

MULTICULTURALISM IN BRAZIL: PROTECTING THE UNBORN AND THE CHILD BASED ON BIOETHICS

MULTICULTURALISMO NO BRASIL: A PROTEÇÃO DO NASCITURO E DA CRIANÇA FRENTE À BIOÉTICA

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SUMMARY: *Introduction. 1 The principles of Bioethics. 2 Human rights and multiculturalism. 3 Protection of the child and the unborn child considering the multiculturalism in Brazil. 4 The role of public policies as an intercultural dialogue aiming the protection of children. Conclusion. Reference.*

ABSTRACT: *The emergence of plural societies with different traditions reveals the need to expand the concept of human rights in a multicultural dimension, including the right to difference, identity and the preservation of ethnic cultures. Ethics must be the measure of respect for multicultural identity, and when it comes to issues related to science and the quality of life of human beings, it must be applied the principles of bioethics. In Brazil, different traditions and beliefs coexist in each region of the country, in the Indian tribes, etc. These groups have different values regarding the family system, especially on how to treat the unborn child and the child. The principles of bioethics can be used as a limit when the cultural practices violate the rights of minors. Finally, considering human dignity, intercultural dialogue is the most suitable alternative to protect the unborn child and infant, and at the same time to ensure respect for cultural identity. For this, the government should implement public policies that promote the right to difference, valuing the culture of other peoples, with the effective participation of those who comprise the society.*

Keywords: *bioethics; multiculturalism; children; public policies.*

RESUMO: O surgimento de sociedades plurais com tradições diversas revela a necessidade de ampliar a concepção de direitos humanos para uma dimensão multicultural, abrangendo o direito à diferença, à identidade étnica e à preservação das culturas. A ética deve ser a medida do respeito à identidade multicultural, e, quando se trata de questões relacionadas à ciência e à qualidade de vida dos seres humanos, faz-se necessária a aplicação dos princípios da bioética. No Brasil coexistem diferentes tradições e crenças em cada região do território nacional, nas tribos indígenas, nas comunidades de imigrantes, etc. Estes grupos possuem valores diversos quanto ao sistema familiar, especialmente no modo de tratar o nascituro e a criança. Os princípios da bioética podem servir de limite quando as práticas culturais violam os direitos dos menores. Por fim, tendo em vista a dignidade da pessoa humana, o diálogo intercultural é a alternativa mais indicada para proteger o nascituro e o infante, e, ao mesmo tempo, assegurar o respeito à identidade cultural. Para isso, o Estado deve implementar políticas públicas que fomentem o direito à diferença, valorizando a cultura dos outros povos, com a participação efetiva daqueles que integram a sociedade.

Palavras-chave: bioética; multiculturalismo; criança; políticas públicas.

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Artigo recebido em 03/03/2018 e aceito em 26/03/2018.

Como citar: CARDIN, Valéria Silva Galdino. Multiculturalism in Brazil: protecting the unborn and the child based on bioethics. **Revista de Estudos Jurídicos UNESP**, Franca, ano 22, n. 35, p. 67 jan/jun. Disponível em: <<https://ojs.franca.unesp.br/index.php/estudosjuridicosunesp/issue/archive>>.

INTRODUCTION

In the midst of so many conflicts arising from cultural differences between people, ethics should be the measure of respect for multicultural identity and when it comes to issues related to science and human beings quality of life it is necessary to apply the principles of bioethics, such as beneficence, nonmaleficence, autonomy and justice.

The zeal of the principles of bioethics in stressful situations needs to be coupled with the observance of human rights. However the emergence of plural societies with different traditions reveals the need to broaden the conception of human rights to a multicultural dimension, including the right to difference, identity and the preservation of ethnic cultures.

In Brazil, different traditions and beliefs coexist in each region of the country, as well as in the Indian tribes, etc. These groups have different values regarding the family system, especially on how to treat the unborn child and the children. These are par excellence vulnerable beings whose autonomy is diminished requiring protection of the State to have a decent life. For this reason, the bioethical principles can serve as a limit when cultural practices violate the rights of children.

Finally considering that the unborn and the child have their autonomy reduced, it is essential to analyze the role of public policies while a state intervention in order to promote an intercultural dialogue that discusses the protection of the infant and at the same time educates society about the need to respect the right of the person and of the community to express their own culture.

