDINGS

This thesis explores whether affective ties, emotional connections and social roles can serve as a legitimate source to the creation of legal parental kinship under the United Nations Convention on the Rights of the Child (UNCRC), and whether the recognition of such bonds enhances the protection of children's rights. It builds on the premise that while legal systems have traditionally linked parenthood to biological or formal legal ties, a child-centered approach must also consider social markers, such as consistency, intent, emotional connection, and care as a source of parental connections. Rather than proposing a substitution, this thesis suggests that social-affective parentage should be recognized as an additional legal basis for parenthood—especially when it reflects the child's actual lived experience and primary sources of care.

This thesis examines how the UNCRC conceptualizes parentage and parental roles. Research demonstrates that the Convention does not set hard limits on who can be considered a child's parent but articulates an inclusive and broad interpretation of family and functional understanding of parenting in Articles 5 and 18. This research led to identifying continuity, consistency, emotional connection, and intentional caregiving as essential characteristics of a parental role. This research concludes that using affective ties, emotional connections and social roles as an alternative source of parenthood is compatible with the UNCRC. These conclusions are grounded on the legal text of the Convention, the Committee on the Rights of the Child's General Comments, international scholarship and the jurisprudence of regional human rights courts.

This thesis also explores the effects that the creation of new parental kinship can have on the child's rights to birth registration (Art. 7, UNCRC), identity (Art. 8, UNCRC), family relations and privacy (Art. 16, UNCRC), and access to justice (Art. 12, UNCRC). To this end, in addition to analyzing international scholarship, this thesis uses the Brazilian model of social-affective parentage as a case-study.

Brazilian legal framework uses similar social elements — mutual affection, continuity, and intent—to recognize and create parental kinship. Once the new parental connection is legally recognized, the child has equivalent rights against the social-affective parent as they would by any other form of filiation: the right to registration is fulfilled, by the addition of the new parent to the child's birth register, allowing access to legal benefits attached to the new parent. The system also realizes the rights to identity, privacy, family relations and participation by acknowledging a new parental connection according to the child's perception of that person as a parental figure. Social-affective parentage can only be declared if the child also interprets the adult as a parent and consents to the proceeding, formally deciding on a relevant aspect of their lives.

The case study illustrates how legal systems can incorporate a social approach to parenthood into domestic framework and how this proposal contributes to the enhancement of the rights of children, as it expands legal protection and benefits to children who would otherwise be overlooked by the law.

This thesis demonstrates that there is no legal impediment in the international children's rights framework to the recognition of affection ties as a source of legal parenthood. In addition, by examining the Brazilian model, it also demonstrates that this pathway enforces and realizes multiple rights of children, being favorable to their protection. It contributes to legal science by advocating for a broader, more inclusive conception of parenthood—one that reflects the social and emotional realities of children's lives and strengthens the legal framework for protecting their rights in diverse family contexts.

EXECUTIVE SUMMARY

This thesis explores whether emotional ties, social roles and relationships of affection can serve as a legitimate source of legal parentage under the United Nations Convention on the Rights of the Child (UNCRC) and, if so, whether this approach enhances the protection and fulfillment of children's rights. Moving beyond traditional paradigms based solely on biological or legal-adoptive connections, the work investigates the legal value of socio-affective bonds—particularly when such relationships are characterized by continuity, consistency, intention, and emotional reciprocity.

To address the issue, the thesis is guided by four supporting questions. First, it identifies the roles expected of parents under the UNCRC and international human rights scholarship and jurisprudence. Second, it examines who can be legally recognized as a parent according to international standards and whether legal barriers exist to acknowledging caregivers as such. Third, it analyzes how legal parenthood connects to a broader set of children's rights—especially birth registration, identity, privacy, family life, and participation. Finally, it considers the legal and practical implications of recognizing social-affective parentage by analyzing the Brazilian model as a case study.

The thesis starts by exploring the international legal framework, with a focus on the UNCRC and interpretative guidance from the Committee on the Rights of the Child, the Inter-American Court of Human Rights (IACtHR), and the European Court of Human Rights (ECtHR). It concludes that while the UNCRC does not define “parent,” it clearly articulates the functions that parents must perform—namely, offering care, direction, and protection according to the child's evolving capacities. Jurisprudence and doctrine support an expansive reading of who qualifies as a parent, pointing toward a functional and child-centered model that allows for the recognition of emotional bonds as legitimate sources of kinship.

This is followed by examining Brazil's model of socio-affective parentage, which provides legal recognition to individuals who perform parental roles through mutual emotional connection, daily care, and social acknowledgment. The chapter outlines the procedural frameworks for recognition, the concept of “status as child,” and the equal stand given to biological, adoptive, and socio-affective filiation ties. It emphasizes the child's agency in initiating or consenting to recognition, and the broad rights triggered by this acknowledgment—including name, identity, maintenance, and access to social protection.

Finally, the work offers a comparative analysis. It finds normative coherence between the international and Brazilian frameworks regarding social markers of parenthood. It also discusses implementation challenges, such as evidentiary thresholds, multiparenthood conflicts, and legal uncertainties. Despite these concerns, the thesis argues that recognizing emotional bonds as a basis for legal parentage is not only consistent with international law, but essential for realizing the full spectrum of children's rights in non-traditional family settings.

In conclusion, the thesis affirms that the creation of parental kinship based on emotional connection and social roles is both a legitimate and effective source of legal kinship under the UNCRC. It enhances the child's identity, security, and agency, and bridges the gap between social reality and legal recognition, making it a powerful tool for advancing child rights in diverse family contexts.

KEYWORDS

CONVENTION ON THE RIGHTS OF THE CHILD – PARENTHOOD – FAMILY LIFE – FAMILY
RELATIONS – RIGHT TO BE HEARD – RIGHT TO IDENTITY – RIGHT TO BIRTH
REGISTRATION – SOCIO AFFECTIVE PARENTAGE – MULTIPARENTING – BRAZILIAN LAW.

LIST OF ABBREVIATIONS AND ACRONYMS

ACHR – American Convention on Human Rights

CC – Brazilian Civil Code

CEDAW - Convention on the Elimination of All Forms of Discrimination against Women

EA – Extraordinary Appeal

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

FCB – Federal Constitution of Brazil

IACtHR – Inter-American Court of Human Rights

ICESCR - International Covenant on Economic, Social and Cultural Rights

NCJ – National Council of Justice of Brazil

Prov. – Provision

SCA – Brazilian Statue of Child and Adolescent

STF - Supreme Federal Court of Brazil

STJ – Superior Court of Justice of Brazil

UNCRC – United Nations Convention on the Rights of the Child

CHAPTER ONE: INTRODUCTION

1.1. Background and problem statement.

Parental ties are traditionally created in two ways: either biologically or legally.² However, family dynamics and care arrangements are constantly evolving. The Committee on the Rights of the Child (Committee) has recognized that “family” in the context of the United Nations Convention on the Rights of the Child (UNCRC) is to be interpreted broadly, to include a variety of arrangements that provide for the child’s care, nurturance and development, in line with the child’s rights and best interests.³ The value of kinship care has been vastly recognized and the UNCRC even refers to this type of arrangement in its provisions.⁴ But there are certain circumstances in which the caregiver performs in such a way that it takes over the role of a parent.

This can happen for many reasons: biological parents may become unable to care for their children or even be unwilling to do so, becoming absent. For blended families, it is common (and healthy) that the child creates connections with a parent’s new partner. Sometimes that connection is so strong that the new partner embraces the role of a main caregiver, and an affection and care-based bond is created, but lacks legal recognition. A similar situation often occurs with same-sex or polyamorous couples in which one of the partners may not have a biological connection with the child, but still performs the role of a parent, however lacking the legal recognition.

This issue becomes relevant because the UNCRC and many domestic legal systems award specific protection and rights to parental relations. Children who lack legal parental kinship (or whose legal parents are absent) are denied such protection, being victimized by potential rights violations. This may impact several aspects of the child’s life even through adulthood: that child may be denied access to child support, pensions, social security, life and health insurance and even inheritance and estate. In addition, this gap in recognition impacts on the child’s right to registration,⁵ identity,⁶ privacy and family life⁷ and even participation and access to justice.⁸ It cannot be justified that children in this context are left in a legal limbo, especially if they experience a parental relationship in their everyday lives.

This thesis is built on these experiences to challenge traditional parental settings and to suggest that parentage can also be created by the performance of parental roles. In other words, if a caregiver fulfills the social markers that constitute parenthood⁹ and cultivates a parental-like emotional and affectional relationship with the child,¹⁰ these circumstances should be sufficient to

² E.g. through adoption.

³ UN Committee on the Rights of the Child (CRC), General comment No. 7 (2005): Implementing Child Rights in Early Childhood, CRC/C/GC/7/Rev.1, 20 September 2006, <https://www.refworld.org/legal/general/crc/2006/en/40994> (UNCRC Committee General Comment 7), para. 15.

⁴ Art. 5, UNCRC.

⁵ Art. 7, UNCRC.

⁶ Art. 9, UNCRC.

⁷ Art. 16, UNCRC.

⁸ Art. 12, UNCRC.

⁹ Which will be examined in this thesis.

¹⁰ Which will also be explored further.

legally create parental kinship. This thesis does not propose a substitution of traditional parental connections, but a new addition to the bunch.

This context brings up additional questions, especially considering the overall impact that the creation of a new parental relationship has on a child's life. What are the criteria for acknowledging the new parental relationship? Do these criteria vary according to the region of social context? Can it be recognized from birth? Is there a limit to the number of parental relationships that can be created? With no ambition to answer all these questions, this thesis aims to provoke the discussion and shed some light on the subject.

This work will investigate whether the acknowledgement of parental kinship based on affective ties and emotional connections is in line with the UNCRC and what are the legal implications of such to the rights of the child. Parenthood is increasingly recognized as a dynamic relationship shaped by affection, daily interactions, consistency, and intentional caregiving, rather than merely biological ties or formal legal recognition. This evolution raises critical questions regarding how legal systems adapt to protect children's rights comprehensively, especially when traditional criteria of kinship fail to represent a child's lived experience accurately.

Brazilian law has adapted through its socio-affective parentage framework, legally recognizing parental status based explicitly on emotional attachment, consistency, intention, and social acknowledgment. Following a landmark Supreme Federal Court ruling, Brazil formalized the concept of "status as child," legally validating parental relationships established through sustained caregiving and emotional bonding. This thesis confronts the Brazilian experience against international children's rights standards and uses it as a case study, analyzing the practical implications of creating parental kinship based on affection ties and social interaction, as well as the challenges in implementation. Ultimately, it seeks to clarify the extent to which acknowledging parental kinship based on ties of affection can meaningfully and effectively enhance the comprehensive protection of children's rights.

1.2. Research Questions.

The main question that this thesis tried to respond is:

- Can affection ties and emotional connections be a source of parental kinship according to the UNCRC? If so, does this model enhance protection to the rights of children?

The investigation was guided by the following questions:

- What are the roles of parents according to the UNCRC and regional human rights courts?
- Who can be considered a parent according to the UNCRC and regional human rights courts? Are there legal impediments or restrictions?
- What is the connection of parenthood with the rights to birth registration, identity, privacy and family life and participation and access to justice?
- What are the practical implications of recognizing parental kinship based on ties of affection? How can social-affective parentage serve as an effective legal tool for protecting children's rights and recognizing diverse family structures? Analysis of the Brazilian model of social-affective parentage.

1.3. Structure.

This thesis is composed of five chapters, including this one, with three primary analytical components. In the second chapter, an analysis of international standards lays the groundwork by exploring how the UNCRC, children's rights academics and the jurisprudence of regional human rights courts interpret and apply parental roles, highlighting the broadening recognition of

caregiving functions and emotional bonds. The same chapter will also examine whether there are legal restrictions on the definition of who can be considered a child's parent and what are the implications of parenthood on selected rights of children.

The third chapter offers a comprehensive examination of how socio-affective parentage emerged within Brazilian legal framework, its formal requirements, procedural mechanisms, and its relevance within the system, considering preexisting childcare structures. The chapter unravels what are the requirements to achieve social-affective parentage and how it can be differentiated from kinship care. It also examines the effects of the model, such as creating a multiparent possibility in the law.

The fourth chapter analyzes the Brazilian model of socio-affective parentage against the international standards and uses it as a practical example of the effects of incorporating this type of parental kinship into an existing legal framework. The chapter also investigates legal implications and practical challenges, considering a children's rights standpoint.

The final chapter offers an overview of the findings, demonstrating that, despite the existing challenges in implementation, the recognition of parental kinship based on the social-affective connection between child and adult is in line with the UNCRC and international standards and that the Brazilian experience offers a positive practical example of such.

1.4. Methodology.

The research is structured around three interconnected phases, employing literary review, jurisprudence study, comparative analysis and case study methodologies:

Initially, the study conducts an analytical review of how the UNCRC conceptualizes parental roles and family relationships, focusing on the relevance that affection ties and social roles play in such concepts. The starting point is the legal text, specifically articles 5 and 18 of the UNCRC, which establish the specific functions and responsibilities expected from parents. The research further explores the Committee's General Comments to unfold its interpretations of family relations and parenthood. These concepts are developed even further with a review of academic literature, searching for definitions and components of parental roles. The results highlighted the legal meaning of affection (that goes beyond simple fondness) and the role that this and other factors (such as consistency, continuity, intent and emotional reciprocity) play in creating and defining parenthood.

Subsequently, the study examines literature to identify whether the UNCRC imposes explicit limitations or constraints on who can be legally recognized as a parent. This analysis is essential to determine the extent to which international law accommodates affective relationships as a legitimate source of parental connections.

The concepts identified in the two previous sections are analyzed against the jurisprudence of regional human rights courts to confirm if practice uses the same criteria as academia to identify parental relationships. This section builds on academic work that had previously conducted broad caselaw review on the courts' family related jurisprudence. This study focused on the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR). These courts were selected for their influential and varied approaches: the ECtHR provides a broader comparative perspective due to its diverse jurisdictional context, whereas the Inter-American Court is recognized for its progressive human rights stance. In addition, the position of this court is particularly relevant because Brazilian law is used as a case study.

The final analytical dimension of the international framework addresses the implications of new parental kinship on a child's personal sphere and rights, with specific focus on the rights to birth

registration (Art. 7, UNCRC), identity (Art. 8, UNCRC), family relations and privacy (Art. 16, UNCRC), and access to justice (Art. 12, UNCRC). These rights were selected because these are the most affected by the creation of new parental relationships. Adding a new name to a child's registration leads to change in the child's legal status and impacts access to other rights and public services. It also affects the child's sense of personal identity and family connections that receive special protection from the state and the UNCRC. Finally, the recognition proceeding itself allows the child the opportunity to actively engage while defining their family structures. Literary review is conducted to pinpoint how those rights relate to parental connections and what is the meaning of these rights according to the UNCRC.

