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The Right to Live in a Family for Abused Children and Adolescents in Ecuador

El Derecho A Vivir En Familia Para Niños, Niñas Y Adolescentes Maltratados En El Ecuador

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Abstract

Abuse is a fact that violates the rights of children and adolescents, caused by different factors, and in some cases occurs within the family. The objective of this research was to describe the right to live in a family for abused children and adolescents in Ecuador. It was based on a quantitative, documentary-bibliographic perspective. This is because, from the documentary review and the study of the social reality observed, the researcher has been able to infer reflective conclusions about the problem posed. In this sense, the current regulations and refereed works related to the topic under study were analyzed. It is concluded that children and adolescents have the right to protection and to live in a family. However, some are mistreated or abused within the family unit, and it is usually the father who commits acts that violate the safety of minors. The Ecuadorian State, through its Constitution and the international agreements it has signed, contributes to monitoring and supporting respect for the human rights of the most vulnerable. However, more effective policies to prevent abuse must be implemented.

Keywords: *Children's rights; family; child abuse.*

Resumen

El maltrato es un hecho que vulnera los derechos del niño, niña y adolescentes, causado por diferentes factores y que en algunos casos se da en el seno familiar. El objetivo de la investigación fue describir el derecho a vivir en familia para niños, niñas y adolescentes maltratados en el Ecuador. Se apoyó en la perspectiva cuantitativa, de tipo documental-bibliográfica. Esto en vista de que a partir de la revisión documental y el estudio de la realidad social observada se han logrado inferir conclusiones reflexivas por parte de la investigadora, de la problemática planteada. En este sentido se analizó la normativa vigente, y trabajos arbitrados relacionados al tema en estudio. Se concluye que, los niños, niñas y adolescentes tienen derechos a su protección y vivir en familia, sin embargo, algunos son maltratados dentro del núcleo familiar, y son los padres de familia que cometen hechos que vulneran la seguridad de los menores. El Estado ecuatoriano mediante su carta magna y los convenios internacionales que ha suscrito, contribuye a realizar el seguimiento y apoyo al respeto del derecho humano de los más vulnerables, sin embargo, debe implementar políticas más efectivas para evitar el maltrato.

Palabras Clave: *Derechos del niño; familia; maltrato infantil.*

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Introduction

The Ecuadorian State recognizes the Principle of the Best Interest of the Child in the Convention on the Rights of the Child, the Constitution of the Republic of Ecuador, and the Organic Code of Childhood and Adolescence, so the rights of children and adolescents must be applied, interpreted and executed effectively. At the same time, the right to a family environment that allows them to satisfy their social and emotional needs is recognized, considering the intercultural framework, promoting responsible motherhood and fatherhood. (Duran, 2018)

In this sense, the family is a historical and legal institution with deep roots throughout the different stages of civilization and its origin dates back to the dawn of humanity. It exists independently of the legal order, since being an institution it is not created through the norm. Its existence is natural, and its purposes support the protection of its permanence. In other words, the family is the group of people who have a degree of kinship and coexistence; that is, the family refers to the minimum social unit made up of the father, mother, and children.

For this reason, the Constitution of the Republic of Ecuador (2008), states:

Article. 45.- Girls, boys, and adolescents have the right to Physical and mental integrity; to their identity, name, and citizenship; to comprehensive health and nutrition; to education and culture, to sports and recreation; to social security; to have a family and enjoy family and community life; to social participation; to respect their freedom and dignity; to be consulted on matters that affect them; to educate themselves as a priority in their language and the cultural contexts of their peoples and nationalities; and to receive information about their absent parents or relatives, unless it would be detrimental to their well-being.

Likewise, the Code of Childhood and Adolescence. (2003), in article 22 on the Right to have a family and to family coexistence:

Article. 22.- Right to have a family and family coexistence. - Children and adolescents have the right to live and develop in their biological family. The State, society, and the family must, as a priority, adopt appropriate measures that allow their permanence in this family.

Exceptionally, when this is impossible or contrary to their best interest, children and adolescents have the right to another family, in accordance with the law.

