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Presentation

This publication focuses on providing scientific-based reflections on advancements in modern doctrinal perspectives, essential for understanding the current landscape in areas such as human rights, public policies, and conflict resolution methods. Unlike traditional approaches that adhere to the dualism of the concrete versus the ideal, this work broadens the scope through a scientific and interdisciplinary lens, focusing on various visions to tackle and solve social challenges in the context of emerging circumstances.

The work, a collective effort, is structured around three thematic pillars: human rights, public policies, and conflict resolution methods. Each of these pillars comprises three chapters, resulting from the collaborative work of researchers from institutions such as Universidad Autónoma de Nuevo León, Universidad de la Costa, Universidad Simón Bolívar, Universidad Sergio Arboleda, Universidad Rey Juan Carlos, and Universidad Camilo José Cela, among other esteemed academic entities.

The first thematic pillar pertains to human rights. Within the intricate world of justice and fairness, the first thematic pillar of this book sheds light on one of our society's fundamental pillars: Human Rights. In times when global challenges constantly threaten human dignity and freedom, it is imperative to have a clear and deep understanding of what it truly means to advocate and uphold these rights. The approach taken in this segment is both groundbreaking and enlightening, challenging traditional perceptions and prompting us to question the very foundations upon which our justice systems are built. Delving into these pages, readers will embark on a journey that transcends borders, cultures, and legal systems, exploring how Human Rights are expressed, interpreted, and most crucially, how they can be safeguarded and championed in the 21st century.

The second thematic pillar discusses public policies. The second thematic pillar delves into the captivating world of Public Policies. In an age where change is the only constant, it is vital that our governmental strategies and decisions are agile, adaptive, and, most importantly, geared towards the common good. Public policies are not mere guidelines; they are powerful tools that shape nations' destinies and their citizens' futures. Throughout these pages, the intricacies of formulating, implementing, and evaluating policies aiming not only to address but to anticipate the challenges we face as a society are unveiled. From an in-depth analysis of theoretical frameworks to the exploration of current practical cases, this segment offers a comprehensive view of how today's decisions can have lasting repercussions for future generations.

The third thematic pillar of the book covers dispute resolution mechanisms. The third thematic pillar transports us to the fascinating, often intricate universe of dispute resolution mechanisms. In a interconnected world, where differences can arise as swiftly as ideas spread, it is crucial to have effective tools that facilitate peaceful conflict resolution and promote social cohesion. This book segment unravels the mechanisms, both traditional and innovative, aiming to bridge gaps between conflicting parties and restore balance in interpersonal and institutional relationships. From mediation and conciliation to more contemporary approaches based on technology and virtuality, multiple paths leading to harmony are explored.

The chapters of this book testify to the enriching contributions of international authors in vital fields such as Human Rights, Public Policies, and Conflict Resolution Methods. Each study and observation reflected in these pages represents a valuable legacy to humanism and law. Collaborating with such passionate and dedicated social science professionals has been an honor. This work is more than a book; it's a window into the forefront of global thought. A intellectual journey you won't want to end!

Milton Arrieta-López

PART I.

HUMAN RIGHTS

Chapter 1

Planetary Republics. Integration of Latin America. Cosmopolitanism and Peace as a Human Right

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Abstract

Both cosmopolitan thought and pacifism originate in ancient Greece and since the baroque century have been articulated with a perspective of international peace and the union of peoples in a world impacted by large-scale armed conflicts. This chapter aims to analyze from the cosmopolitan vision of peace in the international framework to the consolidation of a concept of positive peace as the human right to peace. A descriptive methodology from the qualitative paradigm has been used with a documentary and bibliographic approach. The importance of the study lies in the validity of the impact of peace from the cosmopolitan perspective according to the analysis of the processes referenced. It is mainly concluded that although the current transnational era is driven by market globalization and information and communication technologies, the notion of an open global village implies the deepening of the idea of cosmopolis so that the happy and peaceful coexistence among human beings can be realized.

Keywords: cosmopolis, Cosmopolitanism, Universal Citizenship, Right to Peace, Perpetual Peace.

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Introduction

The concept of cosmopolis had its origins in ancient Greece, a term composed of the word's cosmos, which could be translated into English as planet, universe or world, and the word polis, which was the name given to the Greek city-states. The birth of the concept of cosmopolitanism is usually credited to the philosopher Diogenes of Sinope also known as Diogenes the Cynic for having been the greatest representative of the Cynic school for which there was a natural interrelation between happiness and a perspective of life that was simple and consonant with nature (Arrieta-López, 2023).

The first known use of the concept appears in the writings of Diogenes Laertius who relates in his text Lives, Opinions, and Sentences of the Most Illustrious Philosophers that when Diogenes of Sinope was asked where he was from, he replied "I am a cosmopolitan" to say that he felt that his home was the world. The idea of Cosmopolis was developed by both the Greek and Roman Stoic schools into a universalist ethical idea, Stoic thought is based on an idea of universal equality that transcends all frontiers. Aristotle also influenced Stoic thought from his vision of man as a social being beyond the city-states, man related to all mankind, the logos available to all.

The concept of cosmopolitanism gained strength during the Enlightenment and was introduced in the different European languages that included the terms world citizen, weltbürger, citoyen du monde, världsmedborgare among others. The Enlightenment intellectuals were generally quite familiar with Greek thought, and even more so with the Roman Stoics. Moreover, as the Age of Enlightenment progressed, the idea of faith in the improvement of the human race based on reason and knowledge was accentuated, and the religious faith of the past gave way to another type of faith, one that was based on the human being's own capacity to educate himself in order to dispel the obscurities of superstition, oppression and ignorance; Kant made a short dissertation on this new type of faith when answering the question "What is enlightenment? He stated that "Enlightenment is the liberation of man from his guilty incapacity. Incapacity means the impossibility of making use of his intelligence without the guidance of another" (Kant, 1981, p. 25). As can be seen, enlightenment is emancipation. Later Kant explained that for this emancipation "only one thing is required, freedom; and the most innocent of all those that bear that name, namely: freedom to make full public use of reason" (Kant, 1981, p. 27).

A characteristic feature of the Enlightenment was undoubtedly the public and universalist reasoning. The eighteenth century was prolific in planetary utopias (Mattelart, 1999; Michilini, 2020). Nicolas de Condorcet proposed the Universal Republic of Sciences, according to which it is only possible to exercise planetary citizenship if the citizen is enlightened in science and art.

For his part, Adam Smith proposed the Universal Republic of Commerce, in which capital has a universal character; Louis Sébastien Mercier also proposed the utopia of the Universal Republic of the Gazette, which he developed in his work The Year 2440, in a futuristic Paris, matured by its constant revolutions. All these utopias were "founded on eternal and universal peace, and communication without frontiers" (Beaurepaire, 2017, p. 19).

Regarding peace, among the Greek thinkers of antiquity, one of the leading advocates of peace among nations was the philosopher and mathematician Pythagoras. Although best known for his contributions to the mathematical realm, Pythagoras also had a deep interest in ethics and politics.

According to historical accounts, Pythagoras advocated peace and harmony at the individual and societal levels. He promoted the idea that peace was essential for human flourishing and the establishment of just and equitable societies. He believed in the importance of moderation, nonviolence, and peaceful coexistence.

While Pythagoras was not exclusively a political philosopher, his teachings and ethical principles laid the foundation for the pursuit of peace and justice in society. Although other Greek thinkers were also concerned with peace, such as Socrates and Epicurus, Pythagoras stands out for his emphasis on harmony and concord as fundamental pillars for a fulfilling life and a prosperous society.

Although Pythagoras and Diogenes of Sinope had different ideas and approaches, a relationship can be established between their thoughts in relation to peace and the idea of Cosmopolis.

Pythagoras advocated peace and harmony at both the individual and societal levels. His focus was on cultivating inner peace and promoting peaceful coexistence in society. He considered peace essential for human flourishing and the establishment of just societies.

On the other hand, Diogenes of Sinope was known for the idea that all human beings are citizens of the world, and that loyalty and identity should extend beyond political and national boundaries. Diogenes believed

in equality and universal brotherhood, promoting a broader view of humanity, and fostering the idea that everyone should live in harmony regardless of origin or nationality.

The relationship that can be established between the two thinkers is that both Pythagoras and Diogenes sought peace and harmony on different levels. While Pythagoras focused on individual and social peace, Diogenes extended this ideal to the universal realm, advocating peace transcending political and national divisions.

Both philosophers shared the view that peace was a fundamental value for humanity, and although their approaches differed, their ideas complemented each other in the search for peaceful and harmonious coexistence in the world.

The idea of perpetual peace in a world with global cohesion and happiness stems from the need to materialize deep social reforms founded on humanistic ideals (Beaurepaire, 2017; Prono, 2020; Francis-Oliviero et al., 2021). Perpetual and universal peace remains today a utopia that seems unattainable, however, utopias such as the republic, human rights, democracy, and social rights were materialized by those who dared to challenge the status quo.

The construction of world citizenship exercised in perpetual peace and from the perspective of universal happiness should not be based on a process of globalization of markets, nor on the impact of communications, transportation, and information technologies and their most manifest consequences: the internet and social networks, but on the history of humanity, a history built by virtue of a process of permanent secularization that has lasted a little more than 2,500 years. 500 years, which has implied a more rational humanity and less given to superstition (Arrieta-López, 2019 & Arrieta, 2018).

The process of secularization may have originated when Thales of Miletus dared to challenge Greek religion and began the philosophical tradition that persists to this day. This process of secularization seems not to stop despite the immense obstacles it has had to overcome throughout history; it has survived and caused most of the progressive changes that humanity has experienced, the historical and philosophical discourse that underlies the conception of peace as a right is a clear example of the processes derived from secularization.

The discussion and results of our research will be elaborated below based on the emergence of the idea of peace from the perspective of cosmopolitanism.

Methodology

The qualitative paradigm, the descriptive approach, and the bibliographic documentary cut allowed the method to facilitate the research, recovery, study, and examination of printed, audiovisual, or electronic data; to expand and build more knowledge from the critical analysis.

By the recommendations of Bechara (2018) for the search for information, three selection criteria were applied: relevance, according to the scope of the proposed objectives; completeness, in the review of the available sources; and timeliness, in the latest studies, advances and findings in a research perspective to define the categories of analysis related to the idea of cosmopolis and pacifism as the foundation of the human right to peace in the framework of planetary happiness.

Discussion-Results

The idea of cosmopolis as the foundation of peace as a right within the framework of planetary citizenship is described based on the contribution of specific authors whose particularity lies in defense of a relationship of progress between peace, the union of peoples, and social development from a universalist perspective.

Emeric Cruce expressed his cosmopolitan ideas in the Baroque century, in which he called for a compact, more just, and peaceful world order; later, from the first Enlightenment, Abbé Saint Pierre defended the concept of a Europe at peace as a whole and with all. Andrew Michael Ramsay promoted a cosmopolitan idea of the world among his peers in other closed cultural spaces that opened during the Enlightenment. Finally, German philosophers Immanuel Kant and Karl Krause outlined in greater detail the outline of a cosmopolitan world order, capable of everlasting peace and happiness. The following describes the results of universal peace from cosmopolitanism and planetary citizenship in the context of the Renaissance, the Enlightenment, and the contemporary era of history.

Emeric Cruce and his cosmopolitan vision of world peace.

Although the concept of cosmopolis spread in the Enlightenment in the different European languages, in the second decade of the Baroque century, in 1623, the French author Emeric Cruce published a manuscript entitled Nouveau Cynée, which has been considered a pioneering work on international relations that advocated the construction of an international entity and global and legal order composed of representatives of the countries capable of maintaining world peace (Sibert, 1949; Villaverde, 2017). Cruce's cosmopolitan vision is observed in the following quote:

> What a pleasure it would be to see men go from one part to another freely and communicate together without any scruple of country, ceremonies, or other such impediments as if the earth were, as it should be, a common city for all (Balch, 1909, p. 66).

Cruce's words should be understood within the framework of his intentions, which were both the establishment of universal peace and the possibility of free trade among peoples (De La Reza, 2015). Cruce was a true visionary for his time because he glimpsed the case of an international order that could surpass the sovereignty of his time's territorial and political entities.

The international entity proposed by Cruce was to have an assembly as a deliberative and decision-making governing body whose functioning would be permanent, which should have jurisdiction and competence to settle disputes between peoples peacefully; however, if a nation failed to fulfill its obligations, the assembly would have the power to coerce it by force of arms until order was restored; 296 years later the echoes of Cruce would resound with the creation of the League of Nations through the Treaty of Versailles whose proposal was based on peace, world happiness and the construction of fraternal international relations among peoples after the end of the First World War.

The idea of perpetual peace in Europe

A concrete idea that conceived the utopias of planetary republics and perpetual peace can be found in the proposal of Charles Irénée Castel de Saint-Pierre at the dawn of the Age of Enlightenment, in fact in 1713, the main purpose of the manuscript called Perpetual Peace was to propose the construction of a transnational republic inspired by the German principalities in the context of the Holy Empire (Garzón, 1991).

In his text Saint Pierre defended the need to implement a more equitable tax system in which citizens would contribute according to their wealth, he also reflected on the need to build a public education system with free access for men and women under equal conditions.

Saint-Pierre also proposed in his Project of perpetual peace in Europe, the establishment of an international court of justice so that international conflicts could be solved in a harmonious and peaceful way. However, Saint-Pierre is not usually valued as a philosopher representing the philosophical currents of the Enlightenment, but rather as a utopian writer who saw the need to materialize profound political and social reforms, based on cosmopolitan ideals, without losing the perspective of the achievement of perpetual peace. Sanit-Perre was persecuted for his ideas, after the publication of Discours sur la Polysynodie in 1718 he was expelled from the French Academy, which shows the strength of his convictions against the status quo.

> ...the Abbé de Saint-Pierre shows a deep concern for the problem of war and the ways of peace: "He constantly insisted–Voltaire observes–on the project of perpetual peace, and of a sort of Parliament of Europe, which he called the diète europaine. At the beginning of the eighteenth century, faced with the desolate panorama of wars in Europe, he proposed to the great century a project of peace that he describes as "perpetual" (pérpetuelle)... (Bello, 2015, p. 122).

Although Abbé Saint-Pierre's notion of perpetual peace refers exclusively to Europe as a continent, it greatly influenced Andrew Michael Ramsay's Planetary Republic since this author expounded the idea of a global village in peace. Saint-Pierre and Ramsay knew each other very closely since

the creation of the Parisian club l'Entresol[2], in which they would share ideas with enlightened people such as Claude-Adrien Helvétius and Montesquieu (Childs, 2000).