The second phase examines the Brazilian socio-affective parentage model as a case study to identify the practical implications of acknowledging emotional connections as a legitimate source of parental kinship. Brazilian law was selected as case study because socio-affective parentage has been legally recognized for almost 10 years and is well settled in domestic framework and jurisprudence, allowing for a comprehensive analysis. The law, domestic academic literature and case law from local Superior Courts is critically examined to identify the criteria for this type of recognition and its legal and practical effects on the lives of children and adults involved.

Finally, the thesis conducts a comparative analysis between the Brazilian experience and international standards derived from the UNCRC. This assessment evaluates the coherence between theoretical understandings of the social aspects of parenthood and legal practice, as well as practical challenges in implementation and legal limitations of this form of parental kinship. The comparative analysis further reflects on broader impact for international legal standards, suggesting possible enhancements to child rights protection frameworks by incorporating this type of parental kinship into domestic legislation.

CHAPTER TWO: PARENTHOOD IN THE UNCRC AND REGIONAL HUMAN RIGHTS COURTS

2.1. Introduction.

The UNCRC states that children should be brought up in an atmosphere of happiness, love and understanding, allowing for the full and harmonious development of their personality and preparation for life in society.¹¹

Different groups play a role in this dynamic: the child's parents, members of extended family, legal guardians and other persons legally responsible for the child.¹² Each of these groups holds its own importance by creating unique relationships with the child, making a distinctive contribution in the fulfilment of the child's rights and overall wellbeing,¹³ but parents hold the primary role.¹⁴ This section aims to investigate what are the roles and characteristics that set parents apart from other caregivers according to international legal standards, notably the UNCRC. In addition to identifying the markers of parenthood, this section will investigate whether the UNCRC sets legal impediments for one to be considered a parent.

The legal text will be analyzed considering the interpretation of the Committee, the position of academic authors and how those two have echoed into the caselaw of the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR). Following that, this section aims to identify the key aspects of relevant children's rights connected to parental roles and relationships.

2.2. Parents in the making: what are the roles and characteristics of a parent?

Two articles of the UNCRC are the most relevant to the topic of parental roles: art.5 and art. 18. Article 5 establishes the child's right to receive guidance from parents, family members and other caregivers to the enjoyment of their rights under the UNCRC, as well as the state's obligation to respect the rights, responsibilities and duties of such actors while exercising their roles. Article 18 sets parents as commonly and primarily responsible for the child's upbringing and development with special attention to the child's best interests, as well as the state's obligation to render assistance to parents in the performance of their responsibilities.

Article 5 focuses on the child's perspective: it describes the right of the child, to be held against parents,¹⁵ to receive appropriate direction and guidance to the enjoyment of other rights.¹⁶ To enable this right, parents should have leeway to raise their children, adding the state's duty to respect parents in their roles. This leeway and duty to respect do not imply unhinged liberty or

¹¹ UNCRC, Preamble.

¹² Art. 5, UNCRC.

¹³ UNCRC Committee General Comment 7, para. 19.

¹⁴ Art. 18, UNCRC.

¹⁵ As an intrinsic function of parenthood. See Vandenhole, Wouter, Gamze Erdem Türkelli, and Sara Lembrechts. "Article 5: Appropriate direction and guidance consistent with the child's evolving capacities". In *Children's Rights*, (Cheltenham, UK: Edward Elgar Publishing, 2024a), <https://doi-org.ezproxy.leidenuniv.nl/10.4337/9781035316847.00015>, para. 5.08.

¹⁶ Tobin, John, and Sheila Varadan, 'The Right to Parental Direction and Guidance Consistent with a Child's Evolving Capacities', in John Tobin (ed.), *The UN Convention on the Rights of the Child: A Commentary*, Oxford Commentaries on International Law (2019; online edn, Oxford Academic), <https://doi.org/10.1093/law/9780198262657.003.0006>, p. 161.

subjective values: the guidance should be in line with the other rights in the UNCRC as well as progressively evolve according to the child's capacities.¹⁷ Through article 5 the UNCRC introduces the notion of social parent, as the person who is responsible for the child's day-to-day care, which is the focus this provision.¹⁸

Vandenhoe, Türkelli and Lembrechts highlight that the concept of common responsibilities brought by article 18 of the UNCRC has a double purpose: the first is to fight stereotypical notions of child-rearing roles and bring the concept of gender equality, although not explicitly mentioned in the legal text.¹⁹ By setting common responsibilities for parents, this provision aligns with gender equality provisions set by Convention on the Elimination of All Forms of Discrimination against Women²⁰ (CEDAW) and fights outdated patterns that can still be found in other human rights instruments.²¹ Tobin and Seow agree that the second purpose is to cultivate the idea of child-rearing as a collaborative task to be shared by parents, on a flexible approach, where parents jointly contribute to the care of their children, as opposed to the idea of an equally divided formula, where each task is allocated to a specific person.²² The main concern of this provision is to protect the quality of care and development of the child, ensuring that the child has their needs met, regardless of division of tasks among parents or preconceived societal roles.²³

The joint reading of these provisions show that parents are primarily and commonly responsible for the child's upbringing and development, achieved through offering appropriate direction and guidance to the enjoyment of rights in the UNCRC, with special attention to the child's best interests and evolving capacities.

These duties manifest in a variety of practical forms. The Committee confirms that a child's well-being encompasses material, physical, educational and emotional needs, including the formation of healthy attachment to a caregiver to ensure psychological health and stability.²⁴ To this end, Chase-Lansdale and Pittman's findings are that parenting must include (i) expressing love, affection and responsiveness to the child's needs and requests; (ii) setting discipline and example; (iii) actively engaging and teaching the child; (iv) gatekeeping the child's social relationships and

¹⁷ Tobin and Varadan (2019), p. 171-172.

¹⁸ Id., p.169.

¹⁹ Vandenhoe, Wouter, Gamze Erdem Türkelli, and Sara Lembrechts. "Article 18: Common responsibilities of parents for the upbringing and development of the child". In *Children's Rights*, (Cheltenham, UK: Edward Elgar Publishing, 2024b), <https://doi-org.ezproxy.leidenuniv.nl/10.4337/9781035316847.00028>., para. 18.10.

²⁰ Art. 16 (d), CEDAW.

²¹ International Covenant on Economic, Social and Cultural Rights (ICESCR), Art. 10(2). See Vandenhoe, Türkelli and Lembrechts (2024b), paras. 18.02 and 18.06.

²² Tobin, John, and Florence Seow, 'Parental Responsibilities and State Assistance', in John Tobin (ed.), *The UN Convention on the Rights of the Child: A Commentary*, Oxford Commentaries on International Law (2019a; online edn, Oxford Academic), <https://doi.org/10.1093/law/9780198262657.003.0006>., p. 654.

²³ Id., p. 653.

²⁴ UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC /C/GC/14, 29 May 2013, <https://www.refworld.org/legal/general/crc/2013/en/95780> (UNCRC Committee General Comment 14), paras. 71 and 72.

interactions, as well as outside influences; (v) transmit cultural heritage and family values and (vi) creation of a daily routine, providing the child with structure and stability.²⁵

Chaves contributes by confirming that continuity, commitment and reciprocity are also elements of parenting, that are fulfilled by daily exchange between child and adult, where all parties grow, live, mature and age together.²⁶ In this sense, parenting is an actual choice and an exercise, made consciously and with intent.²⁷

The same elements are considered by domestic courts in Latin America when deciding custody matters: aspects such as the emotional bond shared by the child and the adults, capacity to ensure a child's wellbeing and provide a proper living environment as well as the dedication of each parent to the care and relationship with the child are decisive.²⁸ Similarly, a study conducted in The Netherlands concluded that the elements of good parenting include (i) an unconditional personal commitment, (ii) continuity in the child-rearing relationship, (iii) care for bodily welfare, (iv) raising to independence, and social and societal participation, (v) organizing and monitoring the upbringing of the child in the family, in the school and in the public setting, (vi) the creation of a parent-child identity and (vii) ensuring contact moments with persons who are important to the child.²⁹

Although multifaceted, a few elements seem to be constant in the parental duties, such as caring for the child's material and emotional needs, participating in the child's daily routine, transmitting values and culture, encouraging the child's development and acting with consistency and intent while building a relationship with the child. In addition, the relationship must be mutual, with emotional connection also coming from the child.

In the next section, it will be explored whether there are legal limitations in international law on who can exercise those roles and assume a parental role.

2.3. Who can be considered a parent?

The UNCRC uses different criteria (varying from formal legal relationships to local custom and cultural aspects) to refer to a child's carer, without a firm definition on who can be a parent (or even a family member).³⁰ The Committee has confirmed that "family" is a term to be interpreted

²⁵ Chase-Lansdale, P. Lindsay, and Laura D. Pittman. "Welfare Reform and Parenting: Reasonable Expectations." *The Future of Children* 12, no. 1 (2002): 167–85. <http://www.jstor.org/stable/1602772>, p. 168.

²⁶ Chaves, Marianna. "Family Frontiers: The Definition of Parenthood in Brazil and in Portugal." In *Plurality and Diversity of Family Relations in Europe*, edited by Katharina Boele-Woelki and Dieter Martiny, 1st ed., 119–42. Intersentia, 2019. <https://doi.org/10.1017/9781780689111.007>, p. 125-126.

²⁷ *Id.*

²⁸ Herrera, Marisa, and Fabiola Lathrop. "Parental Responsibility: A Comparative Study of Latin American Legislation." *International Journal of Law, Policy and the Family* 30, no. 3 (December 2016): 274–91. <https://doi.org/10.1093/lawfam/ebw010>, p. 279.

²⁹ Kind En Ouders in de 21ste Eeuw Rapport van de Staatscommissie Herijking Ouderschap (Nederland Staatscommissie Herijking ouderschap 2016), p.11.

³⁰ Varadan, Sheila. "There's No Place Like Home: The Role of Informal Carers under the UN Convention on the Rights of the Child." *International Journal of Law, Policy and the Family* 35, no. 1 (March 18, 2021): 1–23. <https://doi.org/10.1093/lawfam/ebab049>, p. 3. Also see UNCRC arts. 5, 20(3) and 29(c).

broadly, considering traditional or modern arrangements that provide care for children as well as diversity, new trends and ever changing societal roles in multiple regions.³¹

As per Sloan, a biological link is one of the components that may indicate a parental connection,³² but it no longer is the only one. The evolution of reproductive techniques allows for a variety of genetic compositions³³ as well as multiple family arrangements, not being acceptable that the acknowledgement of parenthood is confined to a biological statement. Therefore and as defended by Tobin, the same flexibility from the concept of “family” can be extended to the concept of “parents”.³⁴ Currently, the word has three dimensions that may or may not coincide in the same person: a birth/gestational parent (meaning the woman who gave birth to the child, but does not necessarily hold a genetic connection with the child), a biological/genetic parent (meaning the persons whose genetic material was used in the child’s conception) and a social parent (meaning the persons who perform the everyday function of caring for the child and may or may not have a gestational or biologic connection to the child).³⁵ This illustrates a shift in formation of family structures, going from “being” kin, based in genetic and biological links, to intentional kinship, a constructed relationship without biological or legal basis that, when it comes to children, involves the child and the parent who participated in the child’s life and upbringing.³⁶

The broadening of the concepts of family and parenthood is relevant not only to follow societal development, but also to ensure that the enforcement of rights under the UNCRC reaches every child regardless of their family configuration. Varadan explains that the interpretation of the term “parent” impacts the level of protection extended by the UNCRC as well as the states’ obligations towards that family unit³⁷: the narrower the interpretation is, the lower the level of protection, allowing for potential rights violations.³⁸ Therefore, increasing the meaning of the word leads to a higher level of protection and inclusion.

This is especially relevant considering complex matters, such as surrogacy arrangements. Tesfaye highlights that disregarding the importance of a social parental relationship to surrogate children who do not have a biological link to their parents violates their best interests as it exposes

³¹ UNCRC Committee General Comment 7, paras. 15 and 19.

³² Sloan, Brian. "Chapter 11 Article 5 of the Convention on the Rights of the Child and the Involvement of Fathers in Adoption Proceedings: A Comparative Analysis". In *Parental Guidance, State Responsibility and Evolving Capacities*, (Leiden, The Netherlands: Brill | Nijhoff, 2021) doi: https://doi-org.ezproxy.leidenuniv.nl/10.1163/9789004446854_013, p. 266.

³³ Chaves (2019), p. 133.

³⁴ Tobin, John. “Recognising Same-Sex Parents: Bringing Legitimacy to the Law.” *Alternative Law Journal* 33, no. 1 (March 2008): 36–40. <https://doi.org/10.1177/1037969X0803300107>, p. 37.

³⁵ Tobin, John, and Florence Seow, 'The Rights to Birth Registration, a Name, Nationality, and to Know and Be Cared for by Parents', in John Tobin (ed.), *The UN Convention on the Rights of the Child: A Commentary*, Oxford Commentaries on International Law (2019b; online edn, Oxford Law Pro), <https://doi-org.ezproxy.leidenuniv.nl/10.1093/law/9780198262657.003.0008>, p. 259.

³⁶ Sarcinelli, Alice Sophie, and Monika Weissensteiner. “What’s in a Name? Children’s Rights and Legal Voice within Administrative and Juridical Procedures of Recognition of Same-Sex Filiation.” *Amicus Curiae* 6, no. 1 (November 4, 2024): 203–23. <https://doi.org/10.14296/ac.v6i1.5740>, p. 204.

³⁷ Varadan (2021), p. 11.

³⁸E.g. the rights to identity (art. 7) and to family relations (art. 8(1)) and not to be separated from parents (art. 9). Id.

them to legal uncertainty towards their parental rights as well as to the extent of their protection under the UNCRC.³⁹

Furthermore, the Committee has affirmed that ignoring societal change and denying acknowledgment to forms of parentage that originated from sources other than strictly biological, would be to attribute different rank and societal value to different forms of family, leading to discrimination and defying one of the UNCRC's core principles.⁴⁰

2.4. Parentage in Human Rights Courts.

Each human rights treaty has its own provision focused on the protection of family and family life. The American Convention on Human Rights (ACHR) protects family and family life under articles 11(2) and 17, with specific provision extending the ACHR's rights to children.⁴¹ On its turn, the European Convention on Human Rights (ECHR) protects family life under article 8 but does not elaborate further on protection of children's rights. Finally, the UNCRC also protects family life under article 16. In this section, the position of the IACtHR and the ECtHR on family matters will be examined to evaluate the consideration given to the social aspect of parentage when deciding whether there is family life among the applicants and if the protection from the human rights instruments should be extended.