In all cases, the family must provide them with a climate of affection and understanding that allows respect for their rights and their integral development.

Institutional care, preventive confinement, deprivation of liberty, or any other solution that distracts them from their family environment should be applied as a last and exceptional measure.

However, it is necessary to indicate that there are situations in which the balanced relationships of the family are weakened, causing a crisis and therefore an imbalance in the children's family system. When this imbalance occurs, it is determined that the rights recognized in both the Constitution and the Organic Code of Childhood and Adolescence are being violated.

Currently, abuse and neglect (also known as child abuse) exist within families. It is important to know that child abuse is divided into four main groups:

- Physical abuse: hitting, kicking, or burning, among others.

- Sexual abuse: Refers to forcing a child to engage in sexual activities, including exploitation through pornography.
- Emotional abuse: constant criticism, threats, or sarcasm; disregard, humiliation, or love denial.
- Neglect: Failure of a parent or caregiver to protect a child or adolescent from harm or provide basic needs (for example, food, shelter, supervision, medical care, education, or emotional nurturing). (Child Welfare Information Gateway, 2019)

For this reason, in countries like Ecuador, institutional care for children and adolescents is a legal, temporary, and transitory protection measure that seeks to guarantee rights. However, this becomes a measure that violates rights, due to the prolonged stay in institutions called “shelters”. Within the Ecuadorian framework, there are legal regulations such as the Constitution of the Republic of Ecuador (2008) and the Code of Children and Adolescents (2003), which were created to promote, guarantee, and demand the comprehensive care and development of children and adolescents from a rights-based approach.

In this sense, the Code of Childhood and Adolescence (2003), mentions the protection measures in article 215, which establishes that:

Article. 215.- Concept. - Protective measures are actions adopted by the competent authority, by judicial or administrative resolution, in favor of the child or adolescent, when a violation of their rights has occurred or there is an imminent risk of a violation of their rights due to action or omission of the State, society, their parents or guardians or the child or adolescent themselves. In the application of measures, those that protect and develop family and community ties should be preferred.

Protection measures impose on the State, its officials or employees, or any individual, including parents, relatives, people responsible for their care, teachers, educators, and the child or adolescent themselves, certain actions to stop the act of threat, restore the right that has been violated and ensure permanent respect for their rights.

In this regard, the authorities in charge of issuing protection measures are the Cantonal Board for the Protection of Rights and the Family, Women, Children and Adolescents Judge. The first authority is in charge of issuing administrative measures and the second is in charge of issuing judicial measures. Within the latter, two temporary shelter measures are distinguished: family and institutional. The Childhood and Adolescence Code (2003) defines institutional care in Article 232:

Article. 232.- Concept and purpose: Institutional foster care is a temporary protection measure ordered by the judicial authority, in cases where family foster care is not possible, for those children or adolescents who are deprived of their family environment. This measure is the last resort and will be carried out only in those duly authorized care entities.

In this order of ideas, protection measures impose on the State, its officials and employees, or any individual, including parents, relatives, people responsible for their care, teachers, educators, and the child or adolescent themselves, certain actions to stop the threatening act, restore the right that has been violated and ensure permanent respect for their rights.

Children and adolescents enjoy the protection of the new Ecuadorian Constitution, since it proclaims them as groups of priority attention and provides them with a series of rights that make them different from others, always seeking their protection both in the public and private spheres. However, in the family environment, many children and adolescents are victims of

abuse constantly, for this reason, in Ecuadorian Legislation, institutional care is a temporary legal measure instituted and recognized in the Code of Childhood and Adolescence. However, it is common for the child or adolescent to live for several years in an institution or foster home without being offered a better alternative than institutional care (Barahona, 2016).

In this sense, the authors Acurio Hidalgo et al. (2021) state the following:

Ecuador is the center of profound transformations in the construction of a legal system, to rescue the rights of children and adolescents that are being violated. Considering as a principle that the Childhood and Adolescence Code in article 16 establishes that the rights and guarantees of children and adolescents are of public order, indivisible, inalienable, and non-transmittable. (p.351).