Ramsay's cosmopolitan speeches

Although the cosmopolitan utopia implied by the Planetary Republic had been raised by Emeric Cruce in France 113 years earlier, the two speeches delivered by Andrew Michael Ramsay in 1736 and 1737 would give this cosmopolitan idea to other contexts. Within the Saint-Thomas Lodge No. 1[3] in Paris, Ramsay delivered the first speech, this lodge had been founded in 1725 by Irish and English Catholic supporters of King James II, who had been dethroned by William III of Orange, and the following year from the Grand Oratory of the Grand Lodge of France, Ramsay proposed as a Masonic metaphor the building of a Universal Republic capable of materializing global peace (Arrieta-López, 2016).

Ramsay's cosmopolitan proposal in times of absolute monarchy was sufficiently progressive, considering that international war conflicts were usually settled by war, while slavery and exploitation were tools of wealth.

In Ramsay's words, the following cosmopolitan idea of global union and happiness is set forth:

> The whole world is one great Republic in which every nation is a family, and every individual is a child. Gentlemen, our society was established to revive and propagate the ancient maxims taken from the nature of the human being. We wish to bring together all men of sublime taste and agreeable humor through the love of the fine arts, where ambition becomes a virtue, and the feeling of benevolence for the brotherhood is the same as that for the whole human race, where all nations can obtain solid knowledge and where the subjects of all kingdoms can cooperate without jealousy, live without discord, and love each other (Négrier, 1995, p. 397).

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2   The Entresol Club was a center for meeting and discussion of social, economic, and political issues founded in 1720 in Paris, France.

3   Saint-Thomas Lodge No. 1 was named after Thomas Beckett, also known as Thomas Beckett, Archbishop of Canterbury. Beckett was assassinated in 1170. The number 1 accompanying the lodge's name signifies it was the pioneer speculative lodge in Continental Europe. In 1728, together with other Masonic lodges, the Grand Lodge of France was founded, whose name was changed to Grand Orient of France in 1773.

It is possible to observe a universalist thought of a liberal, fraternal, and humanist nature that takes precedence over the society of the time, which was composed of the three states of the ancien régime.

Kantian cosmopolitan perpetual peace

Based on the perpetual peace of Saint-Pierre and the cosmopolitan landscape that transcended the Enlightenment in 1795, the idealist philosopher Immanuel Kant proposed the creation of a new planetary order capable of materializing peace.

Kant, a political thinker, considered that to promote perpetual peace, it was indispensable to advocate supranational and integration of peoples (Brito Filho & Santa Brígida, 2021). It should be added that Kant based his political proposal on the analysis of the American experience, the United States had been formed as a federal and supranational entity, and the Constitution of 1787 left out war as a possibility of settling conflicts between the states of the union.

The Kantian assumption attempts to answer the following question: How would it be possible to build everlasting peace in the world? It is worth expressing in this section that according to Kant, peace is not natural for a man who is in a "state of nature"; what is natural is discord; however, Kant states that through a social contract called "original contract", man can establish the foundations of perpetual peace, the man then emancipates himself from his "state of nature". Such a contract comes from reason and provides a material reality based on the consent of all parties bound by the social contract.

> Shortly after the peace of Basel, Kant proposed a league of the nations of Europe, represented by a permanent congress; but the German philosopher established as the foundation of perpetual peace, that the constitution of each state should be republican: he wanted a form of government in which each citizen would concur through his representatives in the formation of the laws, to decide whether or not war should be made. Two years later, in his Metaphysics of Jurisprudence, he again insisted on the same ideas. "Perpetual peace," he says, "which must be considered as the ultimate consequence of international law, may be believed in a certain sense impracticable; but the principles which must conspire to that end, forming between the various states ever closer alliances, are

certainly not.... A congress, a league whose object would be to practice the maxims of true public law, would conclude disagreements between nations, as the courts conclude civil suits, without the necessity of resorting to war (Picón, 1852, parr 16).

For Kant, a kind of World Republic of federal nature should be established based on the consensus of the international nation so that everlasting peace could be established and maintained; for this to be possible, a Permanent Congress of States formed by a league of Nation-States should also be established. However, from the categorical imperative perspective, Kant avoids endowing his federal proposal with coercive powers as political and juridical means of removing inconveniences or obstacles that prevent the correct functioning of the Universal Republic (Piulats, 1997).

Kantian perpetual peace must be understood from the concept of the categorical imperative as a formula of universal law and of the peaceful and supranational union of peoples, in Kant's own words "...every state, even the smallest, can expect its security and its right, not from its own power or its own juridical decision, but only from that great federation (Foedus Amphictyonum), from a universal power and from the decision according to laws of the united will" (Kant, 1985, p. 53).

Krause's Cosmopolitan Ideal for a Peaceful Humanity

The German philosopher Karl Christian Friedrich Krause, a contemporary of Hegel, Fichte, and Schelling, transcended in Spain and Latin America through the development of the *Institución Libre de Enseñanza*, which established a pedagogical model based on academic freedom and indoctrination from a vision that reconciled idealism with materialism (De Yzaguirre, 2002; Ureña, 1991). However, Krause was a political thinker who followed the Kantian discourse of perpetual peace.

Through the manuscript published in 1811 and entitled: An Ideal for Humanity, a text preferably for Freemasons, Krause would express his philosophical and political thought (UNED, 2018). In this essay, Krause, motivated by the Kantian argument of an international order that can concretize peace, through his publication An Ideal for Humanity, exposes his humanist

idea of evolution, according to which the human being, to the extent that he develops, can access better states of consciousness and rationality. For Krause, some institutions are limited because they do not reach the globality, operating restrictedly in the social and internal environment of the human being and by the inability to meet the needs of people; referring to the Church and the State, however, he considers as universal institutions the family and the shared values that human beings have, through these universal institutions the moral and material evolution is forged.

Krause, by the restricted operability of the State and the Church, proposes what he called the Alliance of Humanity, which consists of the following:

> ...in the union of all men and States by forming an alliance of countries and associations in such a way that this alliance would not put an end to the cultural and individual differences of the nations and persons that constituted it. More than metaphysics, the latter will be the area of Krausian philosophy that will arouse the most extraordinary enthusiasm and for which it will be embraced by philosophers and jurists to design and reform the social organization of their respective countries. And for this very reason, moreover, the Krausists will pay attention to education as the fundamental way to carry it out, preparing the new generations for dialogue and peace (Orden, 1997, p. 162).

Krause, following the discourse of the Platanary Republics of Cruce, Saint-Pierre, Ramsay, and Kant, proposes the creation of an international body composed of five geo-regional federative entities that would be Europe, America, Africa, Asia, and Australia; this global body should be able to maintain its political and legal organization, and also be able to avoid justice by its hand, which would generate a step forward in the evolution towards better states of progress and universal peace (Sonenscher, 2020; Demuth, 2021).

It can be observed in the Krausist proposal of the Alliance of Humanity a cosmopolitan vision of political and juridical nature quite finished since, unlike Kant, Krause manages to endow his supranational proposal of States with a coercive force capable of removing the obstacles that arise from the judicial, executive, and legislative spheres.

In the following, the idea of cosmopolis is presented in national and international referents; in this way, the materialization of cosmopolitan thought is interpreted in processes that entail the relationship between the union of peoples, peace, and social progress.

Peace in the federal model United States of America

As a political thinker, Kant envisioned the preponderance of both supranational and the integration of peoples as characteristics of his perpetual peace. However, the above argument did not arise from his mere political-philosophical speculation but from his observations on the American experience since the federal and supranational conformation instituted in the United States through its Political Constitution of 1787 denied the possibility of war as the traditional form of conflict resolution between States.

Kant considered that perpetual peace could be guaranteed using a superstructure capable of integrating independent States organized through a deliberative body in which all States were represented.

The supranational union of the United States of America would be tested sixty-six years after the Kantian perpetual peace by the outbreak of the American Civil War between 1861 and 1865 due to a historical conflict over slavery.

The states of Mississippi, South Carolina, Alabama, Florida, Louisiana, Texas, and Georgia proclaimed the birth of a new supranational state that they called the Confederate States of America, which defended the institution of slavery based on the dogma of the supremacy of the white race (Stephens, 1862). However, the States of the Union, loyal to the Political Constitution of 1787 under the government of Abraham Lincoln, achieved victory after the surrender of the Confederate army on April 9, 1865 (McPherson, 1988).

The federalist model of the United States of America, after having solidified internal peace, was strengthened with the entry into the Union of the states of Nebraska, Colorado, North Dakota, South Dakota, Montana, Washington, Idaho, Wyoming, Utah, Oklahoma, New Mexico, Arizona,

Alaska, and Hawaii, consolidating into 50 states and a federal district, which has served to maintain its position as the most significant geopolitical and economic force on the planet.

According to data published by the World Bank, for the year 2021, the United States scored with a GDP of US$ 23.315.080,56, followed by China with a GDP of US$ 17.734.062,65 (Banco Mundial, 2023) so it can be stated that the union of peoples and supranational have as their own characteristic to propitiate, in addition to peace, the economic progress of nations that participate harmoniously in integrative processes.

Theodor Niemeyer, too, could not envision an organized world without perpetual peace:

> It is undeniable that the idea of public international law aimed at guaranteeing peaceful order (peace through law) exists, grows, and acts. The movement known by the name of pacifism in the second decade of the nineteenth century has developed, first in England and the United States and then throughout the civilized world, in a thousand different forms, with little apparent success at first, but inwardly spreading its seed, partly in political parties, partly with the elementary passion of the abused creature, somewhat acting as a sacred religion: this phenomenon which characterizes the international evolution in the last hundred years is the most convincing proof that in the heart of humanity, there exists this holy fire which is called the idea of perpetual peace (Niemeyer, 1930, p. 33).

Niemeyer, however, did not have time to observe how public international law under the League of Nations failed in its duty to maintain peace in an increasingly convulsive world as the geopolitical interests of the most powerful nations clashed a few days before his death, the Second World War would break out which, despite its horrors, would give way to another world order with a new promise of peace.

Peace as law in the European Union Member States

The European Union, in its political, social, cultural, and economic dimensions, is triumphant in terms of peace and social progress; it is an institution with a legal personality of political and economic nature unique in its kind, formed by 27 European nation-states and is based on the rule of

law, which implies that their actions are based on treaties or agreements, democratically and voluntarily agreed by the member states. It is conducted through a representative democracy; the member states are represented in the Council of the European Union and the European Council, while European citizens are directly represented in the European Parliament (Unión Europea, 2020).

The European Union was built in little more than half a century. Since the beginning of its construction, the continent has finally experienced a consecutive exercise of peace among its member states; from the fall of the Roman Empire until the creation of the European Coal and Steel Community, Europe had only displayed war, thus an affirmation of the relationship between peace and the union of peoples, as advocated by Cruce, Saint-Pierre, Ramsay, Kant, and Krause, can be observed.

The idea of cosmopolis is embodied in the European Union. This multi-lingual, pluricultural, and pluri-ethnic entity seeks a collective future based on the shared values that Europeans profess to each other on a planet constantly destabilized by war conflicts and geopolitical interests.

Significant political figures embraced the idea of cosmopolis from the experiences of the two world wars; these, ahead of their time, understood that through the harmonious and consensual integration of peoples, peace could be maintained and, consequently, the economic and social development of the continent.

In 1929, based on the League of Nations in its tenth assembly, the French representative Aristide Briand stated the following:

> ...During the last few years, I have devoted myself to active propaganda in favor of an idea that one would like to describe as generous, perhaps to avoid imprudent. This idea, which has been born for many years now, which has frequented the imagination of philosophers and poets, which has obtained what can be called the success of esteem, has progressed in the minds of spirits by its value. It has ended by appearing in response to a necessity. Propagandists have gathered to take it up again, to introduce it into the spirit of the nations, and I confess that I have found myself among those propagandists (...) I think that among peoples who are geographically grouped like the peoples of Europe, there must exist a sort of federal bond; these peoples must at all times have the possibility of coming into contact, of discussing their interests, of adopting common resolutions, of establishing among them a bond of solidarity, which will enable them, at the moments deemed suitable, to face se-

vere circumstances, should they arise. It is this bond that I would like to strive to establish (...) The association will affect the economic domain: the question presses the most. I believe that it can succeed. But this is undoubtedly a political point of view, a social point of view, the federal tie, without affecting the sovereignty of nations.... (Aparicio, 2016, p. 42).

In 1946, Winston Churchill at the University of Zurich proposed a cure of a cosmopolitan nature to the festering and war, in Churchill's words:

I wish to speak about the tragedy of Europe (...) Among the victors there is a Babel of voices, among the vanquished the sullen silence of despair (...) Yet all the while there is a remedy which, if it were generally and spontaneously adopted by the great majority of people in many lands, would as by a miracle transform the whole scene and would in a few years make all Europe, or the greater part of it, as free and happy as Switzerland is today. What is this sovereign remedy? It is to recreate the European fabric, or as much of it as we can, and to provide it with a structure under which it can dwell in peace, safety, and freedom. We must build a kind of United States of Europe. In this way only will hundreds of millions of toilers be able to regain the simple joys and hopes which make life worth living. The process is simple. All that is needed is the resolve of hundreds of millions of men and women to do right instead of wrong and to gain as their reward blessing instead of cursing (...) the first practical step will be to form a Council of Europe. If at first all the States of Europe are not willing or able to join a union we must nevertheless proceed to assemble and combine those who will and who can (Comisión Europea, 2020, p.1).

In 1950, Robert Schuman proposed the creation of a European Coal and Steel Community as the first stage of a European federal state.

Gentlemen, it is not a matter of empty words but of an act, bold and constructive. France acts, and the consequences of its action can be immense. We hope so. France performs for peace... and associates with Germany. Europe was born from this, a solidly united and firmly structured Europe. A Europe where the standard of living will rise thanks to the grouping of productions and the enlargement of markets which will lead to lower prices. A Europe without distinction between East and West. Europe will not be built all at once, nor as a whole; it will be made using concrete achievements, creating a de facto solidarity. The French government proposes to pool coal and steel production under a common authority in an organization open to the participation of other European

countries. The pooling of coal and steel production will immediately ensure the establishment of standard bases for economic development, the first stage of the European Federation... (Sotillo, 2009, p. 223).

The idea of cosmopolis seen in Briand, Churchill, and Schuman took shape from the realization of the European Coal and Steel Community Treaty signed in 1951 and continued to deepen through the European Economic Community Treaty signed in 1957 and the European Union Treaty of 1993.