The caselaw of the IACtHR demonstrates that this court admits a broad concept of family and parentage. In *Atala Riffo and Daughters v. Chile* (2012), the court decided that the "family" referred to in Articles 11 and 17 was not only the 'traditional' one and that the ACHR also encompasses *de facto* family ties.⁴² In addition, the IACtHR has issued an Advisory Opinion reaffirming the importance of the biological family of a child but also recalling that there are multiple forms of family, including those in which the person responsible for the habitual maintenance, care and development of a child is not a biological parent. The IACtHR included in its definition of family and parents the persons with whom the child holds a strong personal relationship and placed on the state the obligation to determine the composition of a child's family unit based on such criteria.⁴³

The European Court of Human Rights (ECtHR) is leaning towards a similar position. Family matters, including how the concept of parenthood is interpreted by the ECtHR,⁴⁴ are handled under Art. 8 of the ECHR. The ECHR does not elaborate further on family or children's rights, but

³⁹ Tesfaye, Meiraf G. "What Makes a Parent? Challenging the Importance of a Genetic Link for Legal Parenthood in International Surrogacy Arrangements." *International Journal of Law, Policy and the Family* 36, no. 1 (January 11, 2022): 1–20. <https://doi.org/10.1093/lawfam/ebac010>, p. 10.

⁴⁰ Committee on the Rights of the Child, Summary of General Discussion CRC/ C/34., paras. 190-191.

⁴¹ Article 19 of the ACHR.

⁴² Banda, Fareda, and John Eekelaar. "International Conceptions of the Family." *International and Comparative Law Quarterly* 66, no. 4 (2017): 833–62. <https://doi.org/10.1017/S0020589317000288>, p. 843. See also *Atala Riffo and Daughters v. Chile* [2012] IACtHR Series C No 254., paras. 142 and 172.

⁴³ Advisory Opinion OC-21/14, "Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection", OC-21/14, Inter-American Court of Human Rights (IACrHR), 19 August 2014, <https://www.refworld.org/jurisprudence/caselaw/iacrthr/2014/en/101499>, para. 272.

⁴⁴ Lima, Dafni. "The Concept of Parenthood in the Case Law of the European Court of Human Rights." In *Plurality and Diversity of Family Relations in Europe*, edited by Katharina Boele-Woelki and Dieter Martiny, 1st ed., 103–18. Intersentia, 2019. <https://doi.org/10.1017/9781780689111.006>, p. 107.

the ECtHR uses the living instrument approach, allowing for a dynamic interpretation of the charter, in line with evolving standards of society.⁴⁵

This has an impact on the notions of parenthood and family life: the ECtHR has not abandoned the traditional elements of parenthood, where biological ties,⁴⁶ the relationship between the child's parents upon birth and the parents' intentions during conception⁴⁷ play a role in the ECtHR's judgments. However, an additional layer has been added to the pool: parental connections are also being analyzed under the lenses of care and personal connections between adult and child.⁴⁸ The weight given by the ECtHR to the element of care varies according to the circumstances of each case,⁴⁹ but the social aspect of parenthood is gaining relevance. In this sense, it can be argued that the ECtHR adopted a functional understanding of parenthood, where the adult effectively exercises parenting duties over the child,⁵⁰ and performs a decision-making role in the child's life⁵¹ on aspects like place of residence, education and other matters. To decide whether there are parental ties and family life, the ECtHR examines the social relationships of a child and how emotional ties are experienced in practice, giving preference to a secure and stable environment for the child.⁵² When facing conflict between a biological and a social parent, the ECtHR is unlikely to acknowledge the existence of family life in both relationships simultaneously. Therefore, although the ECtHR is open to recognizing the many aspects of parenthood, it is still reluctant to recognize that those aspects can be split up among more than one person.⁵³

A final remark is to be made on the similarities of the legal provisions on the human rights treaties (see table below). Despite very similar words, it is possible to note that the IACtHR's has been more upfront in interpreting the corresponding provision and recognizing multiple forms of family (and extending legal protection) as opposed to the ECtHR, that has displayed a more cautionary posture. This does not necessarily mean less protection to children, considering that, as mentioned, the ECtHR has added the elements of care and personal relations to some of its judgements and considers the UNCRC when relevant,⁵⁴ but it does mean that this court will use its margin of appreciation and balance the social aspect of parenting against other elements depending on the circumstances of the case.⁵⁵

⁴⁵ LIMA (2019), p. 105-106.

⁴⁶ Margaria, Alice. "Fatherhood at the ECtHR." In *The Construction of Fatherhood: The Jurisprudence of the European Court of Human Rights*, 1st ed., 155–68. Cambridge University Press, 2019. <https://doi.org/10.1017/9781108566193>, p. 156.

⁴⁷ MARGARIA (2019), p. 156-157.

⁴⁸ MARGARIA (2019), p. 156.

⁴⁹ MARGARIA (2019), p. 158.

⁵⁰ LIMA (2019), p. 109.

⁵¹ LIMA (2019), p. 114.

⁵² LIMA (2019), p. 116.

⁵³ MARGARIA (2019), p. 159.

⁵⁴ Coscini, Valeria. "Parenting Discrimination and Children's Rights in Lgbtqia+ Families: A Review of International Human Rights Decisions." *The International Journal of Children's Rights* 32, no. 4 (2024): 845–69. doi:10.1163/15718182-32040001, p. 859.

⁵⁵ Such as the relationship status of biological parents before birth. See MARGARIA (2019), p. 158.

UNCRC	ECHR	ACHR
Art. 16	Art. 8	Art. 11
<p>1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.</p> <p>2. The child has the right to the protection of the law against such interference or attacks.</p>	<p>1. Everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p>2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</p>	<p>1. Everyone has the right to have his honor respected and his dignity recognized.</p> <p>2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.</p> <p>3. Everyone has the right to the protection of the law against such interference or attacks.</p>

2.5. Additional remarks.

It is necessary to note that the acknowledgement of social connection and daily care as an independent source of parenthood, detached from traditional forms of parental connection, does not imply that these have decreased relevance or are on the way of being replaced. If the definition of parents is extended to include biological, gestational and social elements,⁵⁶ this means that all these elements become a part of the child's identity and upon which the child still has rights and claims.⁵⁷ The element of care has always been a part of parenthood, but it has only recently been perceived as independent from other elements (such as a biological or a legal connection to the child). This independency led to extended protection, adding on to the interpretation of the rights of the child. It is the law being modelled to offer different consequences and solutions to new situations created by societal development.⁵⁸

As mentioned earlier, the UNCRC does not define who can be considered a parent, but the legal text indicates what is expected from a parent and how a parent plays their roles, demonstrating the acknowledgement and significance of the social aspect of parenthood. Aside from offering guidance, emotional and financial support, the parent has intention, consistency, has a relevant and constructed personal relationship with the child and participates in the child's upbringing and daily activities. This definition goes beyond parental rights and becomes relevant to determine which adult belongs to which child and what can that child demand and expect from that adult,

⁵⁶ See Tobin and Seow (2019b), p. 259.

⁵⁷ That must be balanced against practical possibilities and the rights of those parents. *Id.*, p. 261.

⁵⁸ *Id.*, p. 260.

both in a private sphere, but also before society. It is important for a child to have clarity on who has responsibility over them and has the power to make decisions regarding their life.⁵⁹

In addition to that, a child's healthy emotional development involves forming an attachment to their primary caregivers, creating a sense of security and allowing the creation of personal identity, cultural values and overall sense of belonging.⁶⁰ In this context, the emotional attachment or sense of affection surpasses the common meaning of fondness and liking, representing reciprocation, equality, dignity⁶¹ and creating accountability to the adult that becomes responsible for the child. Undue separation represents a violation of rights,⁶² harming the child's sense of stability, being unreasonable to disregard the importance of such *de facto* relationships due to lack of biological or other legal grounds.

Reading the evidence, a parent seems to be someone who offers guidance and participates in the child's upbringing, by being consistent, affectionate, with intent, with whom the child has a strong personal relationship and who the child interprets as a family member. The law, the jurisprudence, and scholars do not seem to find impediments to the acknowledgement of a parental bond other than that relationship being positive and in the best interest of the child.⁶³ Therefore, it can be argued that a parent is also the person who meets all these criteria towards a child, independently of other forms of connection, such as biological or legal. And, although the concept is still incipient, there also does not seem to be a legal impediment for the acknowledgement of a multiparenting setting, according to the same criteria. Regardless of the origin, once the parental bond is recognized, it comes with a set of rights and responsibilities, which also extend to social or *de facto* parental relationships. In the next session, some of these rights will be examined.

2.6. Unfolding.

Acknowledging new parental connections would have undeniable impact on a child's private life and personal identity. All these aspects are safeguarded by the UNCRC and will be examined in this section.

2.6.1. Identification and identity.

The UNCRC protects children's rights to birth registration (article 7) and personal identity (article 8). Each article is meant to protect a different aspect of a child's sense of self, with the commitment to safeguard a wholesome picture of the child's personal identity.

2.6.1.1. *The right to birth registration, art. 7 of the UNCRC.*

This provision has five aspects: (i) that children must be registered immediately after birth; (ii) that the registration process will ensure that the child receives a name and a nationality; (iii) that the registration will contain information on the child's parents, as far as possible; (iv) that the child will have access to such information and be cared for by the parents and (v) that state parties will ensure that these obligations are met.

⁵⁹ Kind En Ouders in de 21ste Eeuw Rapport van de Staatscommissie Herijking Ouderschap (Nederland Staatscommissie Herijking ouderschap 2016), p. 78.

⁶⁰ UNCRC Committee General Comment 7, para. 16. Also see UNCRC Committee General Comment 14, para. 72.

⁶¹ CHAVES (2019), p. 127.

⁶² UNCRC Committee General Comment 7, para. 18.

⁶³ See UNCRC Committee General Comment 7, para. 15 and also Tobin and Seow (2019a), p. 658.

The purpose of this provision is to contribute to the child's psychological stability, as a complete personal history contributes to the formation of the child's personality, cultural and social identity and sense of self.⁶⁴ Furthermore, being registered and properly identifiable means that the child exists in the eyes of the state, allowing access to services such as social security, health and education,⁶⁵ translating into a tangible connection between child, state and community.⁶⁶

As to the meaning of "parents", it would extend to all the persons connected to the child's gestation, creation and care.⁶⁷ This would translate more significantly into the child's right to information,⁶⁸ but does not necessarily mean that all these people would have actual influence over the child's everyday life and wellbeing.⁶⁹ Still, the term "as far as possible" suggests that said right to information would be weighed against practical circumstances and the rights of other people involved.⁷⁰ In addition, it also suggests that the best interests of the child would play an important role, as the child must be cared for by people who are best fit to do so⁷¹ and not by each person who has a parental title.

2.6.1.2. *The right to identity, art. 8 of the UNCRC*

The provisions on articles 7 and 8 intertwine. While article 7 helps the child answer the question of "where did I come from", article 8 is meant to answer the question of "who am I". A child's identity includes elements such as nationality, name and family relations, but it also encompasses features like religion, ethnic and cultural heritage, gender identity and sexual orientation and social and family history.⁷² To the state, this article sets the responsibility to preserve a child's identity and to assist and allow the child to develop an identity of their own.⁷³

In the earlier years, those elements are mostly defined by the adults in the child's life, who will play major influence on the child's personal identity. Social parentage becomes relevant, as these are the people that will shape most of the child's upbringing and introduce them to their culture in a broad sense, becoming an undeniable influence.⁷⁴ But article 8 also stands for the child's right to create their own identity based on personal experiences and their interpretation of their reality as presented to them by their adults.⁷⁵ Article 8, interpreted in conjunction with articles 5 and 12 of the UNCRC, intitles the child to play an active role in discovering and experimenting to reach a personal identity, which must be respected and facilitated by the family and by the state.

⁶⁴ Tobin and Seow (2019b), p. 238.

⁶⁵ Id., p. 242.

⁶⁶ Id., p. 279.

⁶⁷ Id., p. 260.

⁶⁸ Id., p. 260.

⁶⁹ Id., p. 260-261.

⁷⁰ Id., p. 263-264.

⁷¹ Id., p. 273-274.

⁷² Tobin, John, and Jonathan Todres, 'The Right to Preservation of a Child's Identity', in John Tobin (ed.), *The UN Convention on the Rights of the Child: A Commentary*, Oxford Commentaries on International Law (2019; online edn, Oxford Law Pro), <https://doi.org/10.1093/law/9780198262657.003.0006>, p. 291-292.

⁷³ Id., p. 283.

⁷⁴ Id., p. 297.

⁷⁵ Id., p. 293-295.

2.6.2. A child's private sphere.

The UNCRC's article 16 protects several aspects of a child's life from unlawful interference from the state. The focus of this section will be the protection of family life and privacy.

As discussed above, the concept of family must be interpreted broadly, not to exclude any of the caring arrangements that may exist, considering societal change, local custom and consistency with the child's best interest.⁷⁶ Thus, the concept of family includes gestational, biological, adoptive and foster family, as well as others.⁷⁷ However, this broadening of the concept of family is only possible in circumstances where the child identifies such characters as being family members, relying, therefore, on the assessment of the nature and actual existence of the child's relationship with such people.⁷⁸ This leads to the conclusion that, to the purposes of the protection stated on art. 16, the concept of family can expand from biological connections, as long as it reflects existing relationships with the child. Again, this does not interfere with the right to identity discussed above: the child preserves the right to information and origins previously discussed, but this does not necessarily imply that all those connections will have influence on the child's daily life or be granted the same level of protection from the state.⁷⁹

The nature of the child's relationship is also relevant to the concept of privacy, which encompasses many dimensions. Some of which are: physical and mental integrity, informational privacy, physical/spatial privacy, decisional autonomy and personal identity,⁸⁰ being the last two the most relevant to this paper.⁸¹ In this sense, the right to privacy includes the power and the ability to make decisions regarding the private life of an individual.⁸² To a child, this dimension grows with the child's evolving capacities, level of maturity and with the proper guidance and assistance from parents.⁸³ The expression of the decision-making aspect of the right to privacy depends on the enforcement of the right to participation (art. 12 UNCRC), as well as a best interest assessment. This also has an influence on personal relationships that a child may decide to cultivate with others: a child should have the liberty and autonomy to develop private and healthy relationships, which may evolve to become family-like (or parental-like) and, thus, be subject to the protection from article 16.⁸⁴

2.6.3. Participation and access to justice

The UNCRC sets children's right to participation in article 12, according to which children should be allowed the opportunity to express their views and opinions in legal proceedings affecting them. This right influences practical aspects of a child's life, one of the most relevant being of who

⁷⁶ UNCRC Committee General Comment 7, para. 15.