1 THE PRINCIPLES OF BIOETHICS

The term 'bioethics' is a neologism derived from two Greek roots – 'bios' meaning life, and 'ethike', which includes ethics, the moral values of society. This word was first used in 1971 in the United States by Van Rensselaer Potter in the book *Bioethics: bridge to the future*, in order to promote a dialogue between science and humanities two areas of knowledge that were parallel but needed to meet each other targeting the future.

The need to create a field of study that involves technology and humanization resulted mainly from the events of Second World War like the explosion of two atomic bombs in Japan and the experiments performed on humans in Nazi concentration camps (HOOFT, 1999. p. 5-6).

In 1974, the United States Congress decided to form a National Commission to identify the basic principles which should guide the experiments with human beings both in biomedical and behavioral sciences. After four years of deliberations the Commission approved the Belmont Report which contains three basic ethical principles for human experimentation: the principle of beneficence, autonomy and justice.

The authors Tom Beauchamp and James Childress Franklin, both of the Kennedy Institute, differently from the Belmont Report, systematized the bioethics in four principles, and in addition to autonomy justice and beneficence; they also stressed the principle of nonmaleficence.

The principle of beneficence from the Latin 'bonum facere' is considered the oldest of medical ethics being present from the Hippocratic Oath in which the doctor undertook to do good to his patient and never harm any person. It implies therefore on 'health care', 'promote the quality of life of others', 'do not harm', and so on (SANTOS, 1998. p. 42-43).

Note that in accordance with the Belmont Report, beneficence also includes a duty of abstention a 'non facere' in other words do not take any action that causes harm to others. This outspread is understood by Tom Beauchamp and James Childress Franklin as the principle of nonmaleficence.

The principle of autonomy is more recent having emerged in bioethics to counterbalance the principle of beneficence which had been heavily criticized because of its paternalistic character in which the figure of the doctor and his decision-making power was overrated at the expense of patient's choice.

Respect for the autonomy of determinate person assumes that he or she is able to decide about a life project and is capable of self-determination provided that his or her choice does not cause harm to others. Therefore those who have diminished autonomy such as children, seniors and people with disabilities deserve special protection from the state.

The last principle of bioethics is justice. Justice means an equitable distribution which is also fair and equal without distinction of people in the field of bioethics. According to Aristotle 'in all things, the medium-term is to be praised but sometimes we must incline us towards excess and sometimes in the sense of lack, because in this way we can easily reach the middle ground that is right' (ARISTÓTELES apud FACHIN, 2008. p. 138).

There is no hierarchy among the principles of bioethics. These were created independently and with the goal of being in balance ensuring the humanization of scientific progress. However the facts and new

discoveries that come out every day result in a situation of conflict between these principles rendering impossible the task of harmonizing them.

Thus, in spite of not having a hierarchy among the principles, we can deduce that they are capable of guiding towards a solution for a vast array of problems, which reveals a more rationalist and normative character (BEAUCHAMP; CHILDRESS, 2002, p. 57).

The emergence of multicultural societies leverages the tension between the principles of bioethics particularly regarding the manner of treating the unborn child and the children within the family. In order to solve these conflicts it is essential to rely on human rights but from a multicultural conception that in partnership with ethics has the dignity of the human person as the center.

2 HUMAN RIGHTS AND MULTICULTURALISM

Before even addressing multiculturalism, it is important to analyze the concept of culture, which essentially refers to the life style of a group, capable of organizing thought, having feelings, with beliefs, not only as a group but individually.

Clifford Geertz understands that culture can be understood as webs of meaning woven by man and thus, it's an interpretive Science. It is, from the understanding of the concept of culture that the study of anthropology is made possible as we can see:

The concept of culture I espouse, and whose utility the essays below attempt to demonstrate, is essentially a semiotic one. Believing, with Max Weber, that man is an animal suspended in webs of significance he himself has spun, I take culture to be those webs, and the analysis of it to be therefore not an experimental science in search of law but an interpretive one in search of meaning. It is explication I am after, construing social expressions on their surface enigmatical. But this pronouncement, a doctrine in a clause, demands itself some explication. (2008, p.4).

Because it is a necessary psychological structure for individuals to guide their behavior, conflicts often occur involving the various social groups. Nevertheless, no individual can claim to be superior to others (COMPARATO, 2003).

