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Integrity of Unaccompanied Boys, Girls and Adolescents in Migration Processes

Integridad De Niños, Niñas Y Adolescentes No Acompañados En Procesos Migratorios

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Abstract

The objective of this study was to describe the legal and social strategies for safeguarding the integrity of unaccompanied children and adolescents entering Ecuador during migration processes. The research procedure in this study was supported by a quantitative approach, utilizing a document-based bibliographical typology, which allowed for the analysis of the study's subject. The materials used included scientific research, regulations, laws, and peer-reviewed works. It is concluded that the Ecuadorian legal system and international laws aim to protect the integrity of unaccompanied children and adolescents in the migration process without discrimination based on nationality, race, or age. Unaccompanied children and adolescents in migration processes are more likely to be in a vulnerable situation regarding their rights.

Keywords: Civil rights; migration; child.

Resumen

El objetivo del presente estudio fue describir las estrategias jurídico-sociales para asignar la integridad de niños, niñas y adolescentes, no acompañados en procesos migratorios y que ingresan al Ecuador. El procedimiento que se desarrolló en la presente investigación se apoyó desde el enfoque cuantitativo, recurriendo a la tipología documental-bibliográfica, lo que permitió establecer el análisis del objeto de estudio. El material abordado se conformó por investigaciones científicas, normas, leyes, trabajos arbitrados. Se concluye que, en el Sistema Jurídico ecuatoriano y las leyes internacionales tiene la finalidad de velar la integridad de los niños, niñas y adolescentes en proceso migratorio no acompañados, sin discriminación por motivo de nacionalidad, raza, o edad. Los niños, niñas y adolescentes en procesos migratorios no acompañados, son más propensos a estar en una situación que vulnerable en sus derechos.

Palabras Clave: Derechos civiles; migración; niño.

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Introduction

Human rights are a set of norms aimed at recognizing and safeguarding the dignity of every human being without discrimination based on race, nationality, religion, or age. The United Nations, through the Universal Declaration of Human Rights (1948), acknowledges that children and adolescents, due to their lack of physical and mental maturity, require special protection, including legal protection. Migration is the movement of people from one place of residence to another, often motivated by economic reasons, violence, a desire to improve the quality of life, escape from war, threats to life, or religious factors.

In these migratory processes, unaccompanied children and adolescents who cross borders are particularly vulnerable to various situations, such as detention, exposure to organized crime or human trafficking, basic needs unmet, and lack of access to healthcare. Ecuador recognizes the principle of free mobility for all people within its Constitution (2008), along with the principle of progressive access to the rights of foreign individuals due to inequalities in different countries. International regulations, as stipulated in conventions, declarations, international agreements, and the country's constitution, affirm that human rights are universal and do not end at a border; no person is considered "illegal."

In this context, the International Migration Law Unit (IML) works to promote and strengthen the rights of all individuals involved in migration processes within the framework of the International Organization for Migration (IOM). Given the ongoing global migrations resulting from conflicts, political issues, religious factors, economic disparities, and cultural factors, Ecuador plays a crucial role as a transit country or a destination for migrants.

On the other hand, the challenge for unaccompanied minor migrants is to maintain their identification documents, avoid physical or psychological violence during their journey from one state to another, and ensure the safety of each individual within Ecuadorian territory or establish legal measures for their protection. The 1951 United Nations Convention on the Status of Refugees was the first international instrument to examine the life of a refugee and explain the fundamental rights that every human being can freely enjoy in any state. Article 1 of this regulation states that the refugee:

It is a person who is outside their country of nationality or habitual residence, has a well-founded fear of persecution based on their race, religion, nationality, membership in a particular social group, or political opinions, and cannot or does not want to avail themselves of the protection of their country or return to it for fear of being persecuted. (p.8)

In this sense, a properly functioning state provides its citizens with a range of civil, political, economic, cultural, educational, social, housing, and protection rights. However, if the system fails due to circumstances like civil war or resistance against a government for profit, people may flee to another country and be recognized as refugees, granting them international protection.

The International Organization for Migration's Global Migration Data Analysis Centre is responsible for the Global Migration Data Portal, which ensures accurate data on migration. It provides centralized data access with relevant and comprehensive statistics, offering reliable information on global migration data. In 2020, the number of international migrants reached nearly 272 million worldwide, with 48% being women, compared to 258 million in 2017. Out of these, 164 million are migrant workers. It is estimated that there are 38 million child migrants, and three out of four are in the working-age group of 20 to 64. Asia hosts around

31% of the international migrant population, Europe 30%, the Americas 26%, Africa 10%, and Oceania 3%.

