



Reconciling rights: Prenatal adoption and legislation in Ecuador

Reconciliando derechos: Adopción prenatal y legislación en Ecuador

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Abstract

The objective of this article is to critically analyze the prohibition of prenatal adoption in Ecuador, identifying legal barriers and proposing possible legislative reforms that would allow its implementation under specific conditions. The effectiveness of the current Childhood and Adolescence Code is analyzed and regulatory gaps that generate legal insecurity are identified. The methodology used was a bibliographic review, based on the analysis of recent scientific articles, comparative legislations and normative documents in force. The development of this work contemplates the ethical and legal dilemmas, the need to guarantee the informed consent of the pregnant mothers and the protection of the rights of the fetus. Comparison with international models shows the importance of implementing post-adoption support programs and international cooperation to improve the transparency and effectiveness of the process. Finally, legislative reforms are proposed to create a specific framework for prenatal adoption, simplify administrative procedures, and professionalize adoption personnel.

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Resumen

El presente artículo tiene como objetivo analizar críticamente la prohibición de la adopción prenatal en Ecuador, identificando las barreras legales y proponiendo posibles reformas legislativas que permitan su implementación bajo condiciones específicas. Se analiza la efectividad del actual Código de la Niñez y Adolescencia y se identifican vacíos normativos que generan inseguridad jurídica. La metodología utilizada fue una revisión bibliográfica, basada en el análisis de artículos científicos recientes, legislaciones comparadas y documentos normativos vigentes. El desarrollo de este trabajo contempla los dilemas éticos y legales, la necesidad de garantizar el consentimiento informado de las madres gestantes y la protección de los derechos del feto. La comparación con modelos internacionales muestra la importancia de implementar programas de apoyo post-adopción y de cooperar internacionalmente para mejorar la transparencia y efectividad del proceso. Finalmente, se proponen reformas legislativas para crear un marco específico para la adopción prenatal, simplificar los procedimientos administrativos, y profesionalizar al personal de adopción.

Palabras clave: Adopción prenatal, derecho a la vida, familias adoptivas

Introduction

Prenatal adoption presents unique challenges in terms of the protection of the rights of the parties involved, which makes it a topic of growing relevance in the legal and social sphere. Despite the lack of specific legislation that deals in detail with the adoption of a child prior to its birth, this problem takes on greater relevance in Ecuador. The nasciturus (fetuses) and pregnant women are in a situation of legal

vulnerability due to the regulatory vacuum caused by the lack of a clear legal framework. "Prenatal adoption is an issue that raises important legal and social questions, especially in countries such as Ecuador where legislation does not yet specifically address this practice" (Cando, 2021, p. 10).

In Ecuador, the Childhood and Adolescence Code explicitly prohibits the adoption of children before birth. According to Article 163, numeral 1, of the Childhood and Adolescence Code, the adoption of an unborn child is illegal. This provision shows a big difference between local regulations and adoption practices in other countries, where prenatal adoption is regulated and allowed under certain circumstances. The current situation generates a debate on whether it is necessary to review or reform Ecuadorian legislation to adapt it to international human rights standards and ensure effective protection of all parties involved (Tenecora Peralta & Clavijo Banda, 2022, p. 1).

The purpose of legal adoption is for children who cannot be raised by their biological parents to obtain a safe and stable environment. However, prenatal adoption involves decisions about an unborn child, which introduces a number of additional problems. This process raises important ethical issues, such as the need to ensure that the expectant mother gives her consent in a free and informed manner, without pressure. The rights of the unborn fetus must also be considered (Hernandez, 2022, p. 12).

In our country, prenatal adoption could offer a viable solution for many pregnant women and adoptive families, provided it is implemented with adequate safeguards. However, the current legislative prohibition prevents this option from being considered, leaving unexplored a potential avenue to guarantee the welfare of unborn children and expectant mothers (Baelo Álvarez, 2023, p. 8). It is essential that the legal framework be aligned with international human rights principles, which promote the protection and well-being of both the unborn child and the gestating mother (Flores, 2011, p. 3).

Under this perspective, the main objective of this research is to critically analyze the prohibition of prenatal adoption in Ecuador, identifying legal barriers and proposing possible legislative reforms

that allow its implementation under specific conditions. It seeks to evaluate the viability of prenatal adoption as a legal and ethical option, considering the rights and welfare of all parties involved. In addition, we intend to propose a regulatory framework that ensures the effective protection of the rights of pregnant women and unborn children, in accordance with international human rights standards.