Institutional care can have a devastating impact on the lives of children and adolescents' development, as they need personalized care, love, and attention. Children who grow up in foster care institutions do not have the possibility of developing a healthy attachment to a primary caregiver. The detrimental effects of growing up in such an environment can last a lifetime. Without the protection of a family, children in institutions are highly vulnerable to abuse and neglect and are among the most marginalized in society.

This modality is poorly suited to the needs and reality of the subjects of rights. In this framework, it is necessary to recognize other foster care modalities, to provide services based on the needs and characteristics of children and adolescents. The Ecuadorian judicial system, technical teams, and shelters should incorporate alternative care modalities so that children and adolescents are not separated from their family environments and the right to have a family is not violated. Considering the approaches analyzed, the following question is formulated: How to promote the right to live in a family for abused children and adolescents in Ecuador? The care and protection of children and adolescents constitutes a factor of great value, since this guarantees a responsible and useful adult for society. The objective is to describe the right to live in a family for abused children and adolescents in Ecuador.

Method

This research is based on the quantitative perspective, of a documentary-bibliographic type. This is because, from the documentary review and the study of the social reality observed, the researcher has been able to infer reflective conclusions about the problems posed. According to Baena (1985), documentary research is a technique that consists of the selection and compilation of information through the reading and critique of documents and bibliographic materials, libraries, newspaper libraries, documentation and information centers. In this sense, the current regulations were analyzed, as well as refereed works related to the subject under study.

Results

After the development of the method proposed, the results obtained are presented below.

The authors Jaramillo Ayala, & Salazar Orozco (2023) state that: According to statistics from the United Nations Children's Fund (UNICEF, 2022), 2 out of every 3 children and adolescents in Latin America and the Caribbean suffer violence at home, or are raised with violent methods, such as:

Physical punishment, psychological aggression, sexual abuse, or even homicide, in ages between 1 and 14 years. Therefore, the State promotes alternatives for the care of this priority group, ensuring the care and guarantee of the integrity of the minor, from psychological, sexual, and moral perspectives, among others. In this regard, the Cantonal Board for the Comprehensive Protection of the Rights of Childhood and Adolescence (JCPIDNA), executes these actions based on the application of Article 215 of the Organic Code of Childhood and Adolescence (CONA, 2003), where it specifically establishes how administration and justice are distributed when acting for the benefit of children and adolescents. (p.3)

In this same order, an important study has been carried out in this regard in Ecuador, prepared by the Ministry of Economic and Social Inclusion (MIES), in 2013, titled, *Institutional foster care: causes and repercussions*. This study shows that although the measure of institutional care is effective in meeting its initial objective of emerging protection, food, education, and daily care of children, it presents countless complications in making effective the restitution of the right to live in a family.

During the application of the measure, the responsible entity should preserve, improve, strengthen, or restore family ties, prevent abandonment, seek the family reintegration of the child or adolescent into their biological family, or seek their adoption. The institutional care unit and its tutors carry out actions of care, educational support, and guidance in daily coexistence, strengthening the skills and competencies of children and adolescents for their lives and autonomy.

According to the institutional care report, the systematization of the information collected on June 30, 2018, indicates that the main causes of admission of children and adolescents are neglect (29.90%), abuse (26.84%), and abandonment (17.99%), so implementing prevention and support processes for families in the face of this type of rights violations becomes essential to avoid institutionalization.

Likewise, the protection of the best interests of children and adolescents is a top priority, and all actions taken to improve their situation must demonstrate that they are legitimately meeting this objective. Inter-American legal precedent has suggested specific steps to follow when dealing with minors. There will never be automatic application of judicial decisions involving children. (Ochoa Escobar et al., 2021)

In another aspect, foster care is one of the modalities used for alternative care in a family environment for children and adolescents who don't have the protection of their parents (Fernández-Daza, 2018, p.269). Therefore, the family needs to develop parental skills that allow them to educate and guide their members who are in the process of psychological, socio-affective, and emotional development (Merchán Gavilánez et al., 2021, p.418).