The European Union was forged as a cosmopolitan and, therefore, a supranational institution built with the consensus of all member states, not as an empire imposed by violence and maintained by force. Europeans ceased cultivating themselves as ancestral enemies to build on their shared values for their perpetual pax perpetua.

While a full-scale war with the potential for nuclear escalation is taking place on the borders of the European Union, the Union has categorically condemned both Russia's recognition of Donetsk and Luhansk, the unprovoked and unjustified military aggression, and Belarus's participation in the war and has responded with sanctions packages to weaken the Russian economy.

It has also deployed a series of aid measures in favor of the Ukrainian nation, including the reception of refugees, humanitarian aid, as well as various financing; however, following the idea of peace as a right based on the concept of cosmopolis, in favor of world peace, the European Union must increase its diplomatic efforts regarding the use of international dispute settlement mechanisms in the interest of comprehensively resolving the war conflict, the above, by the involvement of the European Union in the conflict.

It is considered in this section that the European Union is also indirectly part of the conflict between Russia and Ukraine since of the twenty-seven countries that make up the Union, only six are not integrated into NATO; these States are Austria, Cyprus, Finland, Ireland, Malta, and Sweden. Similarly, the need for access to markets, especially energy resources, and international security are precious assets that deserve categorically preserved.

As an indirect party to the conflict but also as an affected party, the European Union must spare no effort; the Union needs to understand the interests of the different parties, including the United States as well as Russia and Ukraine, so that it can strive to reconcile them to resolve the

conflict. The very existence of NATO and the consolidation of a policy aimed at global disarmament must be the priorities for safeguarding democracies, security, and peace in Europe and the world.

From another angle, the model of indirect integration on which the 1993 Treaty on the European Union was based is far from that proposed by Schuman, Churchill, and Briand, who considered implementing a more binding model, that of a federal state based on purely European citizenship rather than a political and economic association.

Although Jean Monnet was one of the architects of the indirect integration model that gave rise to the European Union, the six founding states, Germany, Belgium, France, Italy, Luxembourg, and the Netherlands, preferred to avoid federating into a supranational state to preserve their sovereignty.

However, after what happened with Brexit, which meant the exit of the United Kingdom from the European Union, it is necessary to consider the possibility of deepening the European Union in the models proposed by Aristide Briand, Winston Churchill, and Robert Schuman so that before procedures of direct citizen participation in a given State regarding its exit from the federation, the citizens of the federation should also be consulted through these same mechanisms of direct participation (Astola, 2002; Del Prado, 2018; Hernández et al., 2013).

To preserve peace and the stability of the people and to avoid new exits of States from the European Union, it would be advisable to deepen the Union in the institution of a Federal State, as proposed by Briand in 1929, Churchill in 1946, and Schuman in 1950, in this way the popular sovereignty would reside in the people of the entire Federation, which would prevent circumstances such as Brexit that may jeopardize peace and political, economic and social stability of the European Union.

Perspectives for a Latin American Integration

During the 20th century and so far in the 21st century, efforts have been made to promote integration in Latin America, such as the following: The Latin American Free Trade Association (ALALC) created on February 18, 1960, by the Treaty of Montevideo; the Latin American and Caribbean

Economic System (SELA) instituted on October 17, 1975, by the Constitutive Agreement of Panama; the Latin American Integration Association (ALADI) constituted on August 12, 1980, by the Treaty of Montevideo; intergovernmental structures have also been developed such as the Andean Community of Nations (CAN) through the Cartagena Agreement of May 26, 1969, and the Southern Common Market (Mercosur) founded in 1991. The Bolivarian Alliance for the Peoples of Our America (ALBA) was established in 2004, the Union of South American Nations (UNASUR) came into force on March 11, 2011, and the Community of Latin American and Caribbean States (CELAC) was created on Tuesday, February 23, 2010, at the Summit of Latin American and Caribbean Unity in Playa del Carmen (Mexico).

Finally, the Pacific Alliance was established in Lima (Peru) on April 28, 2011, through the Lima Declaration, instituting a regional integration proposal formed by Chile, Colombia, Mexico, and Peru, and two other countries; until now, official candidates to become members: Costa Rica and Panama, in which Colombia has played a leading role (Alianza del Pacífico, 2011).

In the globalized world, the importance of the degrees of economic integration for the flow of goods, services, productive factors, and the harmonization of economic policies is well known; however, these goals are not achieved immediately since the member countries may opt for a particular form of integration or seek its progressive materialization.

In South America, both Mercosur and the Pacific Alliance were emerging as powerful mechanisms for regional economic integration based on open regionalism; however, although Mercosur was established before the Pacific Alliance through the Treaty of Asunción of June 26, 1991, it entered a post-hegemonic phase; characterized by a return to politics and less attention to the economy, opposition to neoliberalism and the hegemony of the United States, distrust in markets, increased state interventionism and growing attention to social issues such as poverty, inequality and inclusion (Martínez-Castillo, 2016).

Regardless of Martínez-Castillo (2016), the decline of Mercosur was mainly due to the closure of the member countries to new economic integrations in the continent.

However, in the framework of the XIII Presidential Summit of the Pacific Alliance, the presidents of this bloc (Chile, Colombia, Mexico, and Peru) and the presidents of Uruguay and Brazil, the Secretary of Foreign Affairs

of Argentina, and the Vice Minister of Foreign Affairs of Paraguay, signed a Joint Declaration, which aims to strengthen trade, economic and social ties between Mercosur and the Pacific Alliance.

Mercosur's interest in the Pacific Alliance (PA) could be because the Alliance represents a significant potential market. In 2022, the PA reached a combined GDP of US$ 2,318 billion, representing 36.5% of Latin America and the Caribbean (LATAMC) GDP and 2.3% of the world economy. Regarding market size, the combined population of the four PA countries is 235.8 million. It represents 3.1% of the world's population, with an average per capita GDP of US$18,121 (at purchasing power parity–PPP).

It should be noted that the PA is the eighth-largest economic and exporting power in the world. Consequently, the Pacific Alliance, born under the pretense of achieving a common market, has considerable potential as an option for regional integration.

According to the Macro Agreement of the Pacific Alliance, the member States intend to build a progressive integration mechanism for the circulation of goods, services, capital, and people, which they consider necessary for the implementation of specific essential requirements, which are discriminated below:

a. The validity of the Rule of Law, Democracy, and the respective constitutional orders.

b. The separation of the powers of the State; and

c. The protection, promotion, respect, and guarantee of human rights and fundamental freedoms. (Alianza del Pacifico, 2012).

Consequently, the Framework Agreement, in its article 3º, developed the objectives of the Alliance as follows:

a. To build, in a participatory and consensual manner, an area of deep integration to progressively advance toward the free circulation of goods, services, capital, and people.

b. To promote more significant growth, development, and competitiveness of the economies of the Parties, to achieve greater well-being, overcoming socioeconomic inequality and social inclusion of its inhabitants; and

c. To become a platform for political articulation, economic and trade integration, and projection to the world, with particular emphasis on the Asia Pacific. (Alianza del Pacífico, 2012).

The profile presented by the Pacific Alliance becomes seductive not only for States of the region but also for States of all continents. Consequently, this treaty can promote systemic integrations that go beyond mere trade integration, aiming at an economic and monetary union, as happened with the European Economic Community and its four freedoms: goods, services, people, and capital: goods, services, people and capital, therefore, it is possible to consider that the Pacific Alliance in its maturity can generate forms of supranational integration that transcend towards peace and social progress in the region. (Arrieta-López, 2020).

On May 30, 2023, the President of Brazil, Luiz Inácio Lula da Silva, gave a speech proposing the creation of a common currency for Mercosur countries to boost regional cooperation and international trade. He did so during a meeting with South American heads of state in Brasilia.

Lula da Silva is the leader who stands out in the continent for this type of proposal; so far, he has presented the need for economic integration in Mercosur, a trade bloc made up of Argentina, Brazil, Paraguay, and Uruguay; however, Lula da Silva gave his economic integration speech at a meeting attended by 11 South American heads of state, including countries that are not part of Mercosur.

In his opening speech, Lula proposed "strengthening the South American identity in monetary policy, through better compensation mechanisms and creating a shared transaction unit for trade" rather than relying on extra-regional currencies.

Lula also argued that regional development banks such as the Andean Development Corporation (CAF), the Bank of the South, and the Brazilian development bank BNDES should do more to finance the region's social and economic development.

A Latin American Economic Community as the basis for a Latin American Union of Nations or a Latin American Federation of States is possible only if, at some point in history, the Latin nations of the continent manage to put aside ideological trifles and petty interests and can at least agree on the fundamentals to progress and move the region forward.

The process of building the European Union was created as an economic and then political association since the six initial Member States opted to preserve their sovereignty and therefore preferred the indirect

integration model proposed by Jean Monnet, which favored economic integration based on common European economic interests, to achieve political unity later, today embodied in the EU.

This contrasts the model proposed by Aristide Briand and Winston Churchill based on constructing a Federal State of Law composed of European States that would create a European nation.

Since the ochlocratic events that triggered the exit of the United Kingdom from the European Union (Brexit), it is observed that the indirect integration of sovereign countries is not enough to maintain the political and social stability of the community, on which Astola Madariaga explains the following:

> Until now, the existing legal link between the European Union and the State, taking the Spanish State as an example, has been based on the consent given by the Spanish people, in whom sovereignty resides (as stated in Article 1.2 of the Constitution) so that the powers derived from the Constitution are developed, instead of by the Spanish authorities (of the central State, the Autonomous Communities or the local entities), by the international bodies (specifically, by those of the European Union) (Article 93 of the constitutional text). Until now, "formally", sovereignty has not been shared; it resides exclusively with the people of each Member State, who continue to have the last word. The only thing that has been shared with the other Member States has been the development of the competencies derived from the Constitution." "...in the event that the European Union were to become a Federation, sovereignty would reside not in each people of the States but in the people of the European Union itself (the people of the peoples) and to leave the Federation it would be necessary to obtain the consent of that same people, in such a case, the decision could be taken not by the governments of the Member States, but by the peoples (2002).

On the other hand, regarding the federalist model, it is worth considering that since July 4, 1776, the United States of America has managed to solidify itself as a federal republic, with the admission of the State of Alaska on January 3, 1959, and the State of Hawaii on August 21, 1959; it has completed 50 States and a federal district, consolidating itself as the most significant geopolitical force on the planet.

It is preponderant to reflect on the possibility of establishing a Latin American Federal Republic, considering regional models in the United States of America case. Continental models, in the case of the European Union, consider the problems of the process of indirect union of nations represented by the European Union. In the case of Latin America, it is necessary to establish a Latin American Republic of Nations that can establish a Latin American nation, to avoid disintegration processes such as the European Brexit.

A model of a Latin American Federal Republic would be based on a sociological concept of Latin American nation, in the understanding that all Latin Americans share common values (Laise & Manzo-Ugas, 2021); however, the construction of a Latin American Federal Republic today is an illusion since geopolitical, ideological, economic and power interests based on strategic competition are constantly rooted in confrontations between States that lead to processes of continuous tension.

However, in the last three centuries, ideals that were once seen as utopian have materialized: religious freedom, freedom of conscience, contemporary constitutionalism, the Republic, democracy, human rights, and the European Union itself are examples of this.

The Latin American Federal Republic would be a standardized grouping of all the existing social and territorial entities in Latin America, with partial autonomy, composed of territorial divisions that are relatively self-governing and to which the denomination of member states would be attributed.

Each entity composing the Latin American Federal Republic would have its division of public powers (executive, legislative and judicial) which would provide sufficient autonomy for the consolidation of the supra-state identity; on the other hand, the division of public power would also be present in the federal administration, i.e., that which encompasses the entire Latin American nation.

The Latin American Federal Republic by virtue of its constitution as a federation would avoid the concentration of power, there are two models through which the Republic could be implemented, the first one would be based on the principle of constitutionality, which would imply the summoning of a Latin American Constituent Assembly, from which a Latin American Political Constitution would emerge as the supreme norm of

the legal system, in which the rights and obligations of the Latin American citizens would be established, as well as the structure and organization of the Latin American Republic.

The second model would be that of the International Treaty, using which the States as subjects of international law could agree to federate in the Latin American Republic, for which this treaty must define the purposes of the Republic, the fundamental rights of the citizens, the provisions on the institutions and competences of the supranational Republic, in addition to the procedural, technical and institutional issues of the original law as well as the derived law.

This is because even considering the principle of constitutionality (Political Constitution as a norm of norms), the rights in the ratified international treaties would prevail over the domestic law of the States if the theories of monism or moderate monism are observed, both in original law (treaties) and in derived law produced by competent institutions.

Peace as a Concept and a Right

Peace is usually understood as the absence of war, which is undoubtedly a simple and limited concept of peace known as negative peace, which refers to the lack of violence or conflict. It is the most traditional conception of peace and focuses on achieving peace without war, violence, or hostilities. In this sense, negative peace is about the absence of something negative, i.e., the absence of violence, oppression, or injustice.

Conversely, positive peace goes beyond the mere absence of violence and seeks to build just, equitable and sustainable societies. It focuses on creating conditions that foster equality, social justice, respect for human rights, citizen participation, peaceful conflict resolution and cooperation among individuals, communities, and nations. Positive peace seeks to promote well-being and prosperity for all and is based on the recognition and satisfaction of people's basic needs.

The holistic perspective of peace integrates both negative and positive peace and seeks a fuller and deeper understanding of peace. It recognizes that peace is a multidimensional concept that encompasses political, social, economic, cultural, and environmental aspects. From this perspective, peace is not limited to the absence of violence, but involves the promo-

tion of human dignity, equality, justice, sustainable development, cultural diversity, and harmony with nature. Holistic peace seeks the balance and integration of all these elements to achieve lasting and meaningful peace.

Peace has been declared as a right by the United Nations General Assembly through Resolution 71/189 of 2016, it is arguably the most important document that has been adopted in this regard. Like the declarations on the right of peoples to peace and on the preparation of societies for peace, no other document within the United Nations had been so precise in understanding peace as a right. In its preamble, this resolution stresses that peace is a fundamental requirement for the promotion and protection of other human rights (Parr 2) and in Article 2 invites governments to disseminate the document.

Declarations of the United Nations General Assembly are considered "soft law" instruments. Unlike international treaties, declarations of the General Assembly are not legally binding on member states. However, they are of great importance from a political and normative point of view.

General Assembly declarations are adopted by consensus or by a significant majority of states and reflect the position and political will of the international community on certain issues. Although not legally binding, these declarations usually establish principles, norms and recommendations that seek to guide the action of States and promote international standards.