Methodology

Adoption has been a crucial practice throughout human history and plays an important role in shaping family structures and the continuity of lineages. Adoption has undergone significant change from its beginnings in ancient civilizations to its formalization in contemporary legislation, reflecting changes in social structures, legal regulations and cultural perceptions of family and children's rights. This evolution demonstrates how adoption has evolved from a means of securing inheritance and lineage to a means of child protection that seeks to provide a safe and loving environment for children who cannot be raised by their biological parents.

Adoption was a common practice in ancient civilizations to ensure continuity of the family line and inheritance of property. Legal documents from Mesopotamia and Babylonia show that families adopted children, mainly boys, to ensure that they had heirs to maintain their name and manage their property. The laws regulating this type of adoption protected both adopters and adoptees, protecting both economic and family interests (Berebitsky, 2000, p. 35). Similarly, adoption was also used for similar purposes in ancient Egypt, although it was less common, mainly among the upper classes who sought to ensure the continuity of their lineage and heritage.

Adoption became institutionalized as a formalized legal practice in ancient Rome. The Romans used adoption as a political and social tool. Adult adoption was common and was used to strengthen political alliances and positions of power within Roman society. One of the earliest Roman laws, the Law of the Twelve Tables, included specific provisions on adoption, highlighting its importance in the social and legal structure of the time.

The historical development and conceptualization of adoption shows how the practice has changed significantly over time, reflecting changes in social and legal structures. In ancient civilizations, the purpose of adoption was to ensure the continuity of inheritance of blood and property. In Rome, adoption not only guaranteed inheritance, but also served as a political strategy to consolidate alliances and positions of power.

During the Middle Ages, strict inheritance laws and patriarchal family structures in Europe significantly reduced adoption rates. Most families preferred to keep property and lineage with their biological descendants. However, in exceptional cases, adoption was used to protect orphans and administer property in the absence of direct heirs (Pertman, 2000, p. 15). The Renaissance brought a new perspective to adoption, linking it more closely to philanthropy and child welfare. Humanist ideas encouraged the care of orphans and foundlings as a moral and social obligation. As a result, many more orphanages and day care centers have been established, many of them run by religious and charitable organizations. Adoption is increasingly seen as a way to provide homes and families for children in need, reflecting a gradual shift towards child protection and recognition of their rights (Qian, 2012, p. 22).

Results

In the modern era, adoption has undergone a series of significant reforms reflecting changes in social perceptions and advances in children's rights. In the 19th century, adoption began to be more strictly regulated by national laws, with the goal of protecting children's rights and ensuring that adopters were fit to provide a safe and loving environment (O'Halloran, 2010, p. 12). In France, for example, the French Revolution and the promulgation of the Napoleonic Code in 1804 marked an important milestone in the history of adoption. The Napoleonic Code introduced a legal framework formalizing adoption, recognizing the rights and duties of adopters and adoptees, and establishing clear procedures for adoption.

In Latin America, adoption has also evolved significantly over the centuries. In Ecuador, the adoption of minors is regulated by the

Childhood and Adolescence Code, which establishes procedures and guarantees to ensure that adoption is carried out in the best interest of the child. According to Article 151 of the Childhood and Adolescence Code, the purpose of adoption is to ensure the child a suitable and permanent family, providing a safe and affective environment that allows for his or her integral development (National Assembly, 2014). However, the Childhood and Adolescence Code establishes significant restrictions for prenatal adoption, reflecting the legal complexities and challenges associated with this practice.

In recent decades, the approach to adoption has shifted to focus more on the welfare of the child and the rights of adopters and adoptees. International conventions, such as the United Nations Convention on the Rights of the Child, have significantly influenced adoption laws around the world, promoting principles of non-discrimination, the best interests of the child and the child's participation in decisions affecting his or her life. These principles have been incorporated into many national legislations, including Ecuador's, to ensure that adoption processes are transparent, fair and focused on the welfare of the child (Qian, 2012, p. 20).