It also points out that the situation of children and adolescents in Latin America and the Caribbean reveals that migrants between the ages of 15 and 19 make up 25% of the total population of migrants under 20. Unaccompanied migration in this region is a multi-causal and multi-dimensional phenomenon linked to factors such as poverty, social inequality, high levels of violence, family separations, or drug trafficking.

UNICEF Ecuador (2020) points out that Ecuador is facing a crisis of human mobility on its northern and southern borders. In response, they focus on three main areas: humanitarian care during transit, comprehensive protection of human rights with a particular focus on children and adolescents, and social inclusion and integration of the mobile population. The country provides asylum under international and national laws. According to a survey, children and adolescents travel in the following ways: 14% with both parents, 49% with only their mother, 4% with only their father, 24% travel separately, and 14% travel unaccompanied.

The Organic Law of Human Mobility (2017) states:

Article 1 - This law aims to regulate the exercise of rights, obligations, institutional framework, and mechanisms related to individuals in human mobility. This includes emigrants, immigrants, individuals in transit, Ecuadorian returnees, those requiring international protection, victims of human trafficking and illicit migrant smuggling, and their families. In the case of victims of human trafficking and illicit migrant smuggling, this law aims to establish the framework for prevention, protection, care, and reintegration that the State will implement through various public policies, in accordance with the legal framework.

In this regard, considering the existence of international treaties and international organizations to protect children and adolescents, it is nevertheless reported regularly in international or national news sources that a certain percentage of children migrate without accompanying adults, with at least 1.1 million children and adolescents leaving their home countries. Are the rights of children and adolescents who are in the process of migration without adult companions being adequately promoted? This is a current and pressing issue, making it important to focus on the applicable legal framework for the protection of childhood and adolescence and, from that perspective, to identify strategies aimed at enforcing and realizing the rights recognized for minors. The objective of this study is to describe the legal and social strategies aimed at ensuring the well-being of unaccompanied children and adolescents in the context of migration who enter Ecuador.

Method

The procedure used in this research is based on a quantitative approach, employing a document-bibliographic typology. This approach allows for the analysis of the study subject to describe the topic at hand (Hernández et al., 2014). The material considered for this study included scientific research, regulations, laws, peer-reviewed works, and other relevant sources. The aim was to uncover characteristics and relationships among these elements to determine the scope of current regulations related to migration and the protection of unaccompanied children and adolescents.

Results

Doctrinal and Legal Concepts on Migration

The International Organization for Migration (2018) states that migration is the population movement beyond or within state borders, originating from various causes such as violence, war, precarious socio-economic situations, or environmental resource scarcity, among others. In this sense, the author Micolta (2005) approaches the notion of migration as displacements that involve a change of residence, implying a significant decision consciously made to either remain in the new location or return.

In a similar vein, the International Organization for Migration (2021) defines migration as the movement of people from one place to another, within or outside the same state, regardless of the quantity or motivations involved, which includes displaced persons, refugees, economic migrants, and other categories. The phenomenon of immigration is often associated with human nature and social dynamics. It reflects the same evolutionary tendency in human development and existence, characterized by various phenomena that affect the healthy development of individuals' life projects (Aguilar-Barreto, Jaimas, & Rodríguez, 2017).

Immigration at the end of the 20th Century and the 21st

The first reason why immigrants choose Ecuador as their destination is because it has been using the U.S. dollar as its currency since the year 2000. This has led to an increase in violence in Ecuadorian cities, the presence of armed groups, growing social inequality, a shortage of job opportunities, and more. In 2011, the International Organization for Migration (IOM) recorded a figure of 3.4 or 8 million Colombians migrating to different countries due to social, economic, and political reasons.

There is a 586-kilometer border between Ecuador and Colombia, spanning the provinces of Carchi, Esmeraldas, and Sucumbíos in Ecuador and the provinces of Nariño and Putumayo in Colombia. A census conducted in these Ecuadorian provinces registered 93,237 Colombians in the country. Currently, the number of refugee applicants is 150,000. The United Nations High Commissioner for Refugees (UNHCR) and various non-governmental organizations have implemented a series of programs and research efforts to support refugees. People of Colombian origin are living in the country as refugees or immigrants to improve their quality of life in a foreign land.

Simultaneously, at the southern border, 2.4 million emigrants of Peruvian origin were recorded. The primary reasons for this migration are related to the economic situation in Peru, unemployment, social inequality, low wages, and insecurity. However, when crossing the border, many fall victim to human trafficking, sexual exploitation, or labor exploitation. In 2011, Ecuador and Peru implemented the Permanent Migration Statute, aiming to regulate undocumented individuals in both countries.