The value of General Assembly declarations lies in their ability to influence state practice and international public opinion. Often, these declarations reflect global consensus on issues of human rights, peace and security, sustainable development, among other issues of relevance to the international community. In addition, they can lay the foundations for the future development of international law and be used as a reference in the interpretation of the rights and obligations of States.

Although not binding in themselves, General Assembly declarations can have a significant impact, as they can serve as a basis for the elaboration of international treaties, conventions, and other more binding legal norms. They can also generate political pressure on States to adopt concrete measures in line with the principles and recommendations set out in the declarations.

Peace as a Human Right

If peace were to be elevated to the status of a human right by the Human Rights Council and the United Nations General Assembly, it would have several significant implications for the international human rights system.

First, the elevation of peace as a human right would give formal and universal recognition of the fundamental importance of peace in promoting and protecting human rights worldwide. This would strengthen the position of peace as a central value on the global agenda.

Second, a more holistic approach to human rights would be promoted, including not only civil and political rights but also economic, social, and cultural rights. Peace would be considered essential to ensure the full realization of all human rights so far positivized.

Third, recognizing peace as a human right would place greater emphasis on preventing and peacefully resolving conflicts. States and international organizations would be responsible for taking concrete measures to avoid violence and address the underlying causes of conflict, thus promoting a culture of peace.

Fourth, peace as a human right would foster greater cooperation and collaboration among states and international organizations to address peace and security challenges. Joint actions would be promoted to prevent war, promote disarmament, protect people in conflict situations, and promote justice and reconciliation.

Fifth, states would have an obligation to protect and promote peace as a human right at home and internationally. States are expected to adopt concrete policies and measures to prevent violence, promote peaceful resolution, and ensure lasting peace.

Sixth and finally, and most importantly, the inclusion of peace as a human right would require developing and expanding the existing human rights normative framework. New international instruments, declarations, and guidelines that specifically address promoting and protecting the right to peace could emerge.

Santiago Declaration on the Human Right to Peace (2010)

The Santiago Declaration on the Human Right to Peace (AEDIDH, 2010) originated among members of civil society gathered in December on the International Congress on the Human Right to Peace in the framework of the World Social Forum on Education for Peace and forms a Draft Declaration of the United Nations on the Human Right to Peace.

In this declaration, the human right to peace is understood as a right that transcends the simple absence of violence and implies the elimination of structural and cultural violence in the same way (Villán, 2017).

In this sense, the same assumption is made if these conditions of discrimination and inequality are not transformed (which implies, practically speaking, transforming the economic model), it will be difficult to guarantee the right to peace (Arrieta-López, 2022).

Among the issues that could be important in the same, it can be established that peace is not only observed as a precondition for the enjoyment of other human rights but also because of this (paragraph 1, preamble). It also relates the right to peace to the right to life and cultural identities (paragraph 4, preamble) and takes up various elements such as shared responsibilities for the realization of this right (paragraph 20), the culture of peace (paragraph 22), the need to dispel impunity (paragraph 24) and equality as a precondition for peace (paragraph 28) (AEDIDH, 2010).

Also claimed and included in the content of the human right to peace are the right to education for peace and other human rights (art. 2), to human security and to live in a safe and healthy environment (art. 3), the right to development and a healthy and sustainable environment (art. 4), to civil disobedience and conscientious objection, but add, for example, the possibility of conscientious objection to military activities and the possibility of non-interference in armed activities not authorized by the UN, among others (art. 5), to the right to resistance against oppression by regimes that commit international crimes or other gross, massive or systematic violations of human rights (art. 6), to the right to disarmament (art. 7) and the right to the refuge (art. 9) (AEDIDH, 2010).

The human right to peace refers to the recognition that all people have the fundamental right to live in a peaceful environment free from violence. Although there is no specific international treaty that enshrines it, the right to peace is closely related to other human rights, such as the right to life, liberty, security, political participation, and an adequate standard of living.

The importance of the human right to peace lies in its recognition that peace is an essential value for the realization of all other human rights. Without peace, it is difficult to ensure the respect, protection, and promotion of the fundamental rights of individuals. Furthermore, the human right to peace implies a shared responsibility of States and the international community to prevent and resolve conflicts, promote justice, equality, and social inclusion, and build peaceful and sustainable societies.

The human right to peace is also linked to other related concepts and principles, such as conflict prevention, peaceful dispute resolution, reconciliation, transitional justice, and nonviolence. Promoting the right to peace involves addressing the underlying causes of conflict, such as poverty, inequality, discrimination, and lack of access to basic rights.

Conclusions

Globalization, driven by information and communication technologies and in the context of the deepening of human rights, feeds the romantic idea of a global, peaceful, and open village; the truth is that in the planetary utopias of the eighteenth and nineteenth centuries, the foundations of harmonious and peaceful coexistence among human beings can be found.

Regarding the link between cosmopolitanism and the desired right to peace, it must be said that the idea of cosmopolis does not imply the same sense of the international, "inter" means a relationship between nations. In contrast, cosmopolitanism comprises "something beyond" that relates to nations, a universal ethos based on the values shared by humans, which may well be enthroned with peace in a positive and holistic sense, a collective peace but also an individual one.

Peace has always been present as a driving utopia of human existence, in antiquity with the Pax Romana, characterized by the stability and tranquility experienced by the Roman Empire, which allowed it to reach its maximum splendor in terms of economic development and territorial

expansion, in the Middle Ages with the Pax Ecclesiae concerning the feudal order ruled by the Pope-Emperor. In modern times with the Pax Perpetua in Europe of the Abbe de Saint Pierre, who envisioned the possibility of a united and peaceful Europe at the beginning of the 18th century, up to the planetary utopias of Ramsay, Kant, and Krause, who understood that to achieve peace, both the union of peoples and supranational are two fundamental factors.

If peace were recognized as a human right that can be claimed, it would have several significant implications. States would have a legal obligation to guarantee and protect the right to peace for all people within their jurisdiction. This would imply that states would be responsible for preventing violence, promoting the peaceful resolution of conflicts, and taking concrete steps to create an environment conducive to peace.

The recognition of peace as a claimable right would empower individuals and communities to participate in peacebuilding actively. Citizen participation, inclusive dialogue, and participatory decision-making would be promoted as fundamental components for achieving and sustaining peace.

Claiming the right to peace would imply a preventive approach, i.e., measures would be taken to prevent conflicts and violence before they occur. States and the international community should address the root causes of conflicts, such as inequality, social exclusion, discrimination, and lack of access to fundamental rights, to avoid escalating into violence.

On the other hand, if the right to peace is violated, those affected would have the right to seek redress and justice. This could include compensation, rehabilitation, and guarantees of non-repetition for victims of violence. Accountability mechanisms for those responsible for violations of the right to peace would also be strengthened.

Recognition of the claimable right to peace would imply greater cooperation and collaboration between States and international organizations to address threats to peace at the global level. It would promote joint actions to prevent war, promote disarmament, protect people in conflict situations, and promote justice and reconciliation.

The utopias of Cruce, Saint Pierre, Ramsay, Kant, and Krause do not imply the evocation of an archetypal social order or a kind of reference to a naive and infantile earthly paradise but rather speak of the need for the materialization of profound political and social reforms based on humanist

ideals; It is striking that for these authors the major political reform consisted in a change of paradigm concerning the concept of sovereignty, so profoundly rooted during the eighteenth and nineteenth centuries; today, without a doubt, the victorious process of peace and social development that led to the forging of the European Union proves these great visionaries right.

The European Union, born out of the desire and will for peace of the States of the continent after the Second World War, embodies the idea of peace as a right based on the concept of Cosmopolis.

Today, constructing a Federation of Latin American States is considered utopian, just as the European Union was considered unreal or utopian before World War II. The European Union has demonstrated that union is possible despite differences; a Federation of Latin American States would promote greater regional integration. It would allow for closer economic cooperation, security, infrastructure, and the environment. The union of Latin American states in a federation could facilitate the development of standard policies and strategies that promote economic growth, equity, and well-being for all countries in the region.

The union of Latin American states in a federation could also contribute to strengthening peace and security in the region. A federation could establish security cooperation mechanisms, promote the prevention and resolution of internal conflicts, and facilitate a joint response to common threats such as organized crime, drug trafficking, and terrorism. The federation could also foster trust and stability among member states, reducing interregional tensions and conflicts.

Concerning social and cultural integration, it could foster exchange and cooperation in areas such as education, culture, and tourism, promoting greater understanding and appreciation of the region's diversity. A federation could address common social challenges, such as poverty, inequality, and exclusion, promoting sustainable regional human development.

Finally, joining together in a federation could enhance the economic development of Latin American states. The creation of an expanded common market, with the elimination of trade barriers and the promotion of the free movement of goods, services, and capital, could generate an increase in intra-regional trade and attract foreign investment. In addition, a federation could foster regional infrastructure projects and promote cooperation in strategic areas such as energy, transportation, and telecommunications.

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Chapter 2

Analysis of the search for unlocated or missing persons in Mexico from a human rights perspective

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Abstract

The search for missing and unlocated persons is a challenge seen from different perspectives. It is a practice that has different origins in its execution based on political or criminal motivations and that has repercussions on the development of the people and the enjoyment of human rights. The objective of this research is to identify that human rights are transgressed in the issue of people disappeared or not located both in the lack of recognition of legal personality and in the loss of life in the case of people who are found dead. The methodology used for this work is qualitative interpretative by comparing and analyzing official data in a descriptive manner. The result obtained based on the interpretation and description of the information stands out as a violation of human rights and the lack of recognition of the right to legal personality and awareness of a missing person in official databases. In conclusion, it is obvious to point out that the tools to measure problems such as missing persons need multiple Collection tools that reduce the black figure of the data and increase the recognition of people who have not been located by their relatives.

Keywords: *Search for people-Disappearance or non-localization of people-Human rights*

Introduction

The disappearance of people or their non-localization is a challenge seen from different perspectives. The one that matters for this work is the one that represents the matter of human rights and is at the same time the measurement of this problem which affects Mexico regardless of time or geographical area. The data may not match between the institutions belonging to the justice or security system with the information from the networks formed by the relatives of the disappeared people.

This practice has many origins in terms of its execution, since the disappearance of people indicates (Citroni, Hazan, & Villa, 2022) they were based on political motivations where the State through its agents committed this conduct in 2006. In the war against drugs that broke out in that six-year term, the growth continued but the main actors now do not belong to the State, because now the interests are based on both personal and criminal issues, so the perpetrators can vary in their criminal pattern.

A starting point in issues of recognition of this problem was when the Federal Government in Mexico, through the National Search Commission, created the National Registry of Data on Lost or Disappeared Persons (RNPED) and that incorporates their information into the National Registry of Missing and Unlocated Persons (RNPDNO) which can be analyzed and consulted publicly.

Regarding the data on lost and missing persons by segmentation by sex in a period from March 15, 1964, to March 30, 2023, indicate that there are 27,910 missing or unlocated women, 83,382 men, and 741 in the undetermined category. Showing a clear problem within the last 59 years where information was collected and that the official authorities received complaints to be able to constantly update this record (National Registry of Missing and Unlocated Persons, 2023). Although the problem is evident and recognized, there is a period when the data and these actions increased exponentially, it was not until 2005 that the disappearances or non-locations of people began to escalate, the records mention that from 1965 to 2004 disappearances were between 1 person per year, up to 104 people, and from 2005 to 2023 disappearances increased, so in 2019 there were about 23,335 unlocated people in that year, 14,541 men, 8,682 women and 112 undetermined (National Registry of Missing and Unlocated People, 2023).

Continuing with this topic, despite the fact this action is presented, and information is collected. It is evident that there is a problem with the issue of the so-called black figure which does not always agree with the official figures, and this is linked to human rights mainly because they are not identified or recognized as people or humans by not counting them among the victims.

Human rights must be protected by the State. It must be understood as an obligation that institutions and authorities have. Even so, it should not be limited to it because the State must prevent, punish, investigate the actors committing this criminal behavior.

In this chapter, an analysis of the complex social problem of lost or missing people will be presented from a Human Rights approach where recognition of the data of the victims becomes relevant to understand the situation in Mexico.

Discussion

If disappeared people are defined as those individuals or people of whom there is no information, or their disappearance is indicated. Confirming with reliable sources and this can derive from different causes, such as armed conflicts or violent acts, but what is the disappearance of lost or missing persons? To understand this, it is necessary to know different definitions of (General Law on Forced Disappearance of People, Disappearance Committed by Individuals, and the National System for the Search of People, 2017) and (Additional Protocol for the Search for Children and Adolescents, 2021) as they are:

Unlocated Person: person whose location is unknown and according to the information submitted to an authority. Their absence is not related to the probable commission of a crime.

Missing Person: a person whose whereabouts are unknown, and it is presumed, based on any indication, that their absence is related to the commission of a crime.

Search for lost or missing people: set of actions aimed at obtaining information on the status and whereabouts of one or more persons whose whereabouts are unknown, providing help if she/he is found captive, lost

or in danger, and in the event that she/he has lost or been deprived of her life, to locate her/his remains, recover them, identify them and return them with dignity to their relatives.

According to the above information, it is necessary to know what is the issue that must be given importance and is linked to human rights, because in the immersion of the subject, words can be confused or used as synonyms in the case of disappearance or non-location, which are different and that the difference lies in the suspicion of the commission of a criminal event.

Human rights and the disappearance or non-localization of people

One responsibility of the State is the recognition of disappeared persons with or without complaints, that is, the behaviors that are denounced are those that the Government identifies as existing or unique, but those that are not reported or denounced do not belong to the official data and therefore do not exist within its official figures.

Therefore, we must understand that rights are norms that are recognized and supported by the dignity of individuals for the simple fact of being human beings, because they are inherent to the entire population of the world and have an impact on how human beings relate to each other in each part of the world.

They have no distinction in terms of sex, gender, nationality, religion or whatever their condition or characteristic makes them unique (United Nations, 2023), (United Nations Children's Fund, 2023) and (National Commission on Human Rights, 2023).

An important characteristic of human rights lies in the principle of equality and non-discrimination which is since all people are equal by virtue of being human, for this reason there should be no discrimination. From this perspective, no one should treat an individual unfavorably and it can usually result in actions that are not always perceived but that have been caused at some time. As pointed out (National Council for the Prevention of Discrimination, 2023) some groups of humans are discriminated due to different circumstances or characteristics and it is even identified that the reasons can distinguish, exclude, and restrict their access.