It should be added that the protection of the culture of people is necessary for the realization of Human Rights, which are inherent to individuals, since they hold the dignity of the human person.

Multiculturalism can be understood based on three aspects: a) the existence of a diversity of world cultures; b) the existence of different cultures within the same State; c) the influence of these cultures both in a national and a supra-national level (SANTOS; NUNES. 2003. p. 28).

Alain Touraine asserts that the mere coexistence of different cultures in one country or nation does not characterize a multicultural society. It is necessary that each individual takes into account what unites and what differentiates it from his neighbor (TOURAINÉ, 2003. p. 193).

It should be noted that determinate culture is never immutable because it changes over the years through the choices and emotions of people (HOEBEL, FROST, 2005, p. 59).. Furthermore a culture is never perfect or complete otherwise other cultural manifestations could be regarded as inferior (SANTOS. 2003. p. 442).

Thus, the peculiarities over cultural diversity must be analyzed according to the context in which it is inserted. In this sense, Boaventura de Souza understands that:

Human rights must be reconceptualized as multicultural. Multiculturalism, as I see it, is a precondition for a balanced and mutually beneficial relationship between global competence and local legitimacy which constitute to both attributes of a counter hegemonic culture of the human rights of our time. Because all cultures have different concepts of human dignity, which are incomplete, consequences should be increased over these mutual issues for an intercultural dialogue on human rights to occur . (SANTOS, 1997, p. 19)

For Claude Levi-Strauss it is an absurd to consider a particular culture as superior compared to another because cultural diversity is not the result of geographic isolation of a group but the result of relations between communities, emerging as well, 'the desire to oppose, distinguish themselves to be themselves' (LEVI-STRAUSS, 1993. p. 322-323).

There must be respect for cultural diversity in each group. So Charles Taylor argues that recognition of a culture is essential for the formation of individual and collective identity, because the false recognition or its absence entails serious consequences for a particular society (TAYLOR, 1994. p. 25-35).

Recognition is a vital human need and that is linked to the idea of authenticity and difference because every person is capable of self-determination and establishes its own identity as an individual and as a culture. In a multicultural context there should be a policy of difference based on respect for the identity of the person and the group which requires specific rights stemming from their cultural uniqueness (TAYLOR, 1994. p. 37-44).

In Art. 1st of the International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by UN General Assembly resolution 2200A (XXI), which was approved by Brazil through Legislative Decree n. 226/1991, stated that people have the right to self-determination, which means they are able to guide their actions and formulate the laws according to their beliefs, customs and traditions. Still in the preamble they were recognized as parts of human rights alongside the individual and political rights, economic, social and cultural rights.

Our constitution provides in Art. 4 that the Brazilian international relations should be governed by certain criteria including the prevalence of human rights (section II) and self-determination (section III). There is equivalence between these criteria so there should be a respect for cultural authenticity of different groups or communities living in Brazil.

Human rights can no longer be understood as a universalizing discourse which emphasizes individual liberty over the collective interests of ethnic or minority groups. For this reason, Abdullahi Ahmed An-Na'im advocates a magnified view of human rights that includes cultural diversity (AN-NA'IM, 1992. p. 20-39).

This understanding is also shared by Valério Mazzuoli when teaching and saying that human rights are broad with regards to fundamental rights. Thus, any citizen on the planet can demand his or her right, as long as there is proof of a violation within international norms and accepted by the State where he/she is in. Therefore, the preferred term is "Fundamental human rights" so as to reassure the protection union of these rights

Therefore the bioethics in the application of its principles should also respect the cultural identity of each person or social group.

3 PROTECTION OF THE CHILD AND THE UNBORN CHILD CONSIDERING THE MULTICULTURALISM IN BRAZIL

Brazil is par excellence a country with enormous cultural diversity composed mainly by Portuguese, African descent, Indians, and in a second moment by European immigrants, Arabs, Orientals, etc. Despite the attempt of cultural uniformity, the environment, the different landscapes and the climate of each region, among other factors led regional differences and at the same time the preservation of customs and traditions (RIBEIRO, 2006. p. 18-20).

Considering the right to self-determination and the right to recognition of the difference, it is necessary to examine what is the treatment that families give to the unborn and to the children in the different regions of Brazil and in the Indian tribes and if the bioethics, through its principles, may be present as a mediator in the solution of the cultural differences, taking into account the best interest of the child.