Adoption is now seen as a legal act that establishes a legal relationship between the adopter and the adoptee, conferring on the child all the rights and responsibilities of a biological child. This legal framework seeks to ensure that adopters are rigorously screened to ensure that they can provide a safe and loving environment. In addition, modern adoption laws include provisions to protect the rights of birth parents, ensuring that their consent is informed and free from coercion (Pertman, 2000, p. 17). These safeguards are essential to ensure that the adoption process is ethical and fair to all parties involved.

Ethical and legal dilemmas in prenatal adoption.

Prenatal adoption presents a number of ethical and legal dilemmas that must be addressed with special consideration. From an ethical perspective, one of the main challenges lies in ensuring that the rights and welfare of both the unborn child (fetus) and the expectant mother are fully respected. One of the main ethical dilemmas in prenatal adoption is the issue of informed consent.

It is important for surrogate mothers to understand the implications of relinquishing their rights to a child prior to birth. According to Berlina (2014), the complexity of the medical and legal procedures involved in prenatal adoption can make it difficult for pregnant women to make informed decisions. In addition, there is a risk that vulnerable women may be coerced or manipulated into relinquishing their children, raising serious ethical concerns about the validity of consent.

From the legal point of view, there are regulatory gaps regarding prenatal adoption in many countries, including Ecuador. The lack of specific regulations can lead to contradictory interpretations and considerable legal uncertainty. Chapple and Abramsky (1994) argue that the lack of clear standards may result in insufficient protection of the rights of the pregnant mother and the fetus. This legal uncertainty not only affects those involved, but can also lead to abuse and exploitation, especially in situations where pregnant women are in economic or social hardship. Without a clear legal framework, it is difficult to ensure that procedures are carried out in a fair and ethical manner.

Another important ethical dilemma is to consider the welfare of the fetus. Humber and Almeder (2013) emphasize that the fetus has interests that must be protected. Prenatal adoption requires that all necessary measures be taken to protect the health and welfare of the fetus during pregnancy. This includes providing adequate medical care and protection against all forms of exploitation and abuse. Due to the lack of clear rules to protect the interests of the fetus, its welfare cannot be fully taken into account in the adoption process.

In addition, legal dilemmas in prenatal adoption include the question of the rights of the birth parents. Fischmann and Hildt (2011) emphasize that the rights of the birth parents must be carefully balanced with the interests of the unborn child and the adoptive parents. In some cases, birth parents may change their minds after the birth of the child, which can lead to complex and emotionally draining legal disputes. The lack of clear and fair legal procedures to resolve these disputes can increase uncertainty and legal insecurity in the prenatal adoption process. It is essential that laws include mechanisms for resolving disputes in an equitable manner.

Similarly, prenatal adoption also raises ethical questions about commercialization and exploitation. Rodin and Collins (2013) warn about the risks of prenatal adoption becoming a marketplace where pregnant women are exploited for their ability to gestate. This raises serious ethical concerns about the dignity and rights of women, as well as the integrity of the adoption process. It is essential that any legal framework for prenatal adoption include safeguards to prevent exploitation and ensure that the process is conducted ethically and fairly.

Therefore, proper regulation and oversight are critical to address ethical and legal dilemmas in prenatal adoption. Berliner (2014) asserts that implementing clear and transparent policies can help ensure that everyone involved understands their rights and responsibilities. In addition, it is important that adoption agencies and health care providers are trained to adequately address the ethical and legal aspects of prenatal adoption. Education and training can help reduce the risk of exploitation and abuse and ensure a fair and equitable adoption process.

Ethical and legal dilemmas

Adoption, understood as a legal act, is a legal mechanism that establishes a filial relationship between persons who are not related by blood. This legal act not only confers on the adopted child all the rights and obligations inherent to biological filiation, but also guarantees the protection and welfare of the minor, in accordance with the principles of the best interests of the child and human rights. In this sense, adoption as a legal act implies a set of legal and administrative procedures that seek to ensure that the process is fair, transparent and for the benefit of the adopted child. Adoption is, therefore, a necessary tool to ensure that children who cannot be raised by their biological parents have the opportunity to grow up in a safe and loving environment (Jones, 2017, p. 20).