Taking into account the above, there is an exclusion of unlocated or missing persons, in case there is no formal complaint or a report to the emergency system which results in a person being excluded and not searched because they have not been reported, this is even reflected when family members do not have access to information and decide to search for their family members by their own means, regardless of the risk that this entails.

Additionally, we identify the right to legal personality that has weight and relevance in the recognition of unlocated or missing persons, that is, every human has the right to it by always being an individual. According to (Ballesteros, 2003) in the convention of the Council of Europe of 4.4.97 on human rights which is established in Spain.The identity of the human being and the protection of their dignity must be guaranteed without discrimination. If this has origins from the identification of a human being from before his birth. Why not guarantee the identity of the disappeared persons? Likewise (Constitutional Court, 2022) indicates that this right refers to their existence or occupation of a place in the world. Since in State records this person is not alive or dead, therefore they are not sought without a formal complaint.

This is reinforced by the document where human rights are universally declared (Universal Declaration of Human Rights, 2023) and it was adapted and published on December 10, 1948, at the General Assembly of the United Nations in France, which contains 30 articles where an ideal of behavior and protection of human rights in the world is established.

In the case of this work, it is important to point out some articles from (Universal Declaration of Human Rights, 2023) and their relevance to the search for unlocated or missing persons, as is the case:

Article 3.- All individuals have the right to life, liberty, and personal security.

Article 6.- Every human being has the right, everywhere, to the recognition of his legal personality.

Article 8.- Every person has the right to an effective remedy before the competent national courts, which protects them against acts that violate their fundamental human rights recognized by the constitution or by law.

The articles are linked to the forced disappearance of people, especially in two important issues. One of which is that people have the right to life and liberty. At that precise moment of not locating a person or this human right

proclaimed in multiple places like Mexico disappears, it is transgressed. Mainly because there are many people who will not be found alive or will spend years without knowing anything about them. On the other hand, the recognition of a person in the world as we know it is important, but the disappearance in its essence, separates people from the world. The fact that there is no record of a formal complaint before a prosecutor's office prevents this person from being sought, therefore it seems that they do not appear in the world because they are not wanted and if there is no person looking for him, it seems that his situation will not change.

Although the (General Law on Forced Disappearance of Persons, Disappearance Committed by Individuals and the National System for the Search for Persons, 2022) mentions in its article 80 that any person can request the search for missing or unallocated persons through news, reports or complaints, in the digital world there are multiple unofficial reports which belong to objective measurement of crime, a topic that will be addressed in the following part.

Therefore, understanding what the objective dimension of crime or objective measurement of crime is is relevant. It helps to identify the relationship that exists between the fundamental rights declared in the Universal Declaration of Human Rights and the measurement of crime, and the recognition of a situation that Mexico is experiencing and continues to grow.

Measurement of the State of security in the search for lost or missing persons

Measuring the problem of crime is extremely complicated because they belong to human actions, and these belong to society itself that is changing, and its change is constant due to the interactions it has with both criminal and technological trends which decreases the possibilities of following it up. But this is transcendental in terms of the disappearance of people since forgetting or not recognizing that they disappeared or have not been located goes against human rights.

A question that arises in matters of evaluation or measurement of the state of security is: How is crime measured in the search for unlocated or missing persons? To answer this question, it is necessary to recognize

and point out what it mentions. (Sain, 2013) Exposes the existence of two dimensions linked to the identification of actions that cause disorder and problems for citizens.

In the case of the search for unallocated or missing persons, it is recognized through a national database of unallocated and missing persons which are the origin of formal complaints at the justice system in Mexico. Emphasizing the so-called objective dimension security that according to (Sain, 2013) refers to acts of violence and crimes that occurred and registered in a certain place which fits perfectly with these actions when related to criminal behavior.

On the other hand, the dimension or subjective evaluation points to the way in which the population perceives criminal problems and the performance of responding to these events by the justice system. In simple terms it refers to data not provided to security institutions, but that are collected by other types of tools.

In the case of being able to develop evaluations or measurements of crime in issues as complex as the search for unallocated or missing persons. This is sought to reduce the black figure by contributing data to the official figures of public security, (Mercado Almada, Sánchez, & Sierra, 2019), suggesting that making use of victimization surveys that are available on crimes that affect the population or the needs. This can be seen in the National Survey of Perception and Victimization of Public Safety (ENVIPE) which is published year after year in Mexico. Highlighting that more than 90% of crimes are not reported for at least the last three years of evaluation (ENVIPEa, 2022a), (ENVIPEb, 2021b) and (ENVIPEc, 2020c).

Likewise, (Arriaga, 2022) points out that the elaboration of the diagnoses in a comprehensive manner provides an approach to what the criminal problem is. This refers to the measurement of the criminal problem both with data collection of the objective dimension, the subjective one of crime and are described by (World Bank, 2003), (Candina, 2006) and (Program for Citizen Coexistence, 2015) If this is considered, it is evident that the disappearance of people will have more accurate data. Because as mentioned by (Enríquez, 2022), there is a discrepancy between what is registered by the State and the groups of relatives who search and try to locate their beings. Because the internal databases of relatives contain a greater number of disappeared persons than the databases of the National Search Commission, likewise (Meltis, Torreblanca, Lara, Nava, & Solano, 2019) points out

that the records contain many problems in relation to data collection and visualization. Due to this, constant improvements such as those suffered by the databases should be suggested on data related to public safety.

The analysis of the discrepancy between the data offered by the State and what actually happens violates human rights, because by not recognizing their existence or what happens to these people, it highlights that as long as no one looks for the people, they will not be recognized their existence and if the data is not collected in an integral way, less knowledge is had about these events.

Methodology

In order to understand the problem, it is necessary to carry out an analysis of the data that represents the problem of missing or missing persons, there are several advantages that come from administrative data or official data as a method of social investigation,but there are also problems, this is that there is usually no data offered to the public and that it is constantly updated, contrary to what the National Search Commission offers in its National Registry of Missing and Unlocated Persons:

It is possible to evaluate the percentile of violated and victimized people, circumstances in which the disappeared persons are located. Segmentation of information by sex, population affected by their nationality, according to the information collected by the justice system and the participating population.

Although, in scientific terms it belongs to quantitative data or administrative data (Candina, 2006), it points out that it has its defects. Data collection on social issues increases the way of knowing a problem if quantitative and qualitative data are combined.

Type of analysis: Descriptive

Type of data and data period covered: February-March 2023 for data collection, belonging to the National Registry of Missing and Unlocated Persons dated March 15, 1964, to March 30, 2023.

Information collection method

The information has been collected through complaints through the prosecutor's office and are recognized by the National Search Commission and is analyzed in contrast to the information offered by ENVIPE.

Table 1. *Incidence of missing and missing persons*

Lost, missing and located people			
273,668 people			
Lost and missing people		located people	
111,868 people= 40.88%		161,800 people = 59.12%	
Lost people	missing people	people found dead	people found alive
97,774 people= 87.40%	14,094 people= 12.60%	11,226 people= 6.94%	93,060 people= 6.94%

Note. Own elaboration.

Table 1 represents the information presented in the national search registry for missing and unlocated persons, distinguishing between persons located and not located, alive and dead, the same information that serves to identify, compare, and analyze with what it mentions. the ENVIPE in figure 2 especially with the existing black figure.

Table 2. *Victimization and perception of public safety in Mexico*

Victimization and perception of security in Mexico 2022		
National crime rate	Victimization	Black figure of crime
30,786 crimes for every 10,000 inhabitants.	10.8 million households were victims of an estimated total of 37.4 million households.	6.8% of the crimes were reported and 93.2% were not reported or the investigation file was not started.

Note. Own elaboration.

Discussion

The national survey of victimization and perception of public security (ENVIPE, 2022) to there is more than 90% of criminal behaviors not reported, in other words the existence of the black figure is present in all criminal events, which highlights that the national registry of missing or missing people with more than 273, 668 unlocated or missing people ,does not have complete information that can affirm that the disappeared people are being searched for and recognized as humans or citizens of a territory that it mentions (Enríquez, 2022) since the discrepancy between the State databases does not regulate what the relatives of The victim's point out that this is related to the fact that security institutions only collect information that is officially denounced or reported.

Conclusion

By virtue of what was presented in the investigation. There is an evident damage linked to the disappearance of people or their non-location and the transgression of human rights in different ways. Because in addition to preventing free development, coexistence, a large part of the events

does not locate the people and others have been located. Evidencing the existence of a chronic problem that has not been able to stop its growth for almost two decades.

Likewise, the disappeared people. In addition to being victims of this conduct that in many cases is recognized as criminal, I do not know recognize their existence because it is evident that not all criminal conducts are collected regardless of the seriousness and damage it causes which It is reflected in the data offered by the State, since there is great evidence in the existence of official data, real data and the dark figure.

The use of multiple information gathering tools to measure or identify a problem in a comprehensive way gives an approach to the situation that is being experienced. That is, having different sources of information in the search for disappeared persons increases the possibility of recognizing the personality of individuals which increases the protection of human rights and their recognition in issues as critical as this one.

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Chapter 3

Proposal for a Protection Policy Model for Specialized Restorative Justice Programs for Incarcerated Adolescents

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Abstract

The present research focuses on establishing standards that allow the development of a protection policy for specialized restorative justice programs for adolescents. For this purpose, a descriptive study was conducted on the limited access to restorative justice programs by adolescents who are serving a custodial sentence. Additionally, a diagnosis was made on the absence of a protection policy in the few restorative justice programs

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implemented in Mexico. The objectives include raising awareness about the importance of a protection policy for adolescents and proposing minimum standards to be considered for the development of a protection policy model. To achieve the stated objectives, descriptive quantitative research was conducted, using a short-response questionnaire as the measurement instrument. The researcher administered the questionnaire to the 32 federal entities that make up the Mexican Republic through the national transparency platform. Significant findings were obtained from the collected data, providing a basis for the proposed model, and making this research viable, ultimately benefiting one of the most vulnerable groups in society.

Keywords: *Restorative justice, protection policy, adolescents*

Introduction

Through this scientific research, the aim is to support restorative process facilitators in preparing for a restorative intervention with children and adolescents, in compliance with legal norms and international conventions to safeguard the best interests of the child. This includes adolescent individuals who are interned in a sanction execution center. However, those who work directly with these minors also face an exponential risk in the administration of the restorative program, due to the lack of public policies and protection measures for adolescents within the sanction execution centers for adolescents.

For the realization of this study, a quantitative method with a descriptive scope was used, employing a questionnaire as a measurement instrument. The questionnaire was designed to assess the current state of restorative justice implemented in the sanction execution centers and the lack of protection policies for adolescents in Mexico.

A proposal is made for minimum standards to be considered when developing a protection policy for adolescents participating in a restorative justice program implemented within a sanction execution center.

Discussion

Even after 34 years since the ratification of the Convention on the Rights of the Child (United Nations, 1989), the Mexican State still has much to do to ensure the respect and protection of adolescents who are serving a custodial sentence. These adolescents, due to their circumstances, remain the most vulnerable group to violence in different contexts and across all regions of the country. The efforts made by the government have been insufficient. In this regard, this chapter presents the issues that motivate this research and emphasizes the importance of adopting a protection policy for adolescents participating in a restorative justice program.

Violence and mistreatment of adolescents interned in sanction execution centers are a reality. These range from threats by public officials, unjustified punishments, taking photographs without consent, disturbance of sleep at night due to custodial staff banging on the bars, and other violations of rights (National Human Rights Commission, 2019).

Currently, there is no record of the existence of a protection policy within a specialized restorative justice program for adolescents serving a custodial sentence. It is important to highlight that every facilitator of restorative justice processes with adolescents has the obligation to safeguard the best interests of the adolescents they are working with. Therefore, it is crucial for facilitators to be aware of their limits when working with adolescent individuals to avoid compromising their integrity and to ensure their self-protection.

Specialized Restorative Justice for Incarcerated Adolescents

Mexican legislation defines it as a principle that responds to antisocial behavior by adolescents (H. Congress of the Union, 2014). It involves the use of models such as victim-offender meetings, restorative conferences, and circles, which aim to achieve a restorative outcome through an agreement that addresses the individual and collective needs and responsibilities of the participants. It also seeks to promote the integration of the victim and the adolescent individuals into the community. Restorative justice is not an alternative to incarceration (Zehr, 2007), but it can be implemented with individuals who have been sentenced. A restorative process involves a

personal, direct, and emotional encounter (Beloff, 2017). Restorative justice is not a specific practice but a set of principles that can guide the general practice of any organization or group in relation to crime (Marshall, 1999).

A restorative justice program can be understood as any program that utilizes processes involving the offender, the victim, and, where appropriate, any person or members of the affected community to actively participate in resolving issues arising from a crime, usually with the assistance of a facilitator (United Nations, 2006). A restorative justice program can be integrated into the justice system or operate independently (United Nations Office on Drugs and Crime, 2006). In the latter case, it may involve collaboration with a non-governmental organization. However, in both programs, facilitators must be duly certified and specialized in working with adolescents. Within a restorative justice program, the goal is also for the adolescent to desist from criminal behavior so that they can be properly reintegrated into their family and society upon their release (Montoya-González & Steele-Garza, Restorative justice as a pathway to desistance, 2022).

Protection of the Facilitator during Interventions with Incarcerated Adolescents

The protection of adolescent individuals is a responsibility that every facilitator must assume while engaged in conducting restorative justice processes in all relevant contexts. Facilitators should be certified and specialized in their field. It is challenging to provide complete protection to adolescent individuals; however, the risk of violence can be reduced through a protection policy. Therefore, facilitators must have a clear understanding of their behavior towards adolescents, especially in situations that threaten their integrity. To illustrate the potential risks that a facilitator may face, consider the following hypothetical case:

Case under study

Pedro is a young mediator with five years of experience in mediation in family, civil, and criminal matters. He currently works at a center for alternative dispute resolution mechanisms within the judicial setting. Pedro has struggled to receive training in specialized intervention with incarcerated

adolescents, despite repeatedly requesting support for it. The lack of budget has made it challenging for him to undergo the necessary training. Pedro does not yet have specialized certification, so he has been attending sessions with another facilitator who received their last training ten years ago. This facilitator is responsible for conducting restorative justice processes at the center for incarcerated adolescents, where around 20 teenagers are held. The detention center has inadequate facilities, cramped spaces, unbearable heat, and limited staff, making it increasingly challenging. Pedro steps in to assist the more experienced facilitator. It is evident that some adolescents are reluctant to attend the preparation sessions within the restorative justice program. Pedro has formed a friendship with one incarcerated adolescent whom he finds intelligent and pleasant. As a result, Pedro has been persistently trying to motivate the adolescent to attend the preparation sessions. Due to his insistence, the parents of the adolescent approach the administrative authority of the detention center, accusing Pedro of harassment.