It should be noted that the child and the adolescent enjoy privileged protection in the BRAZILIAN Federal Constitution (Art. 227), because they are considered subjects of fundamental rights so they should have assured a life free of violence always observing the principle of human dignity, provided by the Art. 1, inc. III of the Brazilian Constitution.

Moreover, the Art. 3, 'a', of the Convention of Rights of the Child, states that 'In all actions concerning children whether undertaken by public or private social welfare institutions courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'.

Therefore customs and traditions of different peoples who live in Brazil especially on how to educate and treat the children and the unborn should be analyzed from the perspective of the principle of the best interest jointly with bioethical principles without forgetting the right to difference and to self-determination.

3.1 Regional Differences

The immensity of the Brazilian territory composed by climatic and ecological diversity as well as the various economic cycles that we passed through, resulted in cultural differentiation between the regions of Brazil.

It should be noted that the cultural variation between the different regions of Brazil cannot justify the violence within the family. All States of Confederation must submit themselves to the Federal Constitution, the Statute of Children and Adolescents, the national legislation as a whole and the international treaties and conventions. Therefore the psychophysical integrity of the child must be respected.

Despite all these rules protecting children it is common in the riverside population of the Amazon River for fathers to sexually initiate the youngest daughter and then attributing the pregnancy to the pink dolphin from the river, known as boto. According to this legend, the animal becomes a man during the night has sex with the girl leaving her pregnant (GUEDES. 2004). The allocation of an incestuous pregnancy to an animal typical of the region serves to excuse the offender from criminal and civil penalties as well as to not expose the victim to a shameful situation.

However incest cannot be admitted as a cultural practice because it implies in a break in the life of children and adolescents and it is like a real psychological death, especially when it causes a pregnancy.

It is an error to think that incest is common in the animal kingdom or that it was a permitted activity in wild and primitive peoples. In fact, the incest taboo is virtually present in all social organizations. What changes is the degree of relatedness or affinity that is characterized such as it (PEREIRA, 2003. p. 25).

In Brazil the father who practiced incest against his own daughter answers for the crime of rape of vulnerable, provided by the Art. 217 of the Criminal Code, with imprisonment from 8 (eight) to 15 (fifteen) years.

The Art. 128, III of the Criminal Code also authorizes the abortion resulting from rape. Then the girl who gets pregnant because of sexual abuse perpetrated by her own father may decide to abort the fetus but an authorization of her legal guardian is required.

Besides serious psychological trauma incest practiced between father and daughter can cause physical problems especially when it results in pregnancy. Early pregnancy is a risk factor that can affect the health of adolescents, for they have not yet exceeded the growth phase. The science says that pregnancy under these conditions can result in eclampsia, anemia, premature labor, obstetric and newborn infants of low birth weight (SILVA; TONETE. 2006).

When pregnancy is the result of a blood relationship, the consequences are even more serious because there is a great chance of

the pregnancy be interrupted by natural causes or the child be born with congenital malformations.

In these cases abortion is the most suitable alternative. First, according to the principle of beneficence it is not acceptable that a child finalizes a pregnancy that will cause her irreversible physical and psychological traumas. Furthermore by applying the principle of nonmaleficence, termination of pregnancy would also prevent the birth of babies with congenital malformations.

3.2 The Indigenous Issues

In Brazil for centuries the Indians have undergone a process of enslavement, discrimination and dispossession of their lands. Only with the advent of the BRAZILIAN Federal Constitution in 1988 that the rights of the Indians have been effectively protected. More than that, the Brazilian government recognized the cultural, organizational and ethnical autonomy of this people forbidding any policy that aims assimilation by the dominant culture as required by Art. 231 of the mentioned statute.

The intervention of white men in indigenous tribes located in Brazil was justified by an alleged superiority of those customs and traditions in relation to these. This interference resulted in diseases previously unknown by the Indians, the disintegration of families, the rampant use of alcohol and drugs, and suicide (MARTINS, 2005. p. 218).

Nowadays, the society tends to get amazed with stories of apparent violence against children and adolescents in indigenous tribes. This situation generates a public outcry for immediate government intervention. However the principles of bioethics can be important allies to see if this is really the best alternative.