From a historical perspective, adoption has been used by different societies as a tool to ensure continuity of lineage and inheritance. In ancient Rome, for example, adoption was a formalized legal act that allowed childless patricians to ensure the transmission of their patrimony and name. This legal mechanism was regulated by the Law of the Twelve Tables, which established the rules for adoption and

guaranteed the rights of adoptees. This legal approach has evolved over time, adapting to the needs and realities of modern societies. Adoption in Rome not only served to maintain family lineage, but was also used as a political tool to form strategic alliances (Jones, 2017, p. 7).

In the current situation, adoption is regulated by a series of legal norms aimed at protecting the rights of all those involved, especially the child. In Ecuador, the Childhood and Adolescence Law establishes the legal framework for adoption and defines adoption as a legal act aimed at securing a suitable permanent family for a child (National Assembly, 2014). The Code establishes requirements and procedures for adoptions and ensures that adopters meet suitability standards and that the process is carried out with the best interests of the child in mind. These regulations are essential to ensure that the adoption process is conducted in an ethical manner and that the rights of the adopted child are respected.

Adoption as a legal act also includes a series of administrative and judicial procedures designed to guarantee the legality and legitimacy of the adoption. Transparency of the process. In Ecuador, the adoption process begins with an administrative stage that evaluates the suitability of the adoptee. This evaluation includes a review of personal, economic and social background, as well as the performance of psychosocial studies (Asamblea Nacional, 2014). Once the adoptee is determined to be suitable, the process moves to the judicial stage, where a family judge must approve the adoption and make the appropriate decision.

An important aspect of adoption as a legal act is the consent of the biological parents. This consent must be free, informed and voluntary, and must be given before a competent authority. The law establishes that the biological parents have the right to receive all necessary information about the adoption process and its implications before making a decision. In addition, Ecuadorian law protects the right of birth parents to revoke their consent within certain timeframes and under certain conditions, thus ensuring that their decision is final and not influenced by external pressures (Coulibaly, 2015, p. 16). This procedure ensures that the consent is genuine and that the rights of the biological parents are respected.

Another important aspect is the integration of the adopted child into the adoptive family. This integration includes not only the transfer of legal rights and responsibilities, but also the social and emotional recognition of the child as a formal member of the adoptive family. Keating (2009) points out that adoption should be seen not only as a legal act, but also as a process of forging emotional bonds and building lasting family relationships. In this sense, the Adoption Law aims to facilitate this integration by providing adoptive families with support and follow-up to ensure the child's well-being. Successful integration is fundamental for the emotional and psychological development of adopted children.

Intercountry adoptions add even more complexity to the legal process. Intercountry adoption is regulated by international treaties such as the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. The Convention aims to ensure that cross-border adoptions are carried out in the best interests of the child and with respect for his or her rights, his or her fundamental rights (Bohorquez & Ronald, 2015, p. 18). These agreements establish specific procedures and requirements for international adoptions, such as proof of suitability of the adoptee and approval by the central authorities of the countries involved.

In the case of Ecuador, international adoption is regulated by the Childhood and Adolescence Law and international treaties ratified by the country. This legal framework ensures that international adoptions are carried out in an ethical and transparent manner, protects children's rights and guarantees that adopters comply with the established requirements (Dieta Nacional, 2014). Ecuadorian authorities should work with authorities in the adoptees' countries of origin to ensure that this process is carried out in accordance with international standards. This cooperation is essential to prevent child trafficking and ensure that the adoption process is safe and legal.

Adoption as a legal act also faces particular challenges and dilemmas, especially in the context of new reproductive technologies. Hollinger (2018) argues that advances in technologies such as in vitro fertilization and surrogacy raise new legal and ethical issues with respect to adoption. These technologies make it possible to create a

biological bond between the adoptive parents and the adopted child. This is something that would not otherwise exist and can complicate the legal adoption process and raise questions about the definition of parentage and parentage. It is important that adoption laws adapt to these technological advances to ensure that all legal and ethical issues are considered.

Adoption in Ecuador is regulated by the Childhood and Adolescence Law and the Civil Code. Ecuadorian law requires adopters to undergo a rigorous evaluation to ensure that they can provide a safe and loving environment. This includes a thorough evaluation of their financial, social and emotional capacity to care for their child. In addition, the law establishes specific adoption procedures, such as the need to obtain the consent of the birth parents and the consent of a family judge (National Assembly, 2014). These regulations are essential to ensure that the adoption process is fair and that the rights of all involved are protected.