⁷⁷ UNCRC Committee General Comment 14, para. 59.

⁷⁸ Tobin, John, and Sarah M. Field, 'The Right to Protection of Privacy, Family, Home, Correspondence, Honour, and Reputation', in John Tobin (ed.), *The UN Convention on the Rights of the Child: A Commentary*, Oxford Commentaries on International Law (2019; online edn, Oxford Law Pro), <https://doi.org/10.1093/law/9780198262657.003.0006>, p. 578.

⁷⁹ See Tobin and Seow (2019b), p. 260-261.

⁸⁰ See Tobin and Field (2019), p. 555.

⁸¹ The personal identity aspect has been discussed in the previous sections.

⁸² Tobin and Field (2019), p. 565.

⁸³ *Id.*, p. 566.

⁸⁴ *Id.*, p. 578-579.

cares for the child. If properly enforced, this right gives children agency, enabling them to actively participate in the construction of their own reality and sense of personal autonomy.⁸⁵

This prerogative extends to all judicial proceedings involving the child, including matters of custody, care and adoption, whether the proceeding is initiated by the child⁸⁶ or by others, but still affecting the child (such as family law matters).⁸⁷ The child that can be heard is the one who is able to form and express their views on the matter, according to their level of maturity,⁸⁸ which does not have to compare to an adult's. To this end, the child must only demonstrate that understands the part of the issue that affects them and that what they are expressing is their own view.⁸⁹

There is no trump card, however, when it comes to decision-making regarding children. Their views must be given due weight, meaning that a child's opinion cannot be simply dismissed and that conflicting decisions to such opinion must be justified,⁹⁰ but their views are not, on their own, decisive. Depending on the nuances or complexity of the matter, children may lack the ability to see the whole picture and understand the full consequences of their choices,⁹¹ and a best-interest assessment cannot be disregarded. What this provision means is that an adult's views, covered by a best-interest justification, cannot be enough to decide a child's fate⁹²: balance must be sought between the child's views and the impact of such on the child's life and other people involved.⁹³

Finally, it is relevant to mention that a child must be given the opportunity to be heard, but it is not mandatory.⁹⁴ If a child decides to participate in a legal proceeding, they can do so directly or by an appropriate representative. If through a representative, the judicial authority must ensure that the child's views are being properly conveyed, without influence of an adult or of a third party with personal interest in the outcome of the case.⁹⁵

2.7. Conclusion.

This chapter explored the evolving understanding of parenthood under the UNCRC and broader international legal standards, highlighting that while the UNCRC avoids a strict definition of "parent," it outlines clear expectations for what parenting entails. Central to this understanding

⁸⁵ Tobin, John, and Laura Lundy, 'The Right to Respect for the Views of the Child', in John Tobin (ed.), *The UN Convention on the Rights of the Child: A Commentary*, Oxford Commentaries on International Law (2019; online edn, Oxford Law Pro), <https://doi.org/10.1093/law/9780198262657.003.0006>, p. 399.

⁸⁶ E.g. complaints against ill treatment or lack of access to public services.

⁸⁷ UN Committee on the Rights of the Child (CRC), General comment No. 12 (2009): The right of the child to be heard, CRC/C/GC/12, 20 July 2009, <https://www.refworld.org/legal/general/crc/2009/en/70207> (UNCRC Committee General Comment 12), paras. 32-33.

⁸⁸ Art. 12(1), UNCRC.

⁸⁹ Tobin and Lundy (2019), p. 402.

⁹⁰ Id., p. 403 and 411.

⁹¹ Id., p. 403.

⁹² Id., p. 403.

⁹³ Id., p. 413.

⁹⁴ UNCRC Committee General Comment 12, para. 35.

⁹⁵ Sáez, Jérica Delgado. "The Right of the Child to Be Heard in Parental Responsibility Proceedings." In *Plurality and Diversity of Family Relations in Europe*, edited by Katharina Boele-Woelki and Dieter Martiny, 1st ed., 225–36. Intersentia, 2019. <https://doi.org/10.1017/9781780689111.011>, p. 227.

are the characteristics of consistency and intent. A parent, in this sense, is someone who not only provides care and support but does so with deliberate engagement, sustained presence, and emotional investment in the child's upbringing. These elements—daily involvement, affection, and commitment—form the foundation of what the Committee, human rights courts and scholars increasingly recognize as social markers or functional parenthood.

The absence of a rigid definition in the UNCRC allows an inclusive interpretation of parenthood, one that aligns with children's lived experiences. It can thus be argued that there is no legal impediment within the UNCRC framework to recognizing individuals as parents even if they lack a biological or formal legal connection to the child, provided they consistently perform the roles and responsibilities associated with social parenthood. This includes guiding the child in exercising their rights, contributing to their development, and forming an enduring, meaningful relationship based on mutual affection and care.

Importantly, this approach does not seek to override or minimize biological or legal parentage. Rather, it acknowledges that these connections, while significant, are not the sole pathways to forming a parental bond. In reality, many children are nurtured, supported, and guided by individuals outside traditional kinship structures. Recognizing such relationships does not diminish others but adds a layer of protection and acknowledgment for children's actual sources of stability and care. It is, above all, an affirmation of the child's right to identity, family life, and emotional security, in line with the core principles of the UNCRC.

In sum, the UNCRC supports a dynamic and child-centered conception of parenthood—one that values who acts as a parent as much as who is formally named as one. This recognition not only reflects evolving societal realities but strengthens the legal and emotional protections available to children growing up in diverse family settings.

In the next chapter, Brazilian model of social-affective parentage will be examined, as an example of recognizing legal value to social parenting as well as practical implications and consequences.

CHAPTER THREE: SOCIO-AFFECTIVE PARENTAGE IN BRAZILIAN LAW AND PRACTICE

3.1. Introduction.

The Brazilian child protection framework will be discussed in this section. The chapter starts with an overview of the traditional structures and their roles in childcare arrangements. After highlighting the characteristics of each existing institute, the concept of social-affective parentage and its formal recognition by Brazilian Supreme Federal Court will be examined, as well as the current legal proceeding for its acknowledgement. Finally, comparative notes will be made demonstrating the intersections and diverging aspects of each tool.

3.2. Formal Childcare Arrangements.

3.2.1. Family power, guardianship and adoption

There are many configurations in which children may be cared for, by birth parents or not. Each of these configurations may require a different legal remedy to ensure a formal connection between the child and the caregiver. Brazilian law offers a range of legal remedies, and, for the purposes of this chapter, the institutes of family power, guardianship and adoption will be examined. This section will demonstrate that although Brazilian Law already had a comprehensive child protection framework and each existing tool attended to a specific necessity, social-affective parentage comes in as an additional instrument to fill a different gap and improve the system, ensuring a holistic approach to the rights of the child within parental and family relations.

3.2.1.1. Family power

Family power is the expression used by Brazilian legislation to define the set of attributions parents have towards their children.⁹⁶ Some authors challenge the use of the expression “family power” and propose its substitution for “parental authority”, as the word “power” may express an idea of oppression, as opposed to the word authority, that would be more in line with the notion that children are rights holders.⁹⁷ Regardless, it encompasses the rights and duties⁹⁸ to raise, care for, guide and provide financial and emotional assistance to children,⁹⁹ allowing them to develop with autonomy.¹⁰⁰ It is equally shared by the parents, who can resort to judicial authority in case of disputes while exercising those rights.¹⁰¹

⁹⁶ Art. 1,630 Brazilian Civil Code (Law No. 10,406/2002) (CC).

⁹⁷ Pereira, Rodrigo da Cunha, *Direito das Famílias*, 6th ed. (Rio de Janeiro: Forense, 2025), ISBN 978-65-5964-253-3, e-book., p. 419.

⁹⁸ Art. 1,634, CC.

⁹⁹ Among other rights and duties, see Art. 229 Federal Constitution of Brazil (1988) (FCB), Art. 1,634, CC and Art. 22 Statute of the Child and Adolescent (Law No. 8,069/1990) (SCA) for more examples.

¹⁰⁰ PEREIRA (2025), p. 419.

¹⁰¹ Art. 21, SCA.

It is an exclusive feature of parent-child relationship¹⁰² and all children are subject to it, regardless of the nature of the filiation (biological, civil or social-affective).¹⁰³ Although not interdependent, the attributions of family power and guardianship rights intertwine,¹⁰⁴ as it will be discussed further.

While exclusive to the parent-child relationship, family power is not absolute and can be suspended or extinguished, observing the criteria established by the law.¹⁰⁵ The reasons may vary from natural causes, such as the child reaching adulthood, to civil and criminal matters, or neglect, abandonment or acts of violence. The suspension or extinction of a parent's family power must be declared by a specific legal procedure¹⁰⁶ and can be a cause for the child to be placed under the care of the state and into the adoption system.¹⁰⁷

3.2.1.2. Guardianship

Although there is no definition in the law, guardianship can be explained as the legal prerogative and correspondent duty and power to protect, care for and assist the person under this legal regime.¹⁰⁸ When it comes to children, it includes taking charge of the child's life and routine within and outside the domestic environment, observing the child's best interests, age and cultural background, along with other rights and in line with international obligations.¹⁰⁹

It is one of the attributes of family power, but it is not attached to it. It is legally possible for only one of the parents to retain guardianship rights, if that is in the child's best interest. Still, the other parent(s) may continue to hold family power and be allowed to monitor the child's upbringing including keeping visitation rights,¹¹⁰ always considering the child's interests and position as rights holder.

Guardianship rights can also be transferred to others, if the parents are not fit to exercise it or if needed to attend to specific situations.¹¹¹ The guardianship holder overpowers others when it comes to decision-making involving the child,¹¹² even if the parents continue to hold family power.¹¹³ In this setting, parents maintain the capacity to monitor and to be involved in the child's life, keeping visitation rights as well as child support payment responsibilities.¹¹⁴

¹⁰² Arts. 1,631, 1,632, 1,634 and 1,636, CC.

¹⁰³ PEREIRA (2025), p.419.

¹⁰⁴ Id.

¹⁰⁵ Arts. 1,635, 1,637 and 1,638, CC. Also see Art. 129, SCA.

¹⁰⁶ Arts. 24 and 155 to 163, SCA.

¹⁰⁷ Art. 1,734, CC.

¹⁰⁸ PEREIRA (2025), p. 440.

¹⁰⁹ Lôbo, Paulo. *Direito Civil – Famílias*, vol. 5, 15th ed. (São Paulo: Saraiva Jur, 2025), ISBN 978-85-5362-298-6, e-book., p. 302.

¹¹⁰ Id, p. 299. Also see Art. 1,589, CC.

¹¹¹ Art. 33, SCA.

¹¹² Id.

¹¹³ If it has not been suspended or extinguished by a judicial decision.

¹¹⁴ Art. 33, §4º, SCA.

The law prefers that the child is cared for by the parents or extended family,¹¹⁵ meaning that these are the people that most likely will be awarded guardianship rights if the parents are not able to care for the child. In this scenario, the kinship level, childcare abilities and affection ties will be considered when appointing a child's new guardian.¹¹⁶ If the child does not have an extended family or the family is not fit to care for the child, the state shall intervene and integrate the child into the protection system.¹¹⁷

3.2.1.3. Adoption

Adoption is a form of civil kinship¹¹⁸ admitted by Brazilian law. It has the effect of creating a parental relationship between the adoptive parent and the child and of undoing any kinship and legal connections between the child and the biological family.¹¹⁹ Any modality of adoption in Brazilian law is definitive and depends on a judicial decision.¹²⁰ Because it breaks the connection between the original family and the child, adoption does not lead to multiparent family configuration.¹²¹

The adopted child holds the right to know their biological origin and personal history, by requesting access to the adoption proceeding, which must be preserved.¹²² This is considered a part of the child's own personality rights, inherent to the human condition, and it does not connect to the filiation, not being affected by the loss of legal connection to the biological family caused by the adoption.¹²³

A child can only be placed for adoption after all attempts to maintain the child with the birth family have failed.¹²⁴ The birth parents (if known) lose their family power¹²⁵ and the state becomes the new legal guardian. The child enters the National Adoption Register and is matched with prospective adoptive parents based on personal characteristics.¹²⁶ Once matched, the child and prospective parents will gradually be acquainted to each other, evolving to a living stage,¹²⁷ when the child will live at the same house as the prospective parents, and these are granted guardianship over the child.¹²⁸ All stages are overlooked by a team of specialized professionals

¹¹⁵ Art. 19, SCA.

¹¹⁶ Art. 1,584, §5º, CC.

¹¹⁷ PEREIRA (2025), p. 452.

¹¹⁸ Art. 1,593, CC.

¹¹⁹ Art. 41, SCA. The only remaining connection between the child and the biological family are marriage impediments regulated by art. 1,521, CC.

¹²⁰ LÔBO (2025), p. 267.

¹²¹ Id. This does not mean that a socio-affective parental relationship cannot be created in the future between the adopted child and another adult. What it means is that a multiparent configuration cannot be created through adoption.

¹²² Art. 48, SCA.

¹²³ LÔBO (2025), p. 267.

¹²⁴ Art. 39, §1º, SCA.

¹²⁵ Art. 45, §1º, SCA.

¹²⁶ Art. 50, SCA.

¹²⁷ Art. 167, SCA.

¹²⁸ Art. 46, SCA.

associated with the Court¹²⁹ and, if all stages are successful, and if the child agrees,¹³⁰ the adoption process is completed, meaning that the prospective parents become the child's legal parents,¹³¹ with the issuing of a new birth certificate and identity documents for the child.¹³²

This procedure has to be observed in all adoption proceedings in Brazil, except if the child is being adopted by the spouse of a legal parent, by a member of the extended family with whom the child shares kinship and affection ties or by a third party who already has guardianship rights over the child and with whom the child shares affection ties.¹³³ In these conditions, there is no matching through the National Adoption Register, but the family still undergoes state supervision and needs a judicial decision confirming the adoption.¹³⁴

Despite regulation, there are informal ways of adoption that still take place in Brazilian society¹³⁵ and are considered illegal for skipping law established safeguards. In these cases, Brazilian Courts perform a case-by-case assessment and, if it is in the child's benefit to remain under the care of the prospective parents, even though the adoption did not observe the legal formalities, the adoption will be granted.¹³⁶ Although the situation is problematic, the Courts have the position that the child's protection and best interests must always be prioritized, meaning that the removal of the child from the family home to be institutionalized and placed into the system would represent a higher harm.¹³⁷

3.3. Socio-Affective Parentage.

3.3.1. Legal background: Constitutional Principles and the "status as child"

The Brazilian Supreme Federal Court acknowledged the possibility of attributing parental kinship¹³⁸ to a social-affective relationship between a child and a non-legal parent in 2016, through its ruling in the landmark case *Extraordinary Appeal 898,060*,¹³⁹ designated as a theme of general repercussion.¹⁴⁰ The Court grounded its decision in the constitutional principles of human

¹²⁹ Art. 46, §4º, SCA.