It is common for the Indians to practice rites of passage into adulthood that result in a physical injury on the child. In the Amazonian tribe sateré-mawé the teenager is submitted unto a ritual in which he must endure many stings of big ants, known as tucandeiras placed in a glove straw into which he inserts his own hand (FANTÁSTICO. 2010).

Marianna Assunção Figueiredo Holanda describes that the Marubo tribe uses an herb called vakise, a kind of nettle which is applied on the arms and back of the child 'to take the laziness off'. The plant is also used for the legs of children so they will be capable to 'walk properly' (HOLANDA. 2008. p. 56).

A superficial analysis would indicate that indigenous rites of passage violate the principle of beneficence. However, in these cases should prevail the principle of autonomy because although these acts cause a small injury, the children do not feel violated because they will pursue a new role in the tribe.

It should be noted that the major controversy regarding the violence against children among the indigenous people is the infanticide. Some tribes practice eugenics against children born with physical or mental disabilities, children whose fathers didn't assume them as well as one of the twins (HOLANDA. 2008. p. 56)

According to the Non-Governmental Organization ATINI – uma voz pela vida, the practice of infanticide has been reported in several ethnic groups, among them are the uaiuai, bororo, mehinaco, tapirapé, ticuna, amondaua, uru-eu-uau-uau, suruwaha, deni, jarawara, jaminawa, waurá, kuikuro, kamayurá, parintintin, yanomami, paracanã and kajabi (ATINI. 2010). However, this information is not confirmed by the Brazilian National Foundation for Indian – FUNAI.

Initially Indian infanticide seems a serious breach of human rights. In fact it is a violent act but it is important to analyze the reasons of this cultural practice.

According to Mariana Assunção, for the Amerindians, the beginning of life does not occur at birth but with the socialization of children which implies a relationship and a differentiation. Without this relational process with the community the human being is not considered a person (HOLANDA, 2008, p. 30-60).

From the perspective of the tribe the existence of psychophysical weaknesses, the birth of a child who has not a father or a mother to welcome him among other cases prevents the baby to socialize. Therefore due to the impossibility of becoming human the life of this entity is interrupted (HOLANDA, 2008, p. 140-143).

On the other hand, Ronaldo Lidório tells the story of a Suruwahá mother that did not allow her daughter to die according to the custom of the tribe, giving her to an NGO (non-governmental organization) to receive appropriate treatment in Sao Paulo. The tribe Often ignores the Indians who resort to these organizations and prohibit them to return to the village (LIDÓRIO. 2008. p. 188-189).

So far there is no specific law regulating the Indian infanticide. There is only the Project of Law n. 1.057/2007, which adds to the Law.

6.001/1973 (the Brazilian Indian Statute), an article that encourages a dialogue with the Indian tribes.

It will just be punished the parents who practice infanticide if the tribe is already in touch with society and is aware of the wrongfulness of its conduct. However the tribes who perform such a practice are fully or partially isolated and they can not be punished because they do not understand that their conduct is a crime. Moreover the traditions and culture of indigenous people are protected by the Federal Constitution and the Statute of the Indian.

The Indian infanticide involves a collision between two principles of bioethics: the principle of autonomy, regarding to the choice of the tribe to not continue the child's life and the principle of beneficence, respecting the right of children born with disabilities, children rejected by a parent or the one who was born with a twin brother, grow healthily.

Considering the value of those conflicting interests, the right to life prevails. In these cases ethics should be used as the limit of cultural practices. However state intervention in indigenous tribes can not be totalitarian but supportive and minimal otherwise there will be a violation of the right to self-determination of people ignoring the multiculturalism.

4 THE ROLE OF PUBLIC POLICIES AS AN INTERCULTURAL DIALOGUE AIMING THE PROTECTION OF CHILDREN

The plurality of cultures that exists in the Brazilian territory entails various bioethical conflicts regarding how to treat the unborn child and the children within the family. Besides considering that cultural traditions are not immutable an intercultural dialogue is essential so each community can adapt itself to new situations and transform its costumes thinking about the development of social relations and above all improving the quality of life of future generations.

Boaventura de Sousa Santos points out some premises to a progressive multicultural dialogue. Initially there should be a dissatisfaction of people in relation to their own culture. In a second moment there must be a mutual interest in dialogue from topics that are chosen in common (SANTOS, 1998, p. 454-455).