If a case like the one described above were to occur, do you know how to respond? What steps should you take? Where should you turn for help? However, most importantly, how can such a case be prevented?

What is a protection policy?

It is an integrative process of decisions, actions, agreements, and instruments that explains how an institution addresses the protection of children and adolescents, their attitudes, and basic principles. This policy is mostly expressed through a written document that indicates the commitment of an organization or institution to protect the children and adolescents they work with, directly or indirectly (Keeping Children Safe, 2023). In this regard, a protection policy for a specialized restorative justice program for adolescents refers to the guidelines or protocols that instruct the facilitator to prevent or act in any situation that may compromise the integrity of the adolescent in any context. This protection policy must be documented and duly approved by the administrative authority. Furthermore, the protection policy is not only for the protection of adolescents but also for the protection of the facilitator.

A protection policy is not limited to the justice or governmental system; rather, it should be implemented by any organization operating in any field that involves working with children or adolescents. This is evident in the case of child protection standards in sports, which seek to establish a commitment to protect children from any form of violence or abuse (National Society for the Prevention of Cruelty to Children, 2022).

Why are protection policies necessary?

According to the United Nations World Report on Violence against Children (Pinheiro, 2006), children and adolescents are predominantly subjected to violence by people they trust, such as family members or individuals in their school environment. In the case of adolescents who are deprived of liberty and participate in a restorative justice program, either individually or with the involvement of victims or offenders, facilitators become part of the moral circle of concern for the adolescents. Due to the trust developed and the emotional bond that arises from restorative intervention, it is necessary for facilitators to be aware of their limits of action and not compromise the integrity of adolescents or their own. A protection policy enables them to prevent any harm resulting from the actions of the adolescent or their family members.

In Mexico, 68.8% of adolescents experienced psychological violence during their detention, and 42.6% suffered injuries (Executive Secretariat of the National System for the Comprehensive Protection of Girls, Boys, and Adolescents, 2021). This is why protection policies are necessary in all adolescent detention centers. All personnel, including police officers, custodians, public prosecutors, judges, staff at detention centers, and facilitators of restorative justice processes, must be trained and specialized in the comprehensive juvenile justice system (United Nations, 1985). In the case of facilitators, they must have specialized certification in alternative mechanisms for dispute resolution in criminal matters (Congress of the Union, 2019), as well as specialization in working with adolescents (Congress of the Union, 2016).

Background

As observed in this research, the topic of protection policies for adolescents is still relatively unknown in Mexico. However, in the United Kingdom and Switzerland, a group of aid and development agencies, in collaboration with the National Society for the Prevention of Cruelty to Children, worked on these issues, sharing experiences, knowledge, and identifying a common approach to the protection of children and adolescents. These agencies together form what is now known as the Keeping Children Safe Coalition (Keeping Children Safe, 2014).

This Coalition has developed the first organizational child protection standards, which are a crucial part of the work of any institution that can work with children and adolescents, ensuring their protection. It also ensures adequate prevention and protection for the personnel working with children and adolescents, which enhances the institutions' credibility and reputation.

The development of standards by the Coalition has helped institutions fulfill their obligation to protect children and adolescents. Furthermore, it helps make these standards a practical reality for staff, volunteers, and anyone working with these organizations or institutions.

Methodology

For the development of this research, a quantitative descriptive approach was used, as this type of study aims to specify properties and characteristics that allow describing trends in a group or population (Hernández-Sampieri & Torres, 2018). The objective was to determine how many centers for the execution of measures and sanctions for incarcerated adolescents in Mexico have restorative justice programs, and of those restorative justice programs, how many have protection policies for adolescents. To achieve this, 32 information requests were formulated and sent to the 32 federal entities of Mexico.

The requests included a measurement instrument consisting of a short-answer questionnaire with intentional sampling by criteria, which allowed for the collection and analysis of the obtained data. All the information gathered was obtained through individual requests submitted

through the national transparency platform on February 15, 2023 (Montoya-González, Report on Restorative Justice Programs and Protection Policies for Adolescents, 2023).

Discussion of Results

As a result of applying the quantitative measurement instrument, important data were obtained that describe the limited access to the human right of restorative justice for adolescents serving custodial sentences. The following are the descriptive data for each item comprising the instrument, presented through their respective graphs.

Item 1–What is the total number of inmates serving a custodial sentence?

Graph 1–Number of inmates serving a custodial sentence. Information obtained through the National Transparency Platform.

As can be seen in Graph 1, the state of Sonora has the highest number of adolescents serving a custodial sentence, while Baja California Sur, Campeche, Michoacán, and Tlaxcala have the lowest number of incarcerated adolescents. It should be noted that the state of Coahuila did not provide information regarding the total number of incarcerated adolescents.

Item 2–Does it have a specialized Restorative Justice program for incarcerated adolescents?

According to the applicable regulations throughout the territory of the Mexican Republic regarding adolescents in conflict with the penal law, Restorative Justice can be understood as a principle that seeks to respond restoratively to criminal actions. Additionally, the Supreme Court of Justice of the Nation views Restorative Justice as a human right of access to justice.

Graph 2–Specialized Restorative Justice programs for adolescents deprived of liberty in Mexico. Information obtained through the national transparency platform.

According to Graph 2, only 3 federal entities reported having a specialized Restorative Justice program for adolescents deprived of liberty. These states are Durango, Michoacán, and Oaxaca. The remaining entities stated that they do not have a specialized Restorative Justice program for adolescents deprived of liberty.

Item 3–What is the average age of adolescent inmates in the centers for the execution of sanction measures?

Graph 3–Average age of adolescent inmates in the centers for the execution of sanction measures in Mexico. Information obtained through the national transparency platform.

In Graph 3, the average age of adolescents in each state is visualized. The state with the lowest average age is Quintana Roo, with 15.5 years old, while the state with the highest average age is Baja California Sur, with 21 years old. It is important to note that individuals who have reached the age of majority and are currently detained committed their offenses while they were minors. There are eleven states, representing 34% of the Mexican territory, where the average age reaches adulthood.

Item 4–How many facilitators are certified and specialized in working with incarcerated adolescents?

It is of utmost importance that facilitators involved in restorative justice programs not only possess certification in alternative dispute resolution methods in criminal matters but also have specialization in restorative justice with incarcerated adolescents. This specialization enhances the effectiveness of the program. The information obtained in the research regarding item 4 of the measurement instrument is presented below.

Graph 4–Facilitators certified in alternative dispute resolution methods in criminal matters and specialized in working with adolescents. Information obtained through the national transparency platform.

As can be seen in Graph 4, the 3 states in Mexico that reported having a justice restoration program and also having facilitators certified in alternative dispute resolution methods in criminal matters and specialized in working with adolescents who are deprived of liberty are Durango, which has 17 facilitators for 10 incarcerated adolescents, Michoacán, which has 23 facilitators for 3 adolescents, and finally, the state of Oaxaca, which has 7

facilitators for conducting justice restoration processes with 22 incarcerated adolescents. From the analyzed information, it can be concluded that there are sufficient personnel to enhance the efficiency and effectiveness of the justice restoration program.

Item 5–Does the restorative justice program have a written policy for the protection of adolescents?

A policy for the protection of adolescents in a specialized restorative justice program refers to the guidelines or protocols that instruct facilitators on how to prevent or respond to situations that may compromise the well-being of adolescents in any aspect. This protection policy should be documented, based on protection standards, publicly accessible, and approved by the administrative authority.

Regarding the three states that responded affirmatively to having a restorative justice program and certified and specialized facilitators, they also stated that their implemented restorative justice program does not have a policy for the protection of adolescents. Based on this research, it can be affirmed that in Mexico, there is not a single specialized restorative justice program for adolescents in detention that has a policy for the protection of adolescents. This highlights the need to adopt a policy for the protection of adolescents participating in restorative justice programs.

Conclusions

After observing the absence of specialized restorative justice programs for adolescents serving custodial sentences, such as detention, it was expected that out of the 32 states in the country, there are no protection policies within the Centers for the Execution of Sanction Measures for Adolescents. As a result, it is suggested that detention centers begin by training facilitators and ensuring they acquire the necessary certification in alternative dispute resolution mechanisms in criminal matters and specialization in working with adolescents. This includes intervention during the implementation of sanction measures. In the case of entities that already have a restorative justice program, it is recommended to undergo training in the development of public policies for the protection of incarcerated adolescents.

The adoption of a protection policy based on minimum standards not only improves the effectiveness and professionalism of facilitators but also allows for a significant impact on adolescents. In this regard, the following standards are proposed:

Proposal for a Protection Policy Model

Minimum Standards for the Implementation of a Protection Policy in Juvenile Detention Centers

The implementation of a protection policy in juvenile detention centers, as part of adopting a restorative justice program, will ensure the safety of adolescent individuals and protect them from any form of mistreatment.

The standards aim to guide the steps involved in developing the protection policy. In this regard, drawing from international standards (Keeping Children Safe, 2022), the researchers propose the following:

Standards for the development of a protection policy for specialized restorative justice programs for incarcerated adolescents.

I. Policy

Standard 1: The protection policy must be documented in writing, and copies should be distributed to all individuals involved in the specialized restorative justice program for incarcerated adolescents.

Standard 2: Implement the policy through a clear guide on what to do in case the integrity of the adolescent and all individuals involved, including the facilitator, is at risk.

Standard 3: Develop harm prevention strategies for adolescents through proper assessment for the selection of facilitators involved in restorative processes and volunteers comprising the support network, as well as the dissemination of a confidential reporting mechanism.

Standard 4: The protection policy should be adapted according to the specificities of each region, customs, and traditions, while always respecting the Convention on the Rights of the Child.

Standard 5: All adolescent individuals have the same right to be protected, taking into consideration gender differences.

II.- Personal

Standard 6: Develop a written code of ethics that establishes disciplinary processes for all individuals involved in the restorative justice program.

Standard 7: Ensure that all individuals participating in the restorative justice program with adolescents, including professionals in psychology, social work, the volunteer support network, etc., are knowledgeable about effective protection measures. Their opinions should be considered, and they should be given the opportunity to provide input on how to improve the protection policy.

Standard 8: The protection policy should also extend to activities conducted during the preparation stage of the restorative justice program, such as socio-educational activities, sports, and vocational learning, which contribute to the safeguarding of adolescent individuals.

Standard 9: Provide counseling to the families of adolescent individuals, including information about the protection policy and the scope of the restorative justice program with adolescents. Additionally, support should be provided to adolescent individuals who have experienced violence.

III.- Procedure

Standard 10: A person responsible for monitoring and overseeing the proper implementation of the protection policy in the specialized restorative justice program for adolescents serving a custodial sentence should be appointed.

Standard 11: Collaborative and coordinated work with the support network consisting of volunteers should be encouraged.

IV.- Accountability

Standard 12: Carry out the collection of statistics and experiences of adolescent individuals once they have completed their participation in the restorative justice program, as well as provide follow-up support upon their release.

Standards are used in various aspects of everyday life. They help describe the fundamental actions to be performed or the skills required for a product or service to be effective and fulfill its intended purpose.

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Chapter 4

Public policies for inclusive development in Latin America

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Abstract

Latin America has always been a scenario marked by inequalities, violence, and poverty. The way in which public policies are shaped in the region must have a specialized focus on building more inclusive systems and citizenships. The problems that afflict the region are reflected with different shapes and colors, but always with the meeting point of inequality making it the main actor. This chapter analyzes local public policies to promote inclusive development in Latin America. Various theories and theoretical approaches on inequality and exclusion are addressed, as well as the importance of social inclusion in the construction of equitable societies.

Although policies to reduce poverty and inequality have been implemented, much remains to be done. Conditional cash transfer programs that have had a positive impact are mentioned, but the need to continue working on social, educational, labor, and vulnerable group inclusion is highlighted. Income inequality in the region remains high, and the unemployment rate, especially for women, remains worrisome.

Keywords: Inclusive development, public policies, inequality, poverty

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Introduction

Various authors have addressed these problems from different theoretical approaches. For example, some have analyzed the role of economic and political structures in the generation and perpetuation of inequality, such as Raúl Prebisch and Celso Furtado.Others, like Amartya Sen and Martha Nussbaum, have developed theories of poverty and exclusion based on the deprivation of fundamental rights and capabilities.

It is important to mention that the fight against exclusion, inequality, and poverty in Latin America has been the subject of numerous studies and initiatives both at the national and international levels. Organizations such as the Economic Commission for Latin America and the Caribbean (ECLAC), the World Bank, and the United Nations Development Programme (UNDP) have conducted research and proposed policies to address these issues.

Currently, social inclusion has become a fundamental objective for societies worldwide. The goal is to build communities and environments in which all individuals, regardless of their origin, gender, sexual orientation, physical ability, or any other characteristic, can fully participate and enjoy the same rights and opportunities. In this context, inclusive public policies play a crucial role in laying the foundations for the creation of more equitable and just societies.

The purpose of this text is to explore the concept of social inclusion and analyze various public policies implemented in Latin America that seek to promote the inclusion of vulnerable groups, such as women, indigenous people, and people of color. These policies focus on eliminating barriers, prejudices, and structural inequalities that obstruct the full participation of these groups in society and the workforce.

Discussion

Structural heterogeneity and inclusive development

Every theory is built upon a set of relevant variables and how they interact to explain the results intended to be analyzed, such as stylized facts or empirical patterns. In the case of the structural theory of development, the

challenge lies in explaining why certain regions or countries stay behind in terms of per capita income and this gap is accompanied by significant inequality both within the country and in comparison, to others.

Firstly, it is necessary to mention the structural violence perpetrated by Latin American states. Structural violence by the State in Latin America is a concerning phenomenon that has been the subject of debate and analysis in recent years. It refers to forms of systematic and ingrained violence that stem from state structures and policies, disproportionately affecting certain groups or sectors of the population.

Structural violence by the State can manifest in various forms, such as police repression, human rights violations, abuse of power, impunity, discrimination, and lack of access to basic services. These practices can contribute to the perpetuation of inequality, social exclusion, and the marginalization of certain groups, including indigenous peoples, ethnic minorities, Afro-descendant communities, migrants, and other vulnerable groups.