¹³⁰ Art. 45, § 2º, SCA.

¹³¹ Moving from legal guardians to legal parents, the new parents automatically gain family power over the child.

¹³² Art. 47, SCA.

¹³³ Art. 50, §13, I, II, III, SCA. Also see LÔBO (2025), p. 267 on the concept of unilateral adoption. It is relevant to note that adoption in these conditions is only possible if the child is missing a birth parent in the birth registration or if the birth parent consents to the adoption, in which case the legal ties with the original birth parent will be broken and the birth parent is replaced by the new adoptive parent in the birth registration. It is not possible to create a multiparent scenario through adoption.

¹³⁴ Art. 50, §14, SCA.

¹³⁵ See LÔBO (2025), p. 267 for the concepts of "Brazilian Adoption" and "*Intuitu personae* Adoption".

¹³⁶ LÔBO (2025), p. 284.

¹³⁷ Id.

¹³⁸ With corresponding legal consequences.

¹³⁹ Supreme Federal Court (STF – Brazil), Extraordinary Appeal No. 898,060/SC, rapporteur Justice Luiz Fux, judged on September 21, 2016, Brasília. Theme of General Repercussion 622. (EA 898,060/SC).

¹⁴⁰ In Brazilian law, a theme of general repercussion means that the ruling affects other similar cases and not just the parties involved in the leading case. See LÔBO (2025), p. 232.

dignity¹⁴¹ and responsible parenthood,¹⁴² which encompass legal recognition of diverse family models and equality among all types of filiation, enabling children to claim parental rights regardless of the origin of the bond.¹⁴³

The Court decided that the proper interpretation of the principle of responsible parenthood associated with the principle of human dignity imposes the recognition of filiation bonds created from biological ties as well as affection ties, without rank between them and allowing for simultaneous recognition of both types, if it is in the best interest of the child.¹⁴⁴ It is also relevant to mention that Brazilian law recognizes that kinship can originate from birth or other sources,¹⁴⁵ and, therefore, does not prohibit the conception of multiple forms of parenthood, including social-affective.¹⁴⁶

In addition to constitutional principles, the court also considered the concept of “status as child”,¹⁴⁷ which embraces a set of real-life behaviors and circumstances that give legitimacy to a *de facto* parent-child relationship.¹⁴⁸

One of the circumstances is parent-child-like social behavior, meaning that the people involved behave and engage in society in a typical parental manner. Traditionally, three main factors must exist: a shared legal name,¹⁴⁹ treatment (meaning that the adult treats the child as a parent would) and reputation (meaning that the community also interprets that relationship as a parental kind).¹⁵⁰ However, the absence of one of those factors¹⁵¹ does not necessarily compromise the acknowledgement of the relationship. The important thing is that the relationship has a clear

¹⁴¹ Art. 1º, III, FCB.

¹⁴² Art. 226, §7º, FCB.

¹⁴³ LÔBO (2025), p. 232.

¹⁴⁴ EA 898,060/SC.

¹⁴⁵ Art. 1,593, CC.

¹⁴⁶ Marianna Chaves, “Family Frontiers: The Definition of Parenthood in Brazil and in Portugal,” in *Plurality and Diversity of Family Relations in Europe*, ed. Katharina Boele-Woelki and Dieter Martiny, 1st ed. (Cambridge: Intersentia, 2019), 119–42, <https://doi.org/10.1017/9781780689111.007>, p. 128.

¹⁴⁷ This concept is not exclusive to Brazilian Law. It has been applied in ECtHR caselaw (European Court of Human Rights (ECtHR), *C.E. and Others v. France*, Applications Nos. 29775/18 and 29693/19, judgment of March 24, 2022, <https://hudoc.echr.coe.int/eng?i=001-216707>).

¹⁴⁸ LÔBO (2025), p. 226.

¹⁴⁹ As a note, specifically to the relationship between stepparent and stepchild, Brazilian legislation allows that the stepchild receives the stepparent’s family name, if all parties agree, to facilitate that all members of the family have the same name, creating a joint identity, especially in cases where the mother takes on the new husband’s name. On its own, the addition of a new name does not create parental kinship between the stepparent and stepchild. See Art. 57, §8º of Law 6,015/73 (Law of Public Records). Also PEREIRA (2025), p. 415.

¹⁵⁰ EA 898,060/SC.

¹⁵¹ E.g. the name. Whether the parties share or not a legal name, this is not definitive to establish or deny the achievement of “status as child”. See Araujo, Sâmilla Estrela De, and Wellson Rosário Santos Dantas. “Paternidade Socioafetiva: Do Reconhecimento e Suas Consequências Jurídicas.” *Revista Ibero-Americana de Humanidades, Ciências e Educação* 10, no. 11 (November 9, 2024): 2101–14. <https://doi.org/10.51891/rease.v10i11.16781>, p. 2107.

family-like nature with affection and mutual respect among the parties. The overall social behavior and appearance will determine if the “status as child” is achieved.¹⁵²

Brazilian law sets the duties of parents towards their children: parents must raise, assist, protect and guide their children,¹⁵³ ensuring, with absolute priority, their rights to life, health, nourishment, education, leisure, culture, dignity, respect, protecting them from violence, neglect and discrimination.¹⁵⁴ Parents also have family power and guardianship rights¹⁵⁵ over their children, meaning that they oversee the child’s everyday life and routine.¹⁵⁶ Therefore, to demonstrate the “status as child”, one would have to prove direct involvement in a child’s life, including active engagement in that child’s upbringing, showing the performance of duties usually attributed to parents.

Another relevant factor to be considered is the long-lasting feature of such relationship. A true family-like relation is consistent and built through time, and not sporadic. Brazilian law and jurisprudence do not set a minimum timeframe to acknowledge the “status as child”, but the relationship must be long enough to demonstrate effective family life and not mere affinity.¹⁵⁷ The achievement of “status as child” and consequent social-affective parentage comes from the retroactive evaluation of the behavior and mutual treatment that the parties have displayed throughout their lives. If they have built and created a *de facto* parental relationship, then this relationship will receive legal recognition and protection.

If the “status as child” is demonstrated, the social-affective parental relationship can be acknowledged. Given its facts-based foundation and confirmation through time, this type of parentage is definitive and cannot be overruled by divergent biological ties.¹⁵⁸ The child holds the right to know their biological heritage,¹⁵⁹ as a component of the child’s personality rights, but these two parental connections do not interfere with each other.¹⁶⁰ In other words, the acknowledgement of parental bonds based on social-affective ties allows the addition of a new parent without the dismantling of existing parental relationships and does not prohibit the child to investigate the biological origin in case that is unknown.

Through this ruling, Supreme Federal Court added a new form of filiation to Brazilian legal framework, that is based on the factual reality lived by the parties. The name, social-affective parentage, summarizes the logic behind it, of two spheres that complement each other: The first is the social aspect, meaning how the parties behave and present themselves before society and how society interprets that behavior. The second is how the parties interact with each other, in an affectionate relationship of mutual respect and fondness. Those two factors together lead to this type of kinship.

¹⁵² LÔBO (2025), p. 226.

¹⁵³ Art. 229, FCB.

¹⁵⁴ Art. 227, FCB.

¹⁵⁵ Art. 1,634 CC.

¹⁵⁶ LÔBO (2025), p. 302.

¹⁵⁷ Id., p. 226.

¹⁵⁸ LÔBO (2025), p. 230.

¹⁵⁹ If it is unknown.

¹⁶⁰ LÔBO (2025), p. 234.

3.3.2. Multiparenting

By the landmark ruling, Brazilian Supreme Federal Court innovated in two aspects: the first was attributing parental status to a relationship between a child and a caregiver based on the affection ties and “status as child” between them. This created a new pathway to the establishment of parental kinship in Brazilian law. The second innovation was acknowledging that this type of parental relationship can exist simultaneously to other forms that the child may already have, such as biological. Thus, this ruling inaugurated the possibility of a multiparenting scenario within Brazilian law.

The ruling extended legal protection to multiparent arrangements based on social-affection, offering overarching legal assistance and protection to all people involved, also taking into account the principles of human dignity and responsible parenthood.¹⁶¹ Once the parental relationship is acknowledged, the child can claim all rights, prerogatives and obligations associated with parenthood towards the new social-affective parent.¹⁶²

Although this ruling opened the possibility to multiparenting arrangements in Brazilian law, it must be carefully interpreted: this arrangement is only possible if associated with social-affection.¹⁶³ This does not extend to multiple biological origins or adoption.¹⁶⁴ That means that if a child already has both parents in the birth registration,¹⁶⁵ the only possibility to create a multiparent setting would be through a social-affective arrangement.

There is no express regulation in Brazilian legal framework on how many parents a child can have on their registration upon birth. However, by Provision 182/2024, the National Council of Justice (NCJ) (Prov. 182/2024) has established a new template for Brazilian birth certificates¹⁶⁶ that shows two slots for the child’s parental information, one of them being mandatory and the second one to be filled by the registering officer only if the second parent is known. Therefore, upon birth and according to Brazilian regulation, a child is allowed to have at least one parent and a maximum of two parents. The template does not require information about the origin of the parental bond.¹⁶⁷ If a child has both parents on the birth certificate, a third connection can be created through social-affection. If a child only has one parent in the birth certificate, the second connection can be created through multiple forms.¹⁶⁸

3.3.3. The “Step” Relationship

The relationship between a child and a parent’s new spouse does not imply the establishment of parental kinship through social-affection, despite the daily care, involvement in the child’s upbringing and affinity between them.¹⁶⁹ The relationship between stepparent and stepchild has

¹⁶¹ EA 898,060/SC.

¹⁶² LÔBO (2025), p. 237.

¹⁶³ *Id.*, p. 233.

¹⁶⁴ *Id.*, p. 234.

¹⁶⁵ From either a biological or adoptive origin.

¹⁶⁶ See Annex IV of Prov. 182/2024. In force since January 1st, 2025.

¹⁶⁷ There is not a requirement to disclose if the parental connection is biological, legal, civil or from any other origin.

¹⁶⁸ Social-affection, adoption or others.

¹⁶⁹ PEREIRA (2025), p. 415.

a specific legal treatment¹⁷⁰ and scholars diverge on whether social-affective parental kinship could be extended to this category, as the stepparent would merely represent an accessory to the exercise of the birth parent's family power.¹⁷¹ Some argue that it would only be possible in case of the abandonment of the child by a birth parent.¹⁷²

There is consensus, however, on the fact that if a social-affective parental kinship between stepparent and stepchildren is to be acknowledged, it depends on the achievement of "status as child" between stepparent and stepchild, which may or may not have been built, even if they have a good relationship overall.¹⁷³

Despite of the discussion in literature, there are records of acknowledgement of social-affective parental kinship between stepparent and stepchildren by Brazilian Superior Courts.¹⁷⁴ The important remark is that, although the possibility of creation of kinship exists, it is not an automatic consequence of a "step relationship", still relying on evidence and case-by-case analysis.

3.4. The Socio-Affective Parentage Acknowledgement Procedure.

Socio-affective parentage can be acknowledged out of court (extrajudicial, before a Notary) or through court proceeding (judicial). The extrajudicial proceeding is currently regulated by Provision 149/2023 of the National Council of Justice (Prov. 149/23 NCJ).

Extrajudicially, the acknowledgement is allowed for children from the age of 12,¹⁷⁵ whose prospective parent is at least 16 years older than them.¹⁷⁶ The child, the prospective social-affective parent as well as both legal parents (if known) must consent¹⁷⁷ to the acknowledgement. When making the request, the parties must present evidence of "status as child", preferably by documents that demonstrate the lasting connection between the child and prospective parent. The kind of document may vary,¹⁷⁸ but some examples are photography, affidavits, proof that parties live at the same address, proof that the prospective parent is listed as responsible for the child in school, health insurance, clubs and other forms of association. The list is not exhaustive,¹⁷⁹ and parties are free to present anything that demonstrates the connection.

The Notary will analyze the documents and, if convinced, will send the dossier to the approval of the local Public Prosecutor's Office.¹⁸⁰ If approved, the Notary will keep copy of the complete dossier¹⁸¹ and issue a new birth certificate, adding the name of the new parent to the registry.

¹⁷⁰ Art. 1,595, §1º, CC. It is called "Affinity kinship".

¹⁷¹ LÔBO (2025), p. 231.

¹⁷² Id., p. 73.

¹⁷³ PEREIRA (2025), p. 415. Also see LÔBO (2025), p. 73.

¹⁷⁴ Superior Court of Justice (STJ – Brazil), *Special Appeal No. 1,487,596/MG*, rapporteur Justice Antonio Carlos Ferreira, judged on September 28, 2021, Brasília (SA. 1,487,596/MG).

¹⁷⁵ Art. 505, *caput*, Prov. 149/23 NCJ.

¹⁷⁶ Art. 505, § 4º, Prov. 149/23 NCJ.

¹⁷⁷ Art. 507, §§ 4º and 5º, Prov. 149/23 NCJ.

¹⁷⁸ Art. 506, § 2º, Prov. 149/23 NCJ.

¹⁷⁹ Art. 506, §3º, Prov. 149/23 NCJ.

¹⁸⁰ Art. 509, §9º,I, Prov. 149/23 NCJ.

¹⁸¹ Art. 506, §4º, Prov. 149/23 NCJ.

Suspecting fraud, misuse or if, for any reason, the Notary or the Public Prosecutor's Office are not convinced of the long-lasting and parental-like nature of the affective bond, the request will be denied, and the parties need to resort to the judicial authority.¹⁸² The same applies to cases where it is not possible to obtain consent from both legal parents¹⁸³ or if any other condition is not met (e.g. age gap).

It is only possible to acknowledge one social-affective parent through a Notary.¹⁸⁴ Finally, it is possible to perform a *postmortem* acknowledgement through a Notary if the prospective parent left a will, or similar document, confirming the relationship and if all other conditions are met.¹⁸⁵

The judicial proceedings follow similar rules. It can be initiated by both parties together or just by one of them, either the child¹⁸⁶ or the prospective parent. It relies on proof of the "status as child"¹⁸⁷ which, as previously discussed, is a social construction based on facts¹⁸⁸ that must be demonstrated by the party that claims that the relationship exists. For this reason, it can be granted without consensus, but through a longer procedure with thorough examination of evidence.¹⁸⁹ Being facts-based, it also allows for *postmortem* recognition even without a will from the prospective parent.¹⁹⁰ There is no minimum age for judicial recognition, but, because it relies on evidence of the relationship, it can be challenging to attribute it to younger children or a more recent relationship.