Therefore public policies are needed to verify if the cultures are able to establish this dialogue so after that it will be possible to implement programs and strategies that facilitate a cultural exchange between

indigenous tribes and the riverside communities with the Brazilian government institutions.

Schools can contribute to this including in its curriculum courses and teaching materials that address the different cultures that are part of Brazil valuing differences and educating students to respect the traditions and customs of other peoples (TAYLOR, 1994, p. 54-55).

In order to avoid the practice of incest in the populations of the Amazon River, public policies should be implemented to occur an awareness through local media schools and non-governmental organizations.

In cases of incestuous pregnancy public policies should be directed to health allowing the teenager to perform abortion. Unfortunately, almost no hospital in Brazil has a program for incestuous pregnancy in adolescence. The girls in these conditions do not feel safe in seeking the health system and often prefer to use illegal abortion clinics when in fact the Brazilian Health System should offer this possibility in attention of the bioethical principle of justice.

As for the indigenous culture the federal government should fund anthropological studies on infanticide showing the reasons that lead the tribe to do this practice, which are the profiles of the dead children and what is the impact caused in the tribe especially in the family. Thus it will be possible to determine if there is a discontentment in the tribe and if the desire for change is general.

If a dissatisfaction with the practice of infanticide is checked it can be established a dialogue of the State through FUNAI or other more effective government sessions with the Indian tribes so alternatives that are conformed to the cultural parameters can be pointed out. In the case of birth of children with disabilities it could be offered medical services performed in the Indian territory with joint efforts of doctors and the Indian spiritual leader known as shaman or in case the child is born without a father this could be given up for adoption among other measures suggested by the tribe.

A dialogue between the Brazilian government and the Indian tribes is essential so there is going to be at the same time the respect for the parents culture and the village itself and the preservation of life of the newborn children observing the principles of autonomy, beneficence and nonmaleficence.

The role of NGOs in Indian villages should be restricted and be supervised by Federal Government for not imposing their beliefs and

customs but to collaborate in an intercultural dialogue that protects the interests of minors without breaching the right to difference because sometimes these organizations act in their own interests and not on behalf of the tribe.

The children will only be protected in different regions of Brazil as well as in the indigenous tribes if an intercultural dialogue of respect associated with public policies that address the balance between the principles of bioethics considering the dignity of the human being happened.

CONCLUSION

Bioethics emerged from the need to reconcile scientific progress with respect for human dignity. Thus there was created practical principles that enable the compatibility of the technique with ethics. However conflicts arise daily caused for example by cultural differences among the agents of a given relation. When this tension concerns the mode of treat the unborn child and the children the state must be aware of and consider the need of an intervention given that they are vulnerable beings whose autonomy is impaired requiring a special protection to assured them the respect for the rights provided by the internal law as well as the international treaties.

For the protection of the unborn child and the children be effective in a multicultural context it is essential that bioethics is understood from a new conception of human rights which includes the right to difference, the right to recognition of ethnic identity and the right to preservation of cultures.

Brazil is par excellence a multicultural country. It is common in the riverside population of the Amazon River for fathers to sexually initiate the youngest daughter and then attributing the pregnancy to the pink dolphin from the river, known as boto. Abortion is indicated in these circumstances both to ensure the health of the pregnant minor - principle of beneficence as to prevent the birth of babies with congenital malformations - principle of nonmaleficence.

Some Brazilian Indian tribes practice eugenics against children born with physical or mental defects children whose fathers didn't assume them as well as one of the twins. The Indian infanticide generates controversy. It is important that this practices are understood under an anthropological perspective on how indigenous people understand life. However the autonomy of the tribe and parents should be restricted by the principle of beneficence protecting the right to life of the child. Anyway

it is not advisable that the Federal Government interferes in an arbitrary way but it must have an awareness of the harmful effects of the practice for parents who are forced to kill their own son or daughter and go through a great emotional and psychological conflict.

Given the cultural diversity that exists in the country, it is important that the study of these issues involving bioethics be done in order to understand the nuances of each ethnic group, respecting the culture of each one of them.

Finally considering human dignity, intercultural dialogue is the most suitable alternative to protect the unborn child and infant and at the same time to ensure respect for cultural identity. For this the government should implement public policies that promote the right to difference valuing the culture of other peoples with the effective participation of those who comprise the society.

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