Adoption also involves the transfer of legal rights and obligations from the adopted child to the adoptive family. According to Sellinger (2016), this process includes amending the child's birth certificate to reflect the new relationship and transferring all legal rights and responsibilities associated with parenthood. This process is intended to ensure that adopted children have the same rights and protections as biological children, including inheritance rights and access to health care and education. The transfer of rights is an important part of the adoption process, as it ensures that the child is fully integrated into the adoptive family.

The implementation of the legal institution in Ecuador

The implementation of the legal institution of adoption in Ecuador has been a complex process that has required the adaptation of legal norms and the creation of appropriate administrative and judicial procedures. Adoption, as a mechanism to ensure the welfare of children and guarantee them a safe and affective family environment, has evolved significantly in the country. This implementation process has involved not only the adaptation of national laws to international human rights standards, but also the creation of an administrative system that guarantees transparency and fairness in adoption procedures.

In Ecuador, it is mainly regulated by the Childhood and Adolescence Code. This code establishes a set of rules and procedures that seek to ensure that the adoption process is transparent and in the best interest of the child. According to the regulations, adopters must meet a series of strict requirements to be considered suitable. These requirements include psychological, economic and social assessments that ensure that adopters can provide a safe and stable environment for the child (Espinosa, 2016, p. 19). The suitability assessment is a very important step in the adoption process, as it seeks to ensure that only people who can provide a suitable environment for the child are approved as adopters.

The adoption process in Ecuador also involves a series of judicial procedures that seek to guarantee the legality and transparency of the process. Once the adoptive parents are deemed suitable, the case moves to the judicial stage, where a family judge reviews all documentation and evaluates the case. The judge must ensure that all procedures have been followed correctly and that the adoption is in the best interest of the child. This judicial review is essential to ensure that the process is fair and that the rights of all parties involved are respected (Martinez, 2017, p. 18). The role of the judge is determinant in the adoption process, as his or her final decision determines whether the adoption proceeds.

A fundamental aspect of the implementation of adoption in Ecuador is the consent of the biological parents. The law establishes that this consent must be free, informed and given before a competent authority. This means that the birth parents must fully understand the implications of the adoption and must not be coerced in any way. In addition, they have the right to revoke their consent within a certain period of time if they feel that their decision was not made in full knowledge of the facts. This procedure seeks to protect the rights of birth parents and ensure that their consent is genuine (Ortega, 2018, p. 21). Informed consent is an essential safeguard to protect the rights of birth parents in the adoption process.

The implementation of adoption has also faced significant challenges, especially with regard to intercountry adoption. International adoption is regulated by international treaties and conventions that seek to ensure that these processes are carried out in an ethical and

transparent manner. In Ecuador, international adoptions are overseen by the Central Adoption Authority, which works in collaboration with accredited adoption agencies in other countries. This approach seeks to ensure that international adoptions are conducted in the best interests of the child and that the rights of all parties involved are respected (González, 2019, p. 18).

Training and follow-up of adopters are other important aspects of adoption implementation in Ecuador. Adoption agencies and social workers play an important role in this process, providing support and guidance to adoptive families. This follow-up is essential to ensure that adoptive families can handle challenges that may arise and that the child is properly integrated into his or her new family environment. According to Rodríguez (2015), training and follow-up are essential for the long-term success of adoptions and to ensure that the adopted child receives the necessary support for his or her emotional and psychological development.

Adoption in Ecuador has also evolved to include specific provisions on the adoption of children with special needs. These provisions seek to ensure that children with disabilities or medical needs receive appropriate care and attention. Adoption agencies and social workers must work closely with adoptive families to ensure that they are prepared to handle the special needs of the adopted child. Implementation of these provisions is essential to ensure that all children, regardless of their needs, have the opportunity to grow up in a safe and nurturing environment (Lopez, 2018, p. 29).

In terms of legislation, the Childhood and Adolescence Code is the main legal framework regulating adoption in Ecuador. This code has been adapted and updated to reflect international human rights standards and to ensure that the adoption process is fair and transparent. In addition, the code establishes specific procedures for international adoption, ensuring that international treaties and conventions ratified by Ecuador are respected (Paredes, 2016, p. 26). Constantly evolving legislation is essential to adapt to changing needs and ensure that the rights of children and adoptive families are protected.