Legal Nature

The legal nature, characteristics, and essential elements of this figure are established in the Constitution of the Republic of Ecuador (2008). In the third section, Article 41 outlines the right to asylum and refuge, under international laws. People in a refugee condition are entitled to the protection of the State, and the principle of non-refoulement will be applied.

In Article 40 of the Constitution of the Republic of Ecuador (2008), people's right to migrate is recognized. No person is considered illegal based on their migratory status. The State is responsible for taking action to protect the rights of Ecuadorian individuals living abroad with migratory conditions. This includes providing advisory services, comprehensive protection, and the exercise of their rights, family reunification, encouraging voluntary return, and maintaining the confidentiality of personal data.

Furthermore, the Human Mobility Law (2017) stipulates:

Article 2 - The legal and political recognition of the exercise of universal citizenship implies that the State provides protection for the movement of any person, family, or human group with the intention to travel and stay in the destination place either temporarily or permanently.

Discussion

The responsibility of the State towards children and adolescents is carried out through actions aimed at improving living conditions within the family and society, ensuring that the actions undertaken are geared towards transforming the social reality. These objectives should be achieved jointly by the State through its public officials. Public officials have the duty to protect, respect, and enforce the rights of children and adolescents without interfering with their personal growth, leisure time, and enjoyment of various life situations. The protection of these rights should not be compromised by third parties.

For example, the State must ensure access to healthcare for every child and adolescent within its territory, regardless of nationality, gender, ethnicity, or migratory status, while also guaranteeing that parents or legal guardians do not prevent them from receiving proper care or immediate attention in cases of religious or economic conflicts. Society also bears an obligation to provide an appropriate space for children and adolescents to exercise their rights and enjoy their childhood fully. Therefore, society must facilitate and ensure their growth and development in a healthy environment, working together with the State and individuals to create common well-being.

Furthermore, the family plays a fundamental role in protecting children and adolescents from the moment of conception, throughout the socialization process, the establishment of family and social relationships, and the development of their individual rights. For families to fulfill their function and achieve their objectives, they must have the necessary social conditions to transmit values such as democracy, responsibility, tolerance, duty, and respect for the rights of those around them.

The State in Ecuador has the obligation to care for families, as established in Article 45 of the Constitution of the Republic of Ecuador (2008), which states that "girls, boys, and adolescents have the right [...] to have a family and enjoy family and community life; to social participation; to the respect of their freedom and dignity; to be consulted on matters that concern them; [...]". When reading this article, it can be understood that, from the perspective and culture of each Indigenous group within Ecuador's territory, nationalities involved in various coexistences have the right to accurate, appropriate information, delivered in a timely manner, and the freedom of parents or legal guardians to absent themselves.

The Child and Adolescent Code, which was in effect as of 2014, includes protective measures taken by all competent authorities through judicial or administrative resolutions, always prioritizing the well-being of children and adolescents. In cases where the rights of minors are

violated, either through omission or action, measures specified in the code will be applied. Article 22 of the code mentions the right to have a family and family coexistence, stating that the state, society, and families should adopt measures within the family unit.

Risky migration is when an individual or a group irregularly departs from their country intending to leave the country, making them more susceptible to rights violations, threats to life, and personal integrity, and making them an easy target for human trafficking or the illicit trafficking of migrants. In the face of this situation, which can affect both individuals and children and adolescents in the process of migration, it is essential to seek help. The first thing to remember is that we are subjects of rights, and the Ecuadorian state has the Organic Law of Human Mobility from 2017, which stipulates proper protection for all individuals in migration processes, whether they are settling in the country or just passing through.

In this sense, the social obligation towards children and adolescents aims to address the needs of each child and adolescent, whether they are unaccompanied or separated. It focuses on individual rights, including education, health, and comprehensive social protection. When a case involving a minor is reported, the authorities are required to take the necessary actions to ensure protection. Child protection agencies will collaborate with minors to schedule in-depth interviews, respecting established guidelines, to achieve an appropriate, lasting resolution. This resolution could involve returning to the country of origin, and family reunification, among other possibilities, always in collaboration with the immigration authorities of the country.

In the Child and Adolescent Code, in the section on special rules for custody trials, Article 290 addresses custody. It states that the judge will order the Technical Office to conduct periodic monitoring or produce a report on the child's outcome.

Conclusions

In the Ecuadorian legal system and international laws, the objective is to safeguard the integrity of unaccompanied migrant children and adolescents, without discrimination based on nationality, race, or age. Unaccompanied migrant children and adolescents are more likely to be in a vulnerable situation concerning their rights due to various circumstances. They may not plan to return to their homes due to economic reasons or to escape a household where there is physical, psychological, or economic violence.

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