Prov. 149/23 NCJ establishes that only one social-affective parent can be acknowledged through extrajudicial means.¹⁹¹ To recognize an additional relationship, the parties must resort to judicial authority. The same provision establishes a maximum of one additional parent on each side¹⁹² and, although Prov. 149/23 NCJ is only binding on notaries and extrajudicial entities, it was not possible to identify jurisprudence in which additional bonds¹⁹³ have been acknowledged. Despite there is no express legal prohibition and despite it is a facts-based matter, one could argue that it would be challenging to demonstrate such meaningful connections between a child and so many adults.

¹⁸² Art. 507, §9º, II and III and Art. 508, Prov. 149/23 NCJ.

¹⁸³ Art. 507, §6º Prov. 149/23 NCJ.

¹⁸⁴ Art. 510, Prov. 149/23 NCJ. Also see Araújo e Dantas (2024), p. 2108.

¹⁸⁵ Art. 507, §8º, Prov. 149/23 NCJ.

¹⁸⁶ Represented by a parent or legal guardian.

¹⁸⁷ LÔBO (2025), p. 227.

¹⁸⁸ Id., p. 218.

¹⁸⁹ Id., p. 235.

¹⁹⁰ Superior Court of Justice (STJ – Brazil), *Special Appeal No. 2,075,230/RJ (2023/0073473-0)*, rapporteur Justice Nancy Andrighi, judged in 2023, Brasília (SA. 2,075,230/RJ).

¹⁹¹ Art. 510, § 1º. Either one mother or one father. It is not possible to add a father and then add a mother through an extrajudicial proceeding.

¹⁹² Maximum of two mothers and two fathers. Art. 510 *caput*.

¹⁹³ That is, more than two mothers and/or two fathers.

Once social-affective parental kinship is acknowledged, judicially or not, it cannot be undone, except for very specific situations established by law.¹⁹⁴ It is a definitive bond with all the legal consequences attached to it.

3.5. Comparative Notes.

Although all the aforementioned tools serve the ultimate purpose of providing protection to children, they are not interchangeable, and social-affective parentage comes as an addition to the system, by granting legal value to an existing situation and safeguarding the child's rights in relation to a specific adult.

The first point of comparison is that not all these tools will necessarily lead to a parental relationship nor rely on it to exist. The best example is guardianship, which can be granted to a third party, family member or not, while parents may still hold family power and associated rights. Depending on the duration, the living arrangements and the overall development of everyday life, the relationship between child and guardian may eventually lead to a social-affective parental relationship, but regardless of that, the guardianship stands on its own. In addition, from a procedural standpoint, guardianship can be temporary and granted by a judge as an interim measure,¹⁹⁵ while adoption or social-affective parenting are definitive and must undergo the proceeding established by the law.

As a practical example, if a child is raised by someone other than a legal parent, it is necessary to formalize the guardianship arrangement to give legal deciding power to the caregiver (allowing enrollment in school or decision-making in relation to medical treatments for example). Depending on the development of the relationship between child and caregiver, the parties may request the acknowledgement of a parental bond, which can be done by adoption¹⁹⁶ or by the recognition of social-affective connection.¹⁹⁷

A second point of comparison is that, even though both create parental kinship, adoption and social-affective parentage have different proceedings, objectives and consequences. The most evident is that one of the roles of adoption is to be a tool of protection that aims to reintegrate a child into a new family environment, after the child is removed from the original family. The legal consequence of adoption¹⁹⁸ is a rupture with the child's biological family as opposed to social-affective parentage, which allows the addition of a parent to the child's registration,¹⁹⁹ creating a multiparent situation. In addition, adoption starts by a legal proceeding and depends on a judicial decision to create a parental bond, while social-affective parenting can be recognized by a notary and is the acknowledgement of an ongoing situation. The elements of time, mutual respect and affection generate social-affective parentage, leading to legal recognition. Parentage through adoption is legally created by a judicial decision while the ties of affection are being nurtured.

Thirdly, there is a different level of agency granted to the child by each modality. To establish guardianship, a judge must consider elements such as the ties of affection between the child and

¹⁹⁴ Chaves (2019), p. 128. For exceptions, see art. 505, §1º, Prov. 149/23 NCJ.

¹⁹⁵ Art. 1,585, CC.

¹⁹⁶ Art. 50, §13, II, SCA, pending authorization from biological parents or cancellation of their family power. In this scenario, the child would lose ties with the biological parents. Depends on a judicial decision.

¹⁹⁷ Can be done by administrative proceeding before a Notary and preserves ties with biological family.

¹⁹⁸ Art. 41, SCA.

¹⁹⁹ Art. 510, Prov. 149/23 NCJ.

guardian,²⁰⁰ a professional report,²⁰¹ as well as the child's opinion,²⁰² if appropriate. The child over the age of 12 needs to consent to being adopted²⁰³ and to having the social-affective parentage recognized.²⁰⁴ However, both the adoption and guardianship proceedings can only be initiated by the adult, while the recognition of social affective parentage can be claimed by the child through a legal procedure and granted by a judge, regardless of the adult's agreement.²⁰⁵ This is the only modality that allows a child to claim parenting rights over an adult, giving the child agency and control over its social identity.

Finally, because it is based on facts, its effects reverberate into adulthood, and the recognition of social-affective parentage can be claimed by the prospective child even after the death of the parent, through a judicial proceeding.²⁰⁶ On the other hand, adoption can only be granted *postmortem* if the prospective parent initiated the adoption proceeding before passing.²⁰⁷

Before social-affective parentage, Brazilian legislation already had forms to regulate legal responsibility over a child (such as guardianship) as well as to create parental kinship independent from biological bonds (such as adoption) so, at first glance, social-affective parentage may seem unnecessary, as the practical effects of offering care and protection could be achieved by other forms. However, this comparison demonstrates that each modality has different characteristics and can be used to ensure that the child is placed in an arrangement that best suits its needs and enforces its rights. In this sense, social-affective parentage comes as a relevant additional tool and complements the Brazilian system, especially from a children's rights perspective, as will be discussed in the next chapter.

²⁰⁰ Art. 1,584, §5º, CC.

²⁰¹ Art. 1,584, §3º, CC.

²⁰² Art. 28, §1º, SCA.

²⁰³ Art. 45, §2º, SCA.

²⁰⁴ Arts. 505 and 507, §4º, Prov. 149/23 NCJ.

²⁰⁵ If there is sufficient proof of the relationship and all its relevant elements. See LÔBO (2025), p. 218.

²⁰⁶ SA. 2,075,230/RJ.

²⁰⁷ Art. 42, §6º, SCA.

CHAPTER FOUR: ANALITICAL STUDY OF INTERNATIONAL FINDINGS AND THE BRAZILIAN EXPERIENCE

4.1. Opening premises.

As indicated in Chapter 2, the UNCRC does not set a hard definition on who can be considered a child's parent, neither does the interpretation of its provisions by the Committee and by scholars indicate a limitation on who can be awarded such role. What has been clearly identified is that parenthood has many aspects, which include clear social indicators pinned by scholarship²⁰⁸ and practical studies²⁰⁹ that are applied by international human rights courts,²¹⁰ as well as domestic legal frameworks,²¹¹ to identify a child's family life and relevant relationships.

The social markers of parenthood most commonly identified are: (i) caring for the child's material and emotional needs, (ii) participating in the child's daily routine, (iii) actively participating in the child's upbringing and development, including transmitting personal values and culture, (iv) acting with consistency, continuity and intent while creating a mutual parental-like affectionate relationship.

Arguably there is no indication that the creation (or legal recognition) of parental kinship based solely on the aforementioned social markers would be in conflict with international standards and the UNCRC. Articles 5 and 18 of the convention sum up the roles of parents as direction, guidance, upbringing and development of the child, which were unfolded by literature and practice. This social source of kinship seems to be in line with the position of the Committee and international scholarship, that defend an inclusive interpretation of family, based on the child's personal experiences and ties of affection, as well as local custom and culture. Indeed, the concept of a purely social parental kinship seems possible, but a child-centered and rights-friendly approach requires that the social markers of parenthood are observed.

If caregivers can be identified as family based on lived experiences, it seems logical to argue that a caregiver who fills specific roles and criteria is recognized as a parent. To this matter, the UNCRC's lack of hard definition or limitation on who can be considered a parent becomes relevant in two aspects: the first is that the lack of hard limits allows (or does not prohibit) the recognition of parental kinship with any person who performs the role and fills the criteria, regardless of biological or legal connection to the child, broadening the range of protection to the child's benefit. The second is that it provides leeway for member states exploring the concept – that is, the acknowledgement of parental kinship based on affection ties - to shape it according to domestic law.²¹²

It is necessary to reinforce that not every caregiving arrangement would necessarily evolve into a parental relationship. The main elements to watch would be consistency, continuity, intent and

²⁰⁸ See Chase-Lansdale and Pittman (2002), p.168, Chaves (2019), p. 125-126.

²⁰⁹ See *Kind En Ouders in de 21ste Eeuw Rapport van de Staatscommissie Herijking Ouderschap* (Nederland Staatscommissie Herijking ouderschap 2016), p.11.

²¹⁰ See Banda and Eekelaar (2017), p. 843, Lima (2019), p. 107, Margaria (2019), p. 156-159 and Coscini (2024), p. 859.

²¹¹ See Herrera and Lathrop (2016), p. 279.

²¹² Exemplifying, Brazilian law prohibits the adoption or social-affective parentage among siblings (that is, one sibling cannot become the social-affective parent or adoptive parent of another sibling). See Art. 505, §3º, Prov. 149/23 NCJ and Art. 42, §1º, SCA.

mutual affection and respect, which research indicates to be the elements that set a parental relationship apart from mere kinship.

At this stage, it is also important to highlight that this research has a well-defined geographical and societal frame: the sources used to identify the social markers of parenthood are mostly western and build on western-centered concepts of family and parental responsibility. This research creates groundwork for the discussion about the relevance of affection ties to the construction of legal parenthood and the implications of such, but it is possible that not all social elements of parenthood listed here will fit into every societal structure. As examples, *matua whangai*²¹³ and *kafala*²¹⁴ are alternative childcare arrangements that may not be entirely compatible with the concepts discussed in this thesis. This does not reduce the relevance of the discussion. The UNCRC itself suffered similar criticism, leading to the creation of the African Charter on the Rights and Welfare of the Child.²¹⁵ This did not reduce the relevance of the UNCRC: in fact, it reaffirmed its value as an instrument that brought attention to the rights of children. Just the same, although this research may have specific cultural and geographical limitations, it still contributes to raising the discussion about alternative sources of parental kinship and the implications on children's rights.

Furthermore, parental and family relationships have an impact on a child's personal sphere: those shape the child's personal identity, privacy, personal development and manifest in the overall enjoyment of rights and relationship with community and the state. Therefore, the acknowledgment of parental kinship based on social indicators²¹⁶ would necessarily affect such aspects, triggering the need for state presence and attention to ensure protection and equality. The study of the Brazilian social-affective parentage model becomes relevant to demonstrate the practical effects of such recognition in the enforcement of children's rights within the domestic legal framework and society.

4.2. The Brazilian Social-Affective Parentage Model and the Rights of the Child.

4.2.1. An overview of the model against international standards.

The Brazilian social-affective parentage model gives legal significance and extends legal protection to the real-life relationship between the social parent and the child. As discussed in Chapter 3, this model came to complement the Brazilian child protection system: domestic legal framework already had tools to regulate the legal relationship between a child and a caregiver,²¹⁷ but legal practice and societal evolution demonstrated that certain relationships extended beyond mere kinship and care arrangements and deserved specific attention and regulation. In this

²¹³ Practiced by the Maori. See Henaghan, Mark. "Chapter 14 New Zealand Case Studies to Test the Meaning and Use of Article 5 of the 1989 United Nations Convention on the Rights of the Child". In *Parental Guidance, State Responsibility and Evolving Capacities*, (Leiden, The Netherlands: Brill | Nijhoff, 2021) doi: https://doi-org.ezproxy.leidenuniv.nl/10.1163/9789004446854_016., p. 333.

²¹⁴ Practiced by the Muslim community. See Abis, Alessandra. "Child Fostering Care: Kafala in Western Countries." In *Migrant Families and Religious Belonging*, edited by Giovanni Giulio Valtolina and Laura Zanfrini, 84–99. IOS Press, 2023. <https://doi.org/10.3233/STAL230006>., p. 85.

²¹⁵ Sloth-Nielsen, Julia. "The African Charter on the Rights and Welfare of the Child.", in T. Boezaart (ed.), *Child Law in South Africa*, 2nd ed., 424–45. Cape Town: Juta, 2017., p. 424.

²¹⁶ Whichever those may be, depending on the societal framing.

²¹⁷ Through guardianship, adoption or even family power, depending on the circumstances.

scenario, law and legal practice were required to acknowledge the uniqueness of such relationships by attributing parental quality to those that qualified.

This movement is in line with the Committee's acknowledgement of ever-changing social family patterns and arrangements, which impact on a child's wellbeing must not be ignored.²¹⁸ It is also consistent with the IACtHR's broad concept of family, that includes the persons with whom the child holds a strong personal relationship²¹⁹ and with the ECtHR's functional interpretation of parenthood.²²⁰ Three aspects of the Brazilian practice stand out when compared with international standards:

First is the concept of "status as child". Brazilian Supreme Federal Court decided²²¹ that demonstrating "status as child" is the key element to achieve social-affective parental kinship. From a Brazilian law standpoint, the factors of "status as child" are (i) mutual affection (that goes beyond fondness, representing mutual respect),²²² (ii) parent-child like treatment (meaning that the parties behave accordingly to a parent-child dynamic, with the adult performing the expected parental roles),²²³ (iii) reputation (meaning that the relationship is public and that the community also interprets that relationship as parent-child like)²²⁴ and (iv) consistency (meaning that the relationship persists through time and is not sporadic).²²⁵

The elements mirror those identified by international researchers as the elements of social parenthood (general daily care, participation in the child's upbringing and development, consistency, continuity, intent and mutual affection and respect), displaying, once again, Brazilian law alignment with child-centered standards for the conception of family relations and parenthood.

This alignment, however, also indicates that neither the international elements nor the Brazilian framework attend to the needs of all family configurations: if both require consistency and continuity, this means that social-affection cannot be used to constitute parentage at a child's birth, creating a gap to families in which one of the parents does not have a biological link to the newborn child.

Second is the element of intent, that has a few particularities under Brazilian legal practice worthy of examination. The first is that it is not explicitly mentioned by domestic law as a requirement to social-affective parentage, but it is an important feature that is verified by authorities when confronted with such claims. The second particularity is that it is a double-sided feature, meaning that both the child and the adult must confirm the intention of creating a parent-child relationship, but such confirmation unravels differently for each of the parties.