The implementation of adoption in Ecuador also includes the creation of support programs for adoptive families, which provide resources

and assistance to families during the adoption process and after the child has been integrated into the home. The goal is to ensure that adoptive families have the necessary support to handle challenges that may arise and to ensure that the adopted child receives adequate care and attention. According to Perez (2017), these support programs are essential for the long-term success of adoptions and to promote the well-being of adopted children.

Collaboration between national authorities and international organizations is becoming imperative for the successful implementation of adoption in Ecuador. Adoption agencies and children's rights organizations work closely with Ecuadorian authorities to ensure that the adoption process is conducted in an ethical and transparent manner. This collaboration includes training social workers, monitoring adoption processes, and promoting children's rights in all aspects of the adoption process (Quiroz, 2018, p. 21). International cooperation is critical to ensure that best practices are implemented throughout the adoption system.

Analysis of the Effectiveness of the Current Legal Framework in Ecuador

The current legal framework for adoption in Ecuador is mainly regulated by the Childhood and Adolescence Code, which establishes regulations and procedures to ensure that children without families receive adequate care in a safe and affective environment. However, despite the legal provisions, several limitations and challenges have been identified in the effective implementation of these regulations. One of the main problems is the lack of clarity and specificity in the laws on prenatal adoption, which creates a regulatory vacuum and generates legal uncertainty for both adopters and expectant mothers.

Article 163 of the Childhood and Adolescence Code explicitly prohibits the adoption of unborn children, reflecting a conservative and restrictive stance towards this practice. This prohibition, while intended to protect the rights of the nasciturus and prevent possible abuse, also limits the options available to expectant mothers and prospective adoptive parents (Asamblea Nacional, 2014). The absence of a clear legal framework for prenatal adoption creates

uncertainty and may deter families from considering this option, even in situations where it could be in the best interest of the unborn child.

In addition, the adoption process in Ecuador faces administrative and bureaucratic challenges that can significantly delay the placement of children in adoptive homes. Espinosa (2016) notes that the suitability assessment of adopters, although complicated, is often a lengthy and complicated process that can demotivate potential families. This process includes psychological, economic, and social assessments to ensure that adopters can provide a suitable environment for the child. However, a lack of resources and trained staff at adoption agencies can lead to delays in these evaluations, negatively affecting the children waiting to be adopted.

Judicial review of adoption cases is also an essential aspect of the legal framework that seeks to guarantee the transparency and legality of the process. Martinez (2017) highlights the importance of the role of the family judge in the review and approval of adoption cases, ensuring that all parties involved understand and comply with the established regulations. However, the workload in the courts and the possible lack of specialization in adoption issues may result in judicial decisions that do not always fully consider the best interests of the child.

International cooperation in adoptions, although regulated by treaties and conventions such as the Hague Convention, faces challenges in its practical implementation. Gonzalez (2019) indicates that international adoptions require effective coordination between the central authorities of the countries involved, which is sometimes complicated by differences in regulations and legal procedures. This cooperation is vital to prevent child trafficking and ensure that intercountry adoptions are carried out ethically and legally.

Although the current legal framework in Ecuador provides a solid basis for adoption regulation, there are areas that require significant improvement to ensure its effectiveness. The lack of specific regulations on prenatal adoption, administrative and bureaucratic challenges, and the need for greater specialization and resources in the judicial system are areas that need to be addressed. The review and reform of these laws and procedures can contribute to a more efficient, fair and child-centered adoption system.

Ethical and legal challenges in prenatal adoption

Prenatal adoption presents a number of complex ethical and legal challenges that must be carefully addressed to protect the rights and interests of all parties involved. From an ethical standpoint, one of the main challenges is to ensure that expectant mothers give their consent in a free and informed manner, without coercion or undue pressure. The autonomy of the mother and her right to make decisions about her body and her pregnancy must be respected, while protecting the well-being of the fetus.

One of the most critical issues is the question of informed consent. It is essential that expectant mothers fully understand the implications of relinquishing their child's rights prior to birth. Berliner (2014) suggests that the complexity of the medical and legal procedures involved in prenatal adoption can make it difficult for mothers to make truly informed decisions. In addition, there is a risk that women in vulnerable situations may be coerced or manipulated into relinquishing their children, raising serious ethical concerns about the validity of their consent.