In this order of ideas, the authors Alarcón Cedeño and Suárez Montes (2020) define it as:

The family is an institution inserted in all human societies, additionally recognized among the most valued factors in life. Therefore, it is part of both the natural and elemental mechanisms of society. Consequently, it deserves and must be protected by the State, through legal institutionalism and legal basis (p.1023).

In this sense, Calle García and Calle Antón. (2021) state the following:

The Family is considered the oldest legal, sociological, psychological, and biological institution that transfers each learning and effort in a dialectical bond between its members, creating close

ties that move within it in a natural way due to the emotional and/or physical closeness between its members - (p.381)

As a social system, the family is also a psychosocial unit whose growth is influenced by variables of the sociocultural context. A variety of events are encountered as a result of its continuous interaction with the environment, which can benefit or jeopardize its balance and well-being. Within the limits of this complexity, it must fulfill the functions assigned to it by the society to which it belongs, such as socialization, care, and protection of the new members, that is, children and adolescents (Gaviria Chica, 2022).

Discussion

Despite the existence of institutional care, there are cases in which children and adolescents who enter institutional care processes have suffered the painful fate of abandonment, despite that the purpose of the State and society is to preserve the rights of this vulnerable group. (Barahona, 2016)

It is essential to strengthen a culture of respect for the rights of children and adolescents in this priority care group and that the Ecuadorian State, beyond technicalities and legal requirements for entry, can ensure decent conditions and respect for the Best Interest of the Child. The following organizations are responsible for the control, coordination, and protection of the rights of minors: • The National Council for Minors. • The National Directorate for the Protection of Minors • The Judicial Service for Minors. • The Minors Brigade. (Ochoa Escobar, 2021, p.426).

Likewise, the following regulations constitute the legal framework for the protection and care of the rights of the child:

- Constitution of the Republic of Ecuador.
- Convention on the Rights of the Children and Adolescents.
- Children's Rights Convention.
- Universal Declaration of Human Rights.
- Code of Childhood and Adolescence.
- Comprehensive Organic Criminal Code.
- Health Code.
- Work Code.
- Law on Free Maternity and Childcare.
- Civil Code.
- Education and Culture Law.
- Social Security Law.
- Disability Law.

In this sense, the Constitution of the Republic of Ecuador (2008) as a subject of rights describes the rights of children and adolescents, as described below:

Article 45.- Girls, boys, and adolescents will enjoy the common rights of human beings, in addition to those specific to their age. The State will recognize and guarantee life, including care and protection from conception. Girls, boys, and adolescents have the right to physical and mental integrity; to their identity, name, and citizenship; to comprehensive health and nutrition; to education and culture, to sports and recreation; to social security; to have a family and enjoy family and community life.

Everything said in the previous paragraph suggests that, in relation to the universality of the rights of children and adolescents, special attention should be paid to those who are socially disadvantaged and who have difficulties in fully exercising their rights. In this order of ideas, Arroyo Ortega (2018) states the following:

The above reflects the need to consider comprehensive protection beyond the guarantee or restitution of rights and also focus on prevention actions and promotion of the capacities of boys and girls. (p.67)

In this sense, the constitution acts as a guarantor of rights and social justice, protects the interests of children and adolescents, and considers them as the original axis at the center of the family and the basis of society, taking into account all the decisions they make. The State and the family must ensure the interests of children and adolescents, prioritize their comprehensive development, ensure the realization of their rights in the family, society, and a safe environment, and guarantee the development of their intelligence and skills to satisfy their emotional, social, and cultural needs.

Conclusions

Children and adolescents have the right to protection and to live in a family. However, some children and adolescents are abused or mistreated within their own family unit, and it is usually the father who commits acts that violate the safety of minors. The Ecuadorian State, through its Constitution and the international agreements it has signed, contributes to monitoring and supporting respect for the human rights of the most vulnerable. Nevertheless, more effective policies to prevent abuse must be implemented.

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