It is important to highlight the geopolitical characteristics of the region and its abundant natural resources, which make it a target for the agendas of the most developed countries in the world. This places it under the shadow of a country with hegemonic power on the same continent. In this chapter, we will address inclusive policies and their impact on development and international competitiveness from both an international and national perspective. It is essential to understand that such a complex phenomenon as inequality in Latin America cannot be explained solely through endogenous variables.

Structural heterogeneity refers to the existence of wide disparities in labor productivity levels both among different sectors of the economy and within each sector. These differences are significant enough to create a clear segmentation of the productive system and the labor market, with highly asymmetric technological and wage conditions.

Some interpretations relate heterogeneity to the concept of dualism, where a distinction is made between workers engaged in subsistence activities with low or no productivity, and workers employed in the modern sector of the economy, with qualitatively different levels of capital incorporated into the production process and, therefore, average labor productivity. However, it is recognized that structural heterogeneity goes beyond dualism as it encompasses different levels of productivity across various layers

In the report "El desarrollo inclusivo en América Latina y el Caribe: Ensayos sobre políticas de convergencia productiva para la igualdad" (2011) by the Economic Commission for Latin America and the Caribbean (ECLAC), these concepts are addressed from a regional and international perspective.

For example, to explain the differences in the level of development between countries, Prebisch (1949) emphasized in the foundational manifesto of the ECLAC the slow and unequal diffusion of technical progress at the international level as the main variable. From this disparity, two polar structures emerge: the center and the periphery, which are perpetuated endogenously over time.

Although Prebisch developed his ideas in relation to groups of countries, it is evident that they can also be applied to represent regional growth dynamics within a single country. For example, let's consider two countries or regions with similar technology and income levels but with poorly diversified economic structures and weak technical progress. These structures are reproduced with minimal adjustments over time, as described in Schumpeter's (1911) Walrasian circular flow in his classic work. At a certain point, in one of these countries (the center), an intense process of technical and structural changes begins, with the adoption of new technologies, the emergence of new sectors, and the diversification of the economic structure. This results in an increase in the productivity growth rate in the center.

Technical progress, although it may vary among sectors and some sectors may experience greater increases in productivity than others, tends to diffuse uniformly throughout the system. As a result, an economic structure is formed that is both diversified due to the large number of sectors and the high degree of division of labor, and homogeneous because productivity differences between sectors are not significant and do not tend to widen over time.

It is interesting to highlight the similarity between this description and Schumpeter's (1911) definition of economic development, which is directly related to the idea of innovation and its effects on productivity and the productive structure as new sectors emerge and others disappear due to the impact of "creative destruction." Clusters of innovations generate long cycles of growth, moving the economy away from the Walrasian circular flow. The emergence of imitators and secondary innovations ensures the continuity of the innovative momentum, and the diffusion of productivity increases throughout the economic system. Over time, the monopolistic benefits of pioneers gradually dilute due to the erosion of technological asymmetries among firms. The innovative cycle gradually reverses, and the Walrasian circular flow reasserts its dynamic of small adjustments.

It is important to note that these are just some highlighted and simplified aspects of the theory, but they help in understanding the relationship between the diffusion of technical progress, productivity, and economic structure in the context of economic development.

Therefore, structural heterogeneity in Latin America maintains restrictions such as technology, where the gaps resulting from current economic conditions do not allow for innovation and development in this regard. The Economic Commission for Latin America and the Caribbean (ECLAC) asserts in its 2011 report that the theoretical concern for heterogeneity is related to the characteristic of inequality, which is a common condition in many peripheral economies and in Latin America, one of the regions with the highest degree of inequality on the planet.

Exclusion, inequality, and poverty in Latin America

In this section, we will provide a historical review of why exclusion is generated in the region. Latin America has experienced a long history of exclusion, inequality, and poverty that has left deep marks in the region. These phenomena have their roots in complex historical processes such as colonization, economic dependence, neoliberal policies, and the lack of access to resources and opportunities for large sectors of the population.

During the colonial period, the region was subjected to a system of exploitation and domination by European colonial powers. This situation led to a social and economic structure based on inequality and exclusion, where local and foreign elites benefited from the exploitation of natural resources and local labor.

The legacy of colonialism continued to shape the socio-economic landscape of Latin America even after achieving independence. The concentration of land, wealth, and power in the hands of a few privileged groups perpetuated social and economic inequalities, leading to persistent exclusion and marginalization of large segments of the population.

In the 20th century, Latin America faced various challenges, including economic crises, political instability, and the imposition of neoliberal policies. These policies often exacerbated inequalities by promoting market-oriented reforms that favored the interests of the elite and multinational corporations, while neglecting social welfare and the needs of marginalized communities.

The lack of access to quality education, healthcare, housing, and employment opportunities further perpetuated exclusion and poverty in the region. Vulnerable groups such as indigenous peoples, Afro-descendants, women, and rural communities have been disproportionately affected by these systemic inequalities.

Efforts have been made to address these issues and promote inclusive development in Latin America. Governments, international organizations, and civil society groups have implemented policies and programs to reduce poverty, improve social inclusion, and enhance access to basic services. However, the road to achieving sustainable development and overcoming the historical legacy of exclusion and inequality remains a complex and ongoing challenge for the region.

After independence, many of these structures of inequality persisted. The concentration of land in the hands of a few, the lack of access to education, and the exclusion of large sectors of the population from economic and political benefits became prominent features of the region.

In the 20th century, neoliberal economic policies were implemented in many Latin American countries, promoting economic openness, privatization, and a reduced role of the state in the economy. These policies had mixed effects in terms of economic growth, but often exacerbated inequality and exclusion. The benefits of growth were not distributed equitably, resulting in the persistence and increase of poverty.

While some countries experienced periods of economic growth, the benefits were unevenly distributed, leading to widening income gaps and deepening social inequalities. Vulnerable groups, such as indigenous communities, rural populations, and marginalized urban inhabitants, were particularly affected by these policies, facing limited access to quality education, healthcare, and formal employment opportunities.

The social and economic exclusion perpetuated by these structural inequalities further marginalized already disadvantaged groups and hindered social mobility. The lack of social protection systems and adequate public services deepened the vulnerability of those living in poverty, exacerbating the cycle of exclusion and inequality.

In recent years, there have been efforts to address these issues and promote more inclusive development models in Latin America. Governments have implemented social programs and policies aimed at reducing poverty, expanding access to education and healthcare, and promoting social inclusion. Additionally, there has been a growing recognition of the need to tackle structural inequalities and promote more equitable and sustainable economic growth.

However, addressing the deep-rooted challenges of inequality and exclusion requires comprehensive and long-term approaches that go beyond short-term policy measures. It requires addressing not only economic disparities but also social, cultural, and political barriers that perpetuate exclusion and limit opportunities for marginalized groups.

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The concentration of land in the hands of a few elite groups remained a significant issue, leading to social and economic disparities. Limited access to education and educational inequalities further perpetuated social exclusion and obstructed social mobility for large segments of the population.

Additionally, the reduction of the state's role in the economy often resulted in the deterioration of public services, such as healthcare and education, which disproportionately affected marginalized communities. The privatization of key industries and the liberalization of trade also led to the displacement of workers and the decline of traditional sectors.

The combination of historical inequalities, neoliberal policies, and limited access to opportunities created a vicious cycle of poverty and exclusion in many Latin American countries. This cycle was reinforced by factors such as discrimination, corruption, and violence, which disproportionately impacted vulnerable populations.

In recent years, there has been a growing recognition of the need to address these issues and promote more inclusive and equitable development models in Latin America. Governments and civil society organizations have implemented social programs, poverty reduction initiatives, and efforts to improve access to education and healthcare. There has also been a push for greater social and political inclusion, with a focus on empowering marginalized communities and reducing disparities.

However, addressing the deep-rooted challenges of inequality and exclusion requires sustained and comprehensive efforts. It involves not only addressing economic disparities but also tackling social, cultural, and political barriers that perpetuate exclusion and limit opportunities for mar-

ginalized groups. It requires a holistic approach that prioritizes social justice, equal access to resources and opportunities, and the empowerment of marginalized communities to achieve long-lasting and sustainable change.

Inclusive Development in Latin America

The analysis of inequality in Latin America in the 21st century is a complex and multidimensional issue, involving economic, social, political, and historical factors. There are diverse variables involved in the processes of inclusive development in the region. Some of these variables include land distribution, lack of access to basic resources such as clean water, education, and health, gender and racial discrimination, corruption, lack of economic opportunities, and violence. Therefore, social inclusion, educational inclusion, inclusion of vulnerable groups, and labor inclusion will be analyzed for the understanding of the phenomenon.

Regarding social inclusion, it is a concept widely discussed in the academic and political sphere. According to CEPAL, social inclusion refers to ensuring equitable access to opportunities, resources, and basic services for all individuals, regardless of their ethnic origin, gender, age, disability, or socio-economic condition" (CEPAL, 2014). According to another author, it is defined as "Social inclusion involves the recognition and respect for the dignity and rights of all individuals, and the creation of opportunities for them to develop their capabilities and actively participate in society" (Nussbaum, 2011).

Policies and programs aimed at reducing poverty and inequality have been implemented, which have contributed to improving the living conditions of millions of people in Latin America. These efforts include the expansion of conditional cash transfer programs, such as the Bolsa Familia Program in Brazil and the Familias en Acción Program in Colombia, which have had a positive impact on reducing poverty and social vulnerability.

However, there is still a long way to go. According to ECLAC (2022), in 2021 the poverty rate in Latin America reached 32.3% of the total population of the region (a decrease of 0.5 percentage points compared to 2020), while the extreme poverty rate was 12.9% (0.2 percentage points lower than in 2020).

Furthermore, the projected unemployment rate for 2022 represents a setback of 22 years, affecting especially women, for whom unemployment rises from 9.5% in 2019 to 11.6% in 2022.

Now, according to the 2021 Gini index, this is how income inequality behaved in the region:

Figure 1. *Income Inequality in Latin America*
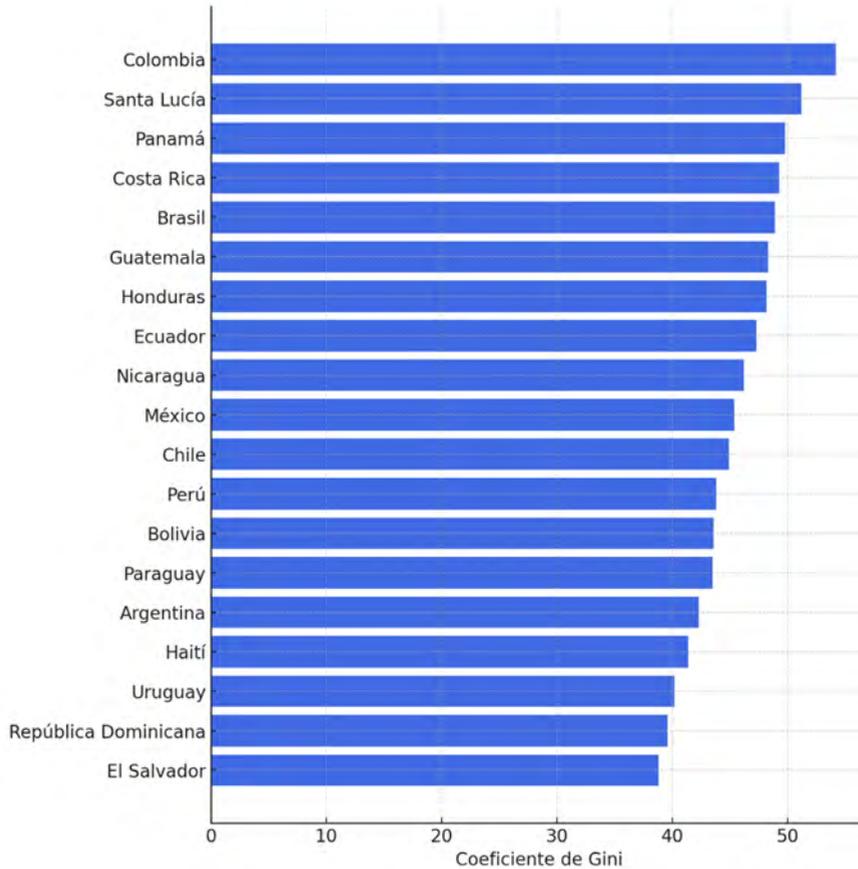
Note. *Source: Gini Index data, World Bank, 2022.*

According to data from CEPAL in 2022, approximately 201 million people (32.1% of the total population of the region) live in poverty, of which 82 million (13.1%) are in extreme poverty. This increase in the number of people in extreme poverty is due to a series of factors such as the education gap that the region has experienced because of prolonged school closures during the pandemic, in addition to the ongoing crisis that the region has been facing for years

On the other hand, there is educational inclusion. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), "Educational inclusion involves a transformation in educational systems to ensure that all students have access to, participate in, and benefit from quality education, without discrimination or exclusion" (UNESCO, 2009).

The concept of educational inclusion entails implementing policies to improve access to education at all levels. Enrollment in primary and secondary education has increased in many countries in the region, and scholarship and financial aid programs have been implemented to facilitate access to higher education for vulnerable groups, such as children from low-income backgrounds and indigenous communities. According to Ainscow (2005), educational inclusion involves transforming schools into welcoming and enriching communities where all students feel valued, respected, and supported in their learning.

In this regard, the region has suffered the effects of the pandemic in recent years, with particularly prolonged school closures in Latin America. According to data provided by UNICEF, before the pandemic, there were 16.5 million school-aged children and adolescents in Latin America who were out of school: 6.1 million were out of preschool education, 1.6 million were out of primary education, and 2.3 million were out of secondary education (UNICEF, 2022).

According to UNESCO, there are three types of obstacles to schooling: those related to the situation (life circumstances), those related to disposition (personal attitudes), and those related to the education system (structural conditions) (UNESCO, 2022). In this regard, there are some examples of inclusive education policies in the region, such as the Inclusive Education Program in Argentina, which aims to promote the inclusion of students with disabilities in regular education settings. It provides pedagogical support, resources, and curriculum adaptations to ensure the participation and learning of these students in mainstream schools (Ministry of Education of Argentina, 2022).

There is also the Escola Inclusiva Program in Brazil, which aims to guarantee the access and retention of students with disabilities in regular schools. It provides support resources such as adapted materials, assistive technology, and specialized teacher training to meet the individual needs of students (UNESCO, 2022)

Similarly, there is the "Crece Contigo" Program in Chile, which focuses on promoting inclusion from early childhood. It provides comprehensive support services to children with disabilities and their families, including access to health services, early stimulation, and educational support (Ministry of Social Development and Family, 2022).