From a legal perspective, it faces a significant regulatory vacuum. The lack of specific regulation can lead to contradictory interpretations and considerable legal uncertainty. Chapple and Abramsky (1994) argue that the absence of clear rules can result in the unprotected rights of pregnant mothers and fetuses. This legal uncertainty not only affects the parties involved, but can also lead to abuse and exploitation, especially in contexts where pregnant women are in situations of economic or social vulnerability.

The welfare of the fetus is another ethical aspect that must be considered. Humber and Almeder (2013) emphasize that the fetus, although unborn, has interests that must be protected. Prenatal adoption should ensure that all necessary measures are taken to protect the health and welfare of the fetus during pregnancy. This includes the provision of adequate medical care and protection against any form of exploitation or abuse. The lack of clear regulations on how to protect the interests of the fetus can lead to situations where its welfare is not adequately considered in the adoption process.

In addition, legal dilemmas in prenatal adoption include the question of the rights of the birth parents. Fischmann and Hildt (2011) emphasize that the rights of the birth parents must be carefully balanced with the interests of the unborn child and the adoptive parents. In some cases, birth parents may change their minds after the birth of the child, which can lead to complex and emotionally draining legal disputes. The lack of clear and fair legal procedures for resolving these conflicts can add to the uncertainty and legal insecurity in the prenatal adoption process.

Finally, ethical questions about commercialization and exploitation are raised. Rodin and Collins (2013) warn about the risks of prenatal adoption becoming a marketplace where pregnant women are exploited for their ability to gestate. This outlines serious ethical concerns about the dignity and rights of women, as well as the integrity of the adoption process. It is essential that any legal framework for prenatal adoption include safeguards to prevent exploitation and ensure that the process is carried out ethically and fairly.

In our country, it faces significant ethical and legal challenges that require careful attention and specific regulation. Protecting the rights of expectant mothers and fetuses, ensuring informed consent free of coercion, and preventing commercial exploitation are important aspects that need to be addressed. The creation of a clear and detailed legal framework can help resolve these dilemmas, ensuring that prenatal adoption is conducted ethically and in the best interests of all parties involved.

Comparison with international adoption models

International adoption has been the subject of various regulations and models that seek to ensure the welfare of children and the legality of the process. In the United States, adoption is regulated by the Adoption Act of 2000, which establishes rigorous procedures to ensure that adoptions are in the best interests of the child. This law includes comprehensive screening of adopters, informed consent of birth parents, and post-adoption monitoring to ensure the child's integration into the new family (Jones, 2017). In addition, the United States is a party to the Hague Convention on Intercountry Adoption,

which provides an additional framework for regulating transnational adoptions and ensuring that they are conducted in an ethical manner.

In contrast, Nordic countries, such as Norway, have a more holistic approach to adoption. Norway implements policies that not only focus on legal aspects, but also on long-term support for adoptive families. Sellinger (2016) highlights that adoption agencies in Norway provide counseling services and psychological support both before and after adoption, ensuring that families receive the necessary support to handle emotional and practical challenges. This comprehensive approach ensures a better adjustment of the adopted child to his or her new environment and promotes the long-term well-being of all parties involved.

In France, adoption is governed by the Civil Code, which has been modified to align with international human rights standards. Keating (2009) notes that France has strict procedures for assessing the suitability of adopters, including specific requirements for age, marital status and financial stability. In addition, France promotes open adoption, where adopted children have the possibility of maintaining contact with their biological parents if they wish to do so and if it is in their best interest. This model seeks to balance the rights of adoptees and adopters, ensuring transparency and fairness in the adoption process.

Comparing these models with Ecuador's legal framework, it is clear that there are areas that could benefit from reform. For example, open adoption and post-adoption support, such as those implemented in Norway and France, could improve the adoption experience in Ecuador. Currently, the adoption process in Ecuador focuses primarily on the initial assessment of adopters and the consent of birth parents, but lacks a robust system of post-adoption support. Implementing ongoing support programs could help adoptive families overcome challenges and ensure the long-term well-being of the adopted child (Espinosa, 2016).