²¹⁸ General Comment 7, para. 19.

²¹⁹ Advisory Opinion OC-21/14, "Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection", OC-21/14, Inter-American Court of Human Rights (IACtHR), 19 August 2014, <https://www.refworld.org/jurisprudence/caselaw/iacrthr/2014/en/101499>, para. 272.

²²⁰ LIMA (2019), p. 109.

²²¹ EA 898,060/SC.

²²² CHAVES (2019), p. 127.

²²³ EA 898,060/SC.

²²⁴ Id.

²²⁵ LÔBO (2025), p. 226. Aso see art. 506 *caput* and §1º of Prov. 149/23 NCJ. for the criteria of consistency, socially exteriorized (public) and affection-based.

The child must consent to the acknowledgement of a social-affective relationship.²²⁶ In a judicial proceeding, confirmation is required that the child understands and consents to the matter,²²⁷ as well as that acknowledging the relationship is in the child's best interests.²²⁸

When it comes to the prospective parent's perspective, Brazilian jurisprudence and doctrine presume intent as being implied within the sphere of treatment. Intent would be a reflection of the actions of the prospective parent towards the child. Mere regret or declaration of contrary²²⁹ by the prospective parent are not sufficient to halt the acknowledgement of the parental relationship if all the other elements are present: that is, if an adult has voluntarily and consistently displayed a parental role during a child's life, the element of intent will be considered fulfilled because the actions repeated through time will demonstrate a undeniable intention to be the child's parent. The adult cannot dodge parental responsibility just by denying intent if their actions through time have demonstrated otherwise.

The third aspect is the facts-based nature of social-affective parentage. One of the legal effects that this creates in Brazilian framework is that this model allows for a multiparent setting: even if the child already has both known legal parents (biological or not), a third social-affective connection can be created, if it is demonstrated that the "status as child" was achieved and that the additional connection is in the best interest of the child. It was not the focus of this thesis to investigate the concept of multiple parenthood²³⁰ under the UNCRC and international scholarship, but no formal restrictions to it emerged during research. Still, some attention is due: firstly, there are concerns on the impacts that multiple parenthood could have on the child's daily life,²³¹ which will be addressed further in this chapter. Secondly, there is a challenge with limiting the number of affection-based parental relationships that a child can legally have. Brazilian law settled in only one additional parent on each side²³² and the Dutch Government Committee on the Reassessment of Parenthood reached a similar conclusion.²³³ Unarguably some type of limitation seems to be appropriate, but this also seems to set a rank on the relationships experienced by the child: they could only be awarded legal recognition if a slot is still available. Nonetheless, the possibility of awarding legal value to a child's lived experience demonstrates a child-centered view to family relationships, in alignment with the UNCRC.

This general overview demonstrates that the concept of social-affective parentage, as built by Brazilian jurisprudence, attends to a child-centered and rights-friendly interpretation of social parenthood and parental roles, as established by the Committee, international human rights courts and academia, but it also indicates that there are aspects that need to be better refined. In the following section, it will be examined how the recognition of social-affective parentage affects

²²⁶ Arts. 505 and 507, §4º, Prov. 149/23, NCJ.

²²⁷ According to the child's level of maturity (Art. 12, UNCRC).

²²⁸ E.g. through a psychosocial study. See LÔBO (2025), p. 235.

²²⁹ *Id.*, p. 204 and 218.

²³⁰ That is, more than two parents legally responsible for the child.

²³¹ See Tobin and Seow (2019b), p. 259-260, on the issues and confusion that could potentially be raised by legal recognition of multiple types of parenthood.

²³² Art. 510, Prov. 149/23 NCJ.

²³³ Kind En Ouders in de 21ste Eeuw Rapport van de Staatscommissie Herijking Ouderschap (Nederland Staatscommissie Herijking ouderschap 2016), p.69.

the rights of children in Brazilian framework and how those rights are domestically enforced and protected.

4.2.2. The Rights of the Child.

The practical effects of the recognition of social-affective parentage are that the name of the social-affective parent will be added to the child's birth certificate and identification documents, and the child is allowed to adopt the social-affective parent's last name if wanted.²³⁴ The child will be able to claim rights against the social-affective parent, including nationality, social security benefits, child support, inheritance and all others connected to a parental bond.²³⁵ Just the same, the parent will have legal deciding power over the child's daily activities and upbringing as well as potential custody and guardianship rights, and also the right to claim assistance from the child at the old age.²³⁶

As discussed in Chapter 2, the right to registration²³⁷ functions both as a safeguard to the child's personal history and as a form to make the child identifiable before the state, granting access to public services,²³⁸ becoming evident that the Brazilian model cares for both purposes.

When it comes to the child's personal identity, the Brazilian model fulfills the multiple features of this right²³⁹: the first interesting aspect to recall is that the recognition of a social-affective parental relationship does not interfere with the child's right to pursue their biological history,²⁴⁰ allowing for the investigation and preservation of the multiple aspects of the child's personal identity. The second thing to note is that the Brazilian model also provides legal stand to a child's personal relationship to the social parent, who, by overseeing the child's daily life, influences many aspects that will form the child's personality, such as religion, culture and engagement with the community.²⁴¹ But, in addition to that, the right to identity encompasses the child's liberty to actively construct and discover their own identity, which should be allowed and facilitated by state parties to the UNCRC.²⁴² This aspect of the right to identity intertwines with the child's right to decisional autonomy,²⁴³ that manifests as the power and the ability to make decisions regarding their own private life,²⁴⁴ including personal relations.

Thus, if the child should have agency in creating their own personal identity and private life, this reverberates into decision making towards who is a part of the child's family and who is a part of a child's parental relationships. The Brazilian model of social-affective parentage realizes such rights by giving legal value to existing relationships that the child interprets as relevant in their

²³⁴ LÔBO (2025), p. 238.

²³⁵ See Araújo and Dantas (2024), p. 2103. Also see LÔBO (2025), p. 237-238.

²³⁶ Art. 229, FCB.

²³⁷ Art. 7, UNCRC.

²³⁸ Tobin and Seow (2019b), p. 238 and 242.

²³⁹ Art. 8, UNCRC.

²⁴⁰ LÔBO (2025), p. 234.

²⁴¹ Tobin and Todres (2019), p. 291-292. Also see Chase-Lansdale and Pittman (2002), p.168.

²⁴² Tobin and Todres (2019), p. 294.

²⁴³ Protected under the aspect of privacy, art. 16 of the UNCRC. See Tobin and Field (2019), p. 555.

²⁴⁴Tobin and Field (2019), p. 565.

own reality. It is important to recall that this model allows the child²⁴⁵ to initiate the legal proceeding, actively demanding that the person who has always played a parental role and made a subjective impact on the child's personal sense of self is formally recognized as parent, exteriorizing the relationship with all legal implications.

This unique characteristic of the system (that the child is allowed to initiate a parental claim over an adult) is also a realization of the child's participation rights and access to justice.²⁴⁶ As explored in Chapter 2, children should be able to participate in legal proceedings and express their views in matters that concern them,²⁴⁷ demonstrating that they comprehend the issue²⁴⁸ within their level of maturity. Allowing that the child not only participates but also initiates a legal proceeding claiming parental rights over an adult is a form of realization of such right.

At this stage, it is necessary to recall that social-affective parentage is not acknowledged based solely on the child's impressions nor dismissed based on the denial of the potential parent. An analysis of evidence is necessary to demonstrate "status as child". Therefore, it requires balancing between the child's impressions and claim against available proof of facts, as well as against the superior interest of the child in having that relationship legally confirmed. Still, while the child's views are not decisive to the matter, the system does give high agency to children, demonstrating alignment with the UNCRC.

As build, Brazilian model of social-affective parentage shows alignment with the rights of children and the interpretation of the concepts of family and parenthood carried out by the Committee, international scholarship and international human rights courts, displaying a child-centered and child's rights focused approach to these concepts. Despite its progressiveness, the system has issues and practical challenges which will be explored in the following section.

4.2.3. Unanswered Questions and Points of Attention.

One of the main aspects of the Supreme Federal Court ruling on landmark case EA 898,060/SC is the equivalence of social-affective parentage with other forms of filiation,²⁴⁹ without ranking among them. Filiation is interpreted as a unified concept under Brazilian law, being prohibited any form of differential or discriminatory treatment based on the origin of filiation.²⁵⁰ This means that, regardless of origin, all children have the same rights and legal protection²⁵¹ and it would be against legal principles²⁵² to create any type of rank between parental relationships based on how they originated.²⁵³ This interpretation corresponds to the Committee's view towards the recognition of different forms of family structures as a form to avoid discrimination.²⁵⁴

²⁴⁵ During childhood or even during adulthood but based on the ties constructed during a lifetime.

²⁴⁶ Art. 12, UNCRC.

²⁴⁷ Tobin and Lundy (2019), p. 399.

²⁴⁸ *Id.*, p. 402.

²⁴⁹ Based on art. 1,593, CC.

²⁵⁰ LÔBO (2025), p. 203.

²⁵¹ Art. 227, §6º, FCB.

²⁵² And, therefore, incompatible with Brazilian law.

²⁵³ See SA. 1,487,596/MG.

²⁵⁴ Committee on the Rights of the Child, Summary of General Discussion CRC/ C/34, paras. 190-191.

The logical consequence is that, once acknowledged, the social-affective parent has the same level of family power over a child as a birth parent,²⁵⁵ with equivalent duties and responsibilities, as well as guardianship and custody rights.²⁵⁶ The immediate concern is that this modality of kinship would open the door to multiple legal battles over the child,²⁵⁷ especially considering that Brazilian law allows parents to bring issues before judicial authority, if they disagree while making child-rearing decisions.²⁵⁸

International scholarship suggests that this issue could be solved (or at least diminished) by tailoring the legal effects of each kind of parental recognition.²⁵⁹ This would entail a balancing of rights: as an example, in an assisted reproduction setting, the donors of genetic material, as well as the gestational mother would not have parental rights or responsibilities over the child.²⁶⁰ In other words, to be labeled as a parent does not imply having parental rights.²⁶¹ Brazilian legal context follows the same logic when it comes to assisted reproduction or even adoption,²⁶² but it seems incompatible with domestic legislation to set a hard criteria on who can claim guardianship or custody rights over a child based solely on the origin of the parental relationship. Legal disputes in this scenario would still claim for a best interest assessment to determine what is the configuration that better safeguards the child's wellbeing.

Still, although the possibility of multiple conflicts may exist, it is not sufficient to overrule this modality of kinship. One could argue that if there was space for the creation of a social-affective relationship between a child and a third party, it may indicate that at least one of the birth parents was not directly involved in the child's upbringing, challenging the reality of multiple disputes. Also, if the social-affective parental relationship was recognized extrajudicially, the biological parents consented to it,²⁶³ meaning that they overall agree to the child-rearing abilities of the social-affective parent, again reducing the conflict potential.

Another dissenting argument to social-affective parentage is the instability that the addition of a new parent in a child's life could bring, especially if that new parent ceases to perform that role.²⁶⁴ It is important to note that the social-affective connection is only acknowledged after extended proof and case-by-case analysis that the "status as child" already exists between the applicants.²⁶⁵ This means that, first, the connection is created and, second, the bond is legally recognized. This relies on the passing of time²⁶⁶ that will build lasting family ties. In other words,

²⁵⁵ PEREIRA (2025), p. 413 and 439. Also see LÔBO (2025), p. 237.

²⁵⁶ PEREIRA (2025), p. 439.

²⁵⁷ Araújo e Dantas (2024), p. 2106. Also see Tobin and Seow (2019b), p. 259-260.

²⁵⁸ Art. 21, SCA.

²⁵⁹ Tobin and Seow (2019b), p. 259.

²⁶⁰ Tobin and Seow (2019b), p. 260.

²⁶¹ Tobin and Seow (2019b), p. 261 and 273-274.

²⁶² LÔBO (2025), p. 235. As a way to preserve the right to know one's genetic origins, Brazilian law allows parental recognition without kinship effect: therefore, the individual may retrieve information on biological truth, but not claim rights connected to parenthood.

²⁶³ Art. 507, §5º, Prov. 149/23 NCJ.

²⁶⁴ Araújo e Dantas (2024), p. 2106.

²⁶⁵ Art. 506, Prov. 149/23 NCJ.

²⁶⁶ LÔBO (2025), p. 204.

the recognition goes beyond a mere application from the interested parties, and it requires careful analysis, to avoid misuse.

Furthermore, the risk of emotional abandonment²⁶⁷ exists in parental relationships of any kind and should not haute the acknowledgement of a positive bond in a child's life. As a response, Brazilian practice allows the child (even as an adult) to claim financial compensation from the absent parent, if proven that the abandonment caused emotional harm.²⁶⁸ While law cannot oblige parents to love their children, nor to perform their parental responsibilities properly,²⁶⁹ the law can hold parents accountable.²⁷⁰

Another point of attention is that the lack of hard standards to prove "status as child", as well as lack of minimum time requirements, has the potential to generate a legal gray area and insecurity. Regulation indicates that proof can be made by any means admitted by law,²⁷¹ including photography, affidavits, health insurance and school registration, but the list is not exhaustive.²⁷² This leaves to the judicial authority's discretion and power the valuation of available evidence, which could potentially lead to diverging decisions. Still, family relations and social interactions manifest in a variety of ways and defining a hard list of evidence and practical requirements would most certainly leave some configurations unattended, diminishing the range of legal protection and defying the starting principle of social-affective parentage. The space left by the law gives leeway to the judicial authorities while analyzing the circumstances on a case-by-case basis.

Finally, it is necessary to mention that the extent of the legal impact that social-affective bonds have on family relations needs to be further regulated. The concept of using affection ties and the "status as child" to acknowledge parental kinship was first created by Brazilian jurisprudence²⁷³ and further incorporated into legislation, with express caveat to the equality between all forms of filiation and without setting rank among biological, legal or social-affective. However, a new tendency has been rising towards the possibility of extinguishing parental kinship based on emotional abandonment by the biological parent and lack of affection ties.

This tendency does not completely lack backup in Brazilian legislation, as abandonment is a factor that leads to the extinction of family power during childhood,²⁷⁴ but this trend takes it further, adding the interpretation of emotional abandonment and extending the effects into adulthood. The Superior Court of Justice has recently issued a decision confirming this tendency,²⁷⁵ but it is a concept that is still emerging. The extent of the legal effects of the kinship rupture are still unclear,

²⁶⁷ And multiple conflicts.

²⁶⁸ LÔBO (2025), p. 312.

²⁶⁹ PEREIRA (2025), p.430.