Finally, comparison with international models reveals the importance of flexibility and adaptation of adoption laws to changing realities. Prenatal adoption, for example, although not widely regulated, could be explored as a viable option under strict conditions of supervision and protection of rights. This practice, common in some U.S. states,

could be adapted to Ecuadorian law to offer more options to expectant mothers and adoptive families, always ensuring the well-being of the unborn child and the protection of the rights of all parties involved (Humber & Almeder, 2013).

Proposed reforms and improvements to the adoption system

It is essential to change the adoption system in Ecuador to ensure that it is equitable, transparent and in the best interest of the child. One of the main proposals is to establish a special law to regulate pre-birth adoption. Currently, the Childhood and Adolescence Code clearly prohibits this action, which restricts alternatives for pregnant women and couples who wish to adopt (National Assembly, 2014). Establishing legal regulations governing pre-birth adoption, guaranteeing informed consent and protection of the rights of each party involved, could be a beneficial solution for several families.

Implementing these initiatives in Ecuador could support families in facing post-adoption challenges and ensure the child's proper integration into his or her new family. It is vital to train and professionalize the staff of adoption agencies. Resources need to be dedicated to the ongoing training of social workers and other professionals involved in the adoption process to ensure that they are up to date with best practices and international standards.

Regarding intercountry adoption, cooperation with other countries and international organizations needs to be strengthened. This includes the full implementation of the principles of the Hague Convention and the creation of bilateral agreements that facilitate the transnational adoption process. Gonzalez (2019) suggests that increased collaboration with international organizations can help prevent child trafficking and ensure that international adoptions are conducted in an ethical and transparent manner. This may also include the creation of an international database of adopters and adoptable children to improve the efficiency and transparency of the process.

Adoption laws should be reviewed and updated to ensure that they reflect international human rights standards. This includes ensuring free and informed consent of birth parents, protection of the rights of the child, and transparency in all procedures. Humber and Almeder

(2013) emphasize the importance of aligning national laws with international treaties to ensure comprehensive protection of the rights of the children and families involved. This legal review is essential to create an adoption system that is fair, efficient, and focused on the welfare of the child.

Proposals to reform and improve the adoption system in Ecuador should focus on the creation of a specific legal framework for prenatal adoption, the simplification of administrative procedures, the establishment of post-adoption support programs, staff training, international cooperation and the revision of existing laws to align them with international standards. Implementing these reforms can contribute to a fairer, more transparent and effective adoption system, ensuring that all children have the opportunity to grow up in a safe and loving environment.

Conclusions

Prenatal adoption and legislation in Ecuador present a set of challenges and opportunities that require careful attention and significant legislative reform. Analysis of the effectiveness of the current legal framework reveals that, although there are robust provisions in the Childhood and Adolescence Code to regulate adoption in general, the lack of specific regulations on prenatal adoption creates a legal vacuum that generates insecurity and complications for expectant mothers, prospective adoptive parents, and the legal professionals involved. The explicit prohibition of prenatal adoption limits the options available to ensure the well-being of unborn children and expectant mothers.

The ethical and legal dilemmas in prenatal adoption underscore the need to ensure that expectant mothers provide truly free and informed consent, and to adequately protect the rights of the fetus. The implementation of a clear and detailed legal framework is essential to resolve these issues, ensuring that prenatal adoption is carried out ethically and in the best interests of all parties involved. International experience shows that models such as those in Norway and France, which offer comprehensive and continuous support to adoptive families, can be adapted to improve the adoption system in Ecuador.

Comparisons with international adoption models indicate that Ecuador can benefit from adopting practices that promote transparency, post-adoption support and international cooperation. Implementation of ongoing support programs and training of adoption agency staff are essential to ensure that adoptive families are well prepared and supported throughout the adoption process and beyond. In addition, harmonization of national laws with international standards, such as those set out in the Hague Convention, can strengthen the protection of children's rights and prevent child trafficking.

Proposals to reform and improve the adoption system in Ecuador should focus on the creation of a specific legal framework for prenatal adoption, the simplification of administrative procedures, the establishment of post-adoption support programs and the professionalization of adoption agency staff. These reforms can contribute to a fairer, more transparent and effective adoption system, ensuring that all children have the opportunity to grow up in a safe and loving environment. International cooperation and the adaptation of national laws to international human rights standards are essential to promote fairness and equity in the adoption process.

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