²⁷⁰ "A child cannot be harmed by an adult's caprice" - Superior Court of Justice (STJ – Brazil), *Special Appeal No. 1,244,957/SC (2011/0068281-0)*, rapporteur Justice Nancy Andrighi, judged on August 7, 2012, Brasília.

²⁷¹ Art. 506, § 2º, Prov. 149/23 NCJ.

²⁷² Art. 506, §3º, Prov. 149/23 NCJ.

²⁷³ EA 898,060/SC.

²⁷⁴ Art. 1,638 CC. Also see Milhomem, Samávilla Nunes and Fernando Palma Pimenta Furlan, "A Exclusão da Paternidade por Abandono Afetivo," *Revista Ibero-Americana de Humanidades, Ciências e Educação* 10, no. 5 (May 18, 2024), <https://doi.org/10.51891/rease.v10i5.14097>, p. 3457.

²⁷⁵ Superior Court of Justice (STJ – Brazil), *Special Appeal No. 2,117,287/PR (2023/0306875-0)*, rapporteur Justice Nancy Andrighi, judged in 2023, Brasília.

but at first glance, it could mean that parent and child lose all legal connections, including duties of mutual support and succession rights.

This may suggest that Brazilian jurisprudence is leaning towards adding more value to the social aspect of parenthood than other aspects, indicating a shift in the initial intention of preserving equality of all types of parenthood. And, although this may seem in line with the practice of giving legal effect to *de facto* situations, it may lead to legal uncertainty, claiming for proper regulation. In addition, if this trend of undoing kinship based on lack of affection ties were to be incorporated by the law, it would be important to consider that this type of request could only be made by the child (even if during adulthood), as a form of not awarding the absent parent with the relief of responsibility.²⁷⁶

4.3. Conclusion.

This study demonstrated that the UNCRC admits a social aspect to parenthood, which is confirmed by the Committee's and international scholarship's interpretation of the legal text. The position is enforced by the rulings of regional human rights courts. The study also demonstrated that the creation (or legal recognition) of parental kinship based solely on the social and affective connections between a child and an adult would be in line with children's rights framework. The parental kinship would have to be built with a child-centered and rights-friendly approach, which includes observing the social markers of parenthood identified by this research.²⁷⁷ These social markers, however, may vary according to societal arrangements and local culture, which must also be observed.

Creating new parental connections impacts the rights of children and the Brazilian model of social-affective parentage serves as a practical example to the feasibility of the concept. It also demonstrates that adding this form of parental kinship to the domestic framework may contribute to the protection and enforcement of the rights of children locally, if the rules are tailored to the local society's needs and characteristics.

The proposal of creating parental kinship based on the social markers of parenthood and the roles performed by the caregiver is not without challenges, that must be addressed to encourage discussion and progress. Still, it stands as a powerful tool to the enjoyment of the rights of children, as demonstrated by the Brazilian law case study. By awarding legal stand to a *de facto* relationship experienced by the child and by acknowledging its parental value, it is possible to extend state services, legal protection and rights attached to parenthood to children living under such arrangements and who would otherwise be denied the same level of protection. This would also be in line with the Committee's understanding of an inclusive concept of family and dissemination of convention rights without discrimination.²⁷⁸

²⁷⁶ PEREIRA (2025), p. 431.

²⁷⁷ General daily care, participation in the child's upbringing and development, consistency, continuity, intent and mutual affection and respect.

²⁷⁸ UN Committee on the Rights of the Child (CRC), General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27 November 2003, <https://www.refworld.org/legal/general/crc/2003/en/36435> (UNCRC Committee General Comment 5), paras. 11 and 12.

CHAPTER FIVE: CONCLUSION

5.1. Opening Remarks.

This project investigated the compatibility of creating legal parental kinship, based solely on ties of affection and social roles, with the UNCRC's standards for parenthood and exploring the implications to the rights of children. The premises are that parenthood is a complex concept built of many aspects, including a social component, and that a child-rights-centered approach to parenthood considers social markers, such as consistency, intent, emotional connection, and care to its definition and is not based solely on biology or formal legality.

This is supported by the fact that the UNCRC does not provide a rigid definition of "parent", but it does outline clear parental responsibilities and emphasizes the importance of relationships that ensure the child's well-being, identity, and self-determination.

Brazilian law, through its approach to socio-affective parentage, operationalizes these child-centered principles in concrete legal terms. The model acknowledges parental kinship based on daily interaction, emotional attachment, and social roles, rather than strict biological or legal criteria. The Brazilian experience served as a case study to exemplify the practical implications of this variation of parentage. Despite the identified issues, the suggested approach seems to enforce the rights of children, by giving legal stand to *de facto* relationships and allowing children to claim parental responsibility and rights in situations that would otherwise be overlooked by the law.

5.2. Social Parenthood is Compatible with Children's Rights Framework.

The Committee confirms that the concept of "family" in the UNCRC should be interpreted broadly,²⁷⁹ considering multiple societal configurations and the relevance of people who play an active role in the child's daily life and with whom the child has strong emotional connections. Scholars defend that this expanded interpretation should extend to the concept of "parent", as advances in reproductive techniques have allowed for diverse biological scenarios (meaning that a biological connection no longer implies a parental one) and lead to multiple dimensions of parenthood, that may not coincide in the same person.²⁸⁰ One of these dimensions is the social aspect of parenthood, that can be understood as the persons who perform the everyday function of caring for the child.²⁸¹

The social aspect of parenthood is contained in the legal text of the UNCRC. Articles 5 and 18 describe parents as those who provide appropriate direction and guidance to the child, according to the child's evolving capacities, and who share primary responsibility for the child's well-being and upbringing. The Committee confirms that a child's well-being encompasses material, physical, educational and emotional needs, including the formation of healthy attachment to a caregiver to ensure psychological health and stability.²⁸²

Legal research and scholarship dissected further the concepts of "guidance", "upbringing" and "well-being". Aside from the objective element of providing material assistance, parenting a child includes emotional and affective reciprocity, providing structure and a daily routine and actively

²⁷⁹ UNCRC Committee General Comment 7, paras. 15 and 19.

²⁸⁰ See Tobin (2008), p. 37, Chaves (2019), p.133 and Tobin and Seow (2019b), p. 259.

²⁸¹ Tobin and Seow (2019b), p. 259.

²⁸² UNCRC Committee General Comment 14, paras. 71 and 72.

engaging with the child and the child's affairs, in addition to continuity in care, personal commitment and intent.²⁸³

Regional human rights courts echo this flexible and functional understanding of parenthood. The IACtHR has more openly embraced this view, affirming that family ties must be recognized based on emotional bonds and caregiving patterns, not limited to biology. On its turn, the ECtHR has increasingly acknowledged that care and commitment can be decisive elements in recognizing parental ties for the protection of family relations under Article 8 of the ECHR.

This reminiscence was necessary to demonstrate that the UNCRC's framework admits a social aspect to parenthood through articles 5 and 18. In addition, there is no legal impediment in the UNCRC's legal text, nor in its interpretation by the Committee and academia, nor even in its application by regional human rights courts to the construction (or legal acknowledgement) of parental kinship based solely on social markers and emotional connections as an additional source of parenthood. The only remark is that the relationship is in the child's best interest.²⁸⁴ The relevance and importance of the social dimension of parenthood is well accepted and developed, both in legal doctrine and jurisprudence, being natural that these connections are granted legal value with corresponding juridical consequences.

Research also indicates, however, that creating parental kinship based on affection and social roles depends on understanding what each society identifies as a parental role. This was how the concept evolved in Brazilian framework: jurisprudence first created social-affective parentage from practice and caselaw and only after it was formalized by law. The social markers pinpointed by this research derive from western-centered starting points and legal basis, suggesting that the same social markers may not be suitable for every social arrangement.

Despite the potential need of tailoring to local reality, the proposition of an alternative source of parental kinship based on affection and social roles is not only "not prohibited" by the UNCRC's international standards but it also serves as a tool to enhance the applicability of the Convention to more children that are raised in non-traditional settings and expands the reach of the state's obligations towards them, as demonstrated by the Brazilian law case study.

And, although the Brazilian example serves as a good compass, demonstrating the promising potential of the concept, it does not solve all problems: first, it is necessary to note that affection-based parental kinship, considering the UNCRC's international standards for parenthood, may not meet the needs of all family models. Second, although there is no indication that an affection-based multiparenting configuration would be incompatible with the UNCRC, it becomes necessary to question the number of additional parents that would be admissible, to ensure that the child's best interests remains safeguarded.

Finally, this research does not conclude that member states are obliged by the UNCRC or international law to acknowledge parental kinship to an adult-child relationship based solely on social-emotional connections and the concept does not override conflicting domestic law or other existing parental relationship.²⁸⁵ However, this research does confirm that the recognition of parental ties based on social markers and emotional connections is aligned with the UNCRC and can be a form of enforcing Convention rights by expanding their applicability to more children. In

²⁸³ See Chase-Lansdale and Pittman (2002), p.168, Chaves (2019), p. 125-126 and Kind En Ouders in de 21ste Eeuw Rapport van de Staatscommissie Herijking Ouderschap (Nederland Staatscommissie Herijking ouderschap 2016), p.11.

²⁸⁴ UNCRC Committee General Comment 7, para. 15.

²⁸⁵ Such as biological.

this context, this research invites future academics and legal practitioners to investigate the implications of social parenthood in their jurisdictions with the goal of enhancing the protection of children's rights.

5.3. The Brazilian Model: Legal Recognition of Social-Affective Parenthood as a Path to the Enforcement of the Rights of the Child.

Brazil's approach to social-affective parentage illustrates a child-centered interpretation of parenthood, incorporating the UNCRC's principles into domestic law and legal practice. Established by a Supreme Federal Court's landmark ruling (EA 898,060/SC, 2016), this model introduced two important novelties into Brazilian legal system: the first is that a social-affective relationship between a child and an adult is sufficient to create a legal parental bond, if certain criteria are observed. The second is that the bond can be recognized simultaneously to existing parental connections, allowing for a multiparent scenario, if it is in the best interest of the child.

The criterion for the recognition of social-affective parenting is the achievement of "status as child". For such, the adult and the child must cultivate and display a parent-child like relationship, in which the adult is publicly and directly involved in the child's daily activities and upbringing, performing roles that are traditionally played by parents. In addition to that, the relationship must be consistent and built through time demonstrating effective family ties and not mere affinity.²⁸⁶ Brazilian legal framework shows compatibility with international standards, as the traces of affection, stability, publicity and intent are main elements to constitute a family-like relationship.²⁸⁷ If the "status as child" is achieved, the social-affective parentage can be legally acknowledged and the responsibilities and rights attached to it are equivalent to those of traditional origin and derive from family power.²⁸⁸

This study demonstrated that the Brazilian experience of acknowledging social-affective bonds as a source of parental connection is in line with the UNCRC and that the legal effects that derived from the new parental bond enforce children's rights. The right to registration is promptly fulfilled, by the addition of the new parent to the child's birth register, preserving the child's personal history and, at the same time, ensuring identification before the state and access to benefits attached to the new parent.

Moreover, the system realizes the rights to identity, privacy and family relations: interpreted together, these rights represent the child's liberty and capacity to create their own personal identity, making decisions regarding their own life, respecting their evolving capacities, including building personal relationships that may expand into a family-like relationship. The Brazilian system realizes such rights by acknowledging a new parental connection created by the child, according to the child's perception of that person as a parental figure. Social-affective parentage can only be declared if the child also interprets the adult as a parent and consents to the proceeding, formally deciding on a relevant aspect of their lives.

This unfolds into a unique characteristic of the system, which is the possibility of the child initiating the social-affective parentage proceeding in a judicial setting, realizing the child's right to participation and access to justice. In this setting the child moves from the object of a custody battle to the protagonist of their private life.

²⁸⁶ See LÔBO (2025), p. 226.

²⁸⁷ See LÔBO (2025), p. 59. Aso see art. 506 caput and §1º of Prov. 149/23 NCJ. for the criteria of consistency, socially exteriorized (public) and affection-based.

²⁸⁸ PEREIRA (2025), p. 413.

On the other hand, the challenges revealed by the examination of the Brazilian approach cannot be ignored. Proving “status as child” demands evidence to be analyzed by the designated authority. The quality and type of evidence is not hardly defined by law, which can lead to misuse and excessive legal claims, as well as legal uncertainty. In addition, the recognition of the social-affective parental bond may lead to a multiparent scenario, meaning that, in practice, the child would have at least three adults with legal power to make decisions over them, again generating risk of multiple legal battles. Another point of attention is that the legal impact of emotional ties has been extended by recent novel judicial decisions to allow for the dismissal of parental connections for lack of social-affective bond, without express legal prevision in the law. This suggests that the legal weight of social-affective connections needs to be better regulated, as well as its use within the legal framework.

Still, the model seems to bring more benefits than harm. Brazilian law supports a more inclusive and realistic understanding of family, in line with the Committee’s interpretation of the concept. Legally, the model has the effect of extending rights to children that are brought up in such settings, ensuring protection and empowerment. Thus, despite the complexity and need for further regulation, the model still stands for a positive example of how this alternative source of parenthood can be beneficial for children.

5.4. Closing Remarks.

The duck test²⁸⁹ says that if it looks like a duck, swims like a duck, and quacks like a duck, then it probably is a duck. Brazilian jurisprudence took a similar approach while constructing the concept of social-affective parentage: if it looks like a parent and if it acts like a parent, then it must be a parent. And, if it is a parent, it must be treated as such by the law.

This logic may seem like an oversimplification of a complex matter, but it illustrates how reality plays a significant role in creating legal development. Law cannot ignore social reality as it is, if nothing else, an instrument of service and justice.

For this reason, it is mandatory that legal concepts are frequently reviewed and shaped to keep up with societal change. Acknowledging legal value to a child’s lived experiences empowers children as rights holders as opposed to simple bystanders. A parental relationship is the gateway thought which children experience society and it cannot be constrained to conventional definitions. Instead, parenthood can be performed and experienced in multiple forms: biologically, legally, but also through the social aspect.

While the social markers of parenthood identified by this research may not be universally suitable and while it may not be appropriate to transplant the Brazilian social-affective parentage model to every society, this work confirms that the adoption of a social and affection-based approach to parenthood contributes to the enforcement and protection of the rights of children. While challenges remain, this research offers valuable insights for jurisdictions seeking to harmonize legal parentage with the emotional and social dimensions of care and invites future researchers and legal practitioners to explore the possibility on their respective jurisdictions as a way to enhance the rights of children.

²⁸⁹https://en.wikipedia.org/wiki/Duck_test#:~:text=If%20it%20looks%20like%20a,what%20it%20appears%20to%20be. Accessed on 11 Jun 2025.

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