In the same way, the inclusion of vulnerable groups will be addressed in this text, focusing on migrants and people with disabilities. Efforts have been made to promote the inclusion of historically marginalized groups, such as indigenous peoples, Afro-descendant communities, and people with disabilities. However, there are still structural disparities that are reflected in the productivity demanded by the prevailing capitalist system in the region. A person with a disability is not equally productive, or perceived as such, which excludes them from accessing services and jobs that prioritize productivity. Booth and Ainscow (2011) mention that "inclusion involves addressing and responding to the diversity of the needs of all students, removing barriers to learning and participation" (p. 6).

Furthermore, the region faces a phenomenon of forced migration, one of the most predominant exoduses in the world, driven by insecurity, violence, poverty, and a policy of impunity that seems to permeate all Latin American judicial systems. Despite the efforts of the Mexican and U.S. governments to stop migration, concrete public policies that encompass the inclusion of forced migrants have not been implemented. As Suárez-Orozco (2018) points out, "the inclusion of migrant individuals implies guaranteeing equitable access to education, promoting their active participation, and respecting their cultural diversity" (p. 127).

Finally, there is labor inclusion, which according to Eduardo Matarazzo Suplicy, a Brazilian economist and politician, "Labor inclusion is the path to social and economic equity, guaranteeing all individuals the opportunity to actively participate in the workforce and contribute to the development of society" (Suplicy, 2013). According to official sources, there is evidence supporting the existence of gaps and inequalities in the labor market in the region.

For example, regarding unemployment, according to the International Labour Organization (ILO) in its report "Labor Overview in Latin America and the Caribbean 2021," the unemployment rate in the region reached 10.5% in the year 2020, which is the highest level in two decades. This figure represents millions of people who are excluded from the labor market and face difficulties in accessing decent employment opportunities.

On the other hand, there is the issue of informal employment, which has experienced unprecedented phenomena during and after the pandemic, as more formal workers prefer informality due to the precarity and poor quality of formal jobs. Informal labor is another relevant aspect of exclusion in Latin America. According to the Economic Commission for Latin America and the Caribbean (ECLAC), approximately 54% of workers in the region are in informal jobs. These individuals lack adequate social protection, are exposed to precarious working conditions, and have limited access to fundamental labor rights.

Furthermore, the persistent gender gap also contributes to labor exclusion. Gender inequality in the workplace is evident in Latin America, as reported by the ILO. The labor force participation rate for women in the region is approximately 20% lower than that of men. Additionally, women often face greater obstacles in accessing formal employment, receiving equitable wages, and advancing in their professional careers.

Sectoral policies and inclusive policies

The analysis of inequality in Latin America in the 21st century is a complex and multidimensional issue that involves economic, social, political, and historical factors. To fully understand inclusive public policies and their operational mechanisms, it is important to have a context of the Latin American region. In recent decades, the approaches guiding the design and implementation of poverty reduction and inequality policies in the region have been characterized by a wide diversity of perspectives and debates, as well as some dichotomies.

The idea of sectoral public policies contrasts with their universality, as the focus on universality was mainly concentrated on inclusion and overlooked what the sectoral policies excluded. Sectoral policies solely focused on poverty and extreme poverty, leaving out the rest of the population. Overcoming poverty and inequality requires both selective or targeted

policies, which primarily target individuals and families living in poverty, as well as diverse efforts to include that population in universal programs, which are usually organized in a sectoral manner.

In Latin America, there are various sectoral inclusion policies, and here are some descriptions of them:

1. Programa Juntos (Peru): This program aims to reduce poverty and social exclusion by providing conditional cash transfers to the most vulnerable families. In addition to the economic benefits, it offers health services, education, and training.

2. Programa Oportunidades/Prospera (Mexico): This program is a conditional cash transfer program that seeks to improve the health, education, and nutrition of families living in poverty. Besides the economic benefits, it provides health and education services to the beneficiaries.

3. Programa Puente (Chile): This program aims to improve the employability of individuals in vulnerable situations by providing training, job counseling, and support in job search. It also focuses on the inclusion of people with disabilities in the labor market.

4. Programa Nacional de Apoyo Directo a los Más Pobres (PNADMP)– Programa Tekoporã (Paraguay): This program aims to provide economic assistance to families in extreme poverty. It focuses on the inclusion of female heads of households and seeks to empower them economically by providing conditional cash transfers.

5. Gender Quota Law (Ecuador): This law establishes the obligation to include a minimum percentage of women on candidate lists for elective and political representation positions. It aims to promote gender equality and ensure women's political participation at all levels of government.

6. National Program of Intercultural Bilingual Education (Peru): This program aims to guarantee access to quality education for indigenous students by promoting teaching in their mother tongue and respecting their cultural identity. It seeks to reduce the educational gap and strengthen the inclusion of indigenous peoples in the education system.

7. Programa Afrocolombianidad 2022 (Colombia): This public policy aims to promote the inclusion and recognition of the Afro-Colombian population, reducing inequality and discrimination gaps. It includes actions to improve quality of life, education, employment, political participation, and the strengthening of Afro-Colombian culture.

These are just a few examples of inclusive public policies in Latin America. Each country has implemented different programs and actions to address exclusion and promote social inclusion in various areas. It is important to note that programs may undergo evaluations and modifications over time to improve their effectiveness and adapt to the changing needs of the population.

Conclusions

In the analysis of inclusive development in Latin America and the formulation of inclusive public policies, it was found that it is important to consider a rights-based approach in their development, design, and evaluation, moving away from purely welfare-oriented approaches.

Additionally, there is a need to prioritize community empowerment and learn to manage social resources, promoting the participation of citizens in their communities under conditions of equality.

And finally, throughout the process of formulating public policy, applied research should be included to gain firsthand knowledge of the variables that generate exclusion both endogenously and exogenously.

In conclusion, there is still much work to be done in terms of inclusive development in Latin America. The historical, social, and economic background of the region creates obstacles in establishing equality among its individuals.

However, the efforts of governments and international institutions are generating gradual changes. For a definitive and lasting change, it is necessary to establish new approaches in the creation of public policies from an inclusive perspective.

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PART II.

Conflict Resolution Methods

*Procedural Stages of Mediation Instrumental:
View of a Normativity Reality*

Francisco Javier Gorjón Gómez
Lucía Todd Lozano

*Situation and scope of penitentiary mediation
in Spain within violent environments*

María Petronela Popiuc
Miriam Salvador García

*Access to virtual conciliation in Colombia and
Mediation in the state of Nuevo León Mexico*

Roberto Certain-Ruiz
Lina Sierra-García
Abel Ramiro-Meza

Chapter 5

Procedural Stages of Mediation Instrumental: View of a Normativist Reality

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Abstract

The mediation procedure has undergone significant professionalization and standardization over time. Divided into four stages—pre-mediation, mediation, re-mediation, and post-mediation—each stage provides unique benefits to the resolution process while requiring a nuanced understanding of Conflict Resolution Methods (CRM). Pre-mediation focuses on informing parties about mediation options and initiating the process if they agree to proceed. Mediation involves the structured application of tools and techniques to help parties resolve their conflicts. Re-mediation allows parties to renegotiate terms when circumstances change or when partial compliance requires adjustments. Finally, post-mediation ensures the enforcement of mediation agreements, often through institutional monitoring or by empowering parties to resolve conflicts proactively. This paper explores

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each stage in detail, examining how their distinct procedural features contribute to the overall effectiveness and adaptability of mediation, ultimately ensuring a fair and flexible process while emphasizing the transformative potential of conflict resolution.

Keywords: Mediation Procedure, Conflict Resolution, Pre-mediation, Post-mediation

Introduction

The mediation procedure, as well as that of other Conflict Resolution Methods (CRM), has been increasingly professionalized as they evolve and are widely utilized. This has necessitated the development of norms, rules, and techniques that enhance their chances of success while providing legal certainty as conflict management methods. This has posed a challenge and instrumentalization that does not undermine their essence, as they require a deeper technical understanding while preserving their valuable intangible qualities of fairness and flexibility.

In this scenario, the mediation procedure has been divided into four stages: pre-mediation, mediation, re-mediation, and post-mediation. This division enables greater effectiveness in each of its procedural phases. These four procedural stages demand from the mediator a more refined understanding of Conflict Resolution Methods (CRM) techniques to ensure their success. By having a solid grasp of these procedural stages, their techniques become more accessible to both the parties involved and the mediator.

Mediation as a Procedure

One of the most significant intangible values of mediation is its simplicity, with its immediate understanding by users standing out as one of its distinctive features. This also contributes to the obviousness of its procedure (Gorjón Gómez F. J., 2017). However, doctrine and various regulations do not specifically lean towards any operational model (Novel Martí, 2010) that aims to tailor conflict management to the needs of those involved in the mediation. These models guide them to resolve the conflict based on elements such as the history of the conflict, emotions, family dynamics,

or simply an agreement for the sake of agreement itself, as seen in the original linear Harvard model. Conversely, there has been a shift towards instrumentalization in mixed procedures, resulting in an array of processes ranging from simplicity to complexity. This brings forth the effect of judicialization of Conflict Resolution Methods (CRM) and adapts CRM laws more to judicial practice rather than the practice of conflict management and transformation that characterizes mediation and other CRM.

Hence arises the phenomenon of dividing the mediation procedure into four stages: the first being pre-mediation, the second mediation, the third re-mediation, and finally, the fourth post-mediation. We will pay particular attention in this article to Pre, Re, and Post-mediation, as mediation itself does not vary in regulations and is the one traditionally known, characterized by the proper administration of techniques and tools that enable us to manage and transform the conflict.

Pre-Mediation

Pre-mediation can be defined as the initial stage where the parties involved in mediation have their first encounter with the conflict management and transformation process. In this stage, individuals receive their first information about what mediation is and its purpose. This is not the opening statement of the mediation (OSM); it is something different. During this stage, the parties are informed and discover the possibility of engaging in mediation as a pre-procedural act. Its main objective is to inform the parties that they have the option to mediate, as well as to take the initial steps to formalize and initiate the mediation process in case the parties decide to proceed. However, if the parties do not wish to continue, this stage paves the way for the judicial procedure.

This stage has led to certain types of mediation, such as in the cases of Mexico, becoming mandatory in criminal and labor matters. We clarify that this obligation only pertains to attending mediation and not necessarily participating in the mediation process itself. Nonetheless, this stage has become an opportunity, as it turns the parties into "captive clients." Let us elaborate on this concept. The limited societal awareness of mediation makes it challenging for mediators to attract clients, as they must actively seek them out–at least in this historical moment. However, in criminal and

labor matters, this search is not necessary; we can say that the parties are captive clients. This gives rise to the opportunity to solidify the practice of mediation during the pre-mediation stage. It is worth noting that these types of mediation can be considered public rather than private.

Let's observe what is indicated by the National Law of Alternative Dispute Resolution Mechanisms in Criminal Matters (LNMASCMP) in its articles 9, 10, 12, and 13. The first of these marks the beginning of pre-mediation and covers very specific formalities where the interested party and the person with whom the interested party has a conflict are identified. It's important to highlight that in this case, the victim directly requests to initiate the mediation procedure:

> "Article 9. Request for the Application of Alternative Mechanisms and its Commencement: Alternative Mechanisms shall be requested verbally or in writing before the competent authority. In the case of individuals, the request shall be made in person, and for legal entities, through their representative or legal attorney. The request shall include the consent of the Applicant to voluntarily participate in the Alternative Mechanism and their commitment to adhere to the rules governing it. Likewise, it shall provide the general information of the Applicant, as well as the names and contact details of the complementary individuals who are to be invited to the sessions."

As a second procedural option, there is referral when the parties are previously unaware of the possibility of mediation. The Public Ministry, now the Prosecutor, guides the parties to alternative dispute resolution mechanisms and informs them about what this entail and their scope. Therefore, the complainant or plaintiff must agree to request it, giving rise to a mini OSM (Opening Statement of Mediation), as this formally occurs only at the start of mediation, where both parties must be present. Similarly, referral can occur when the defendant has already been linked to the legal process, following the same guideline of requiring agreement from both parties.

> Article 10. Once the complaint or accusation is received, the Public Ministry shall guide the complainant or plaintiff on the Alternative Dispute Resolution Mechanisms and inform them about their nature and scope. The Public Ministry may refer the matter to the entity attached to the procurator's office or prosecution office when the victim or offended party agrees to request the initiation of the Alternative Mechanism provided for in this Law. The involved parties must be identified, have a

known address, and fulfill the requirements of opportunity and admissibility established by this legal ordinance. The Public Ministry shall carry out urgent or inescapable actions to safeguard the necessary evidence. When the defendant has been linked to the legal process, the Judge shall refer the matter to the respective entity if the defendant and the victim or offended party agree to request the initiation of the Alternative Mechanism provided for in this Law and the requirements of opportunity and admissibility are met.

Continuing with the procedure, once the referral is received, it must be evaluated to determine if the dispute falls within the scope of mediatable conflicts. If it is deemed feasible, it will be referred to the facilitator and, if applicable, admitted.

It is important to note at this point that the LNMASCMP refers to the mediator as a facilitator. This terminology stems from the consolidation of the designations for professionals involved in both mediation and restorative conferencing – a procedure of restorative justice – as established in its Chapter IV. Unfortunately, this practice of legal simplification has led to mediators being called facilitators, a term that, in our view, is clearly incorrect and detrimental (Gorjón Gómez F., 2019).

Article 12. Upon receiving the request, the entity will examine the dispute and determine whether it is amenable to resolution through the Alternative Mechanism. Once admitted, it will be referred to the Facilitator for further action.

When it is reasonably and justifiably believed that the matter is not suitable for resolution through an Alternative Mechanism, the entity shall communicate this to the Applicant, and if applicable, to the Public Ministry or the Judge who made the referral, for the necessary legal purposes.

A request for reconsideration of the admission denial may be submitted to the entity. If the Alternative Mechanism is deemed appropriate, a Facilitator will be assigned.

If applicable, it shall be recorded that the Applicant agrees to adhere to the Alternative Mechanism, and the corresponding Appointment or Invitation for the Respondent to the initial session will be scheduled.

As the final part of pre-mediation, a record of the procedure is gener-
ated. This will subsequently provide an opportunity to record the outcome,
whether the parties reach an agreement or decide not to proceed. In the
latter case, a necessary certification will be issued to allow the ongoing
criminal complaint to follow its regular course.

Article 13. Upon filing the request, a case file shall be opened and regis-
tered, containing a brief account of the facts, the Alternative Mechanism
to be applied, and the outcome achieved.

Pre-mediation is also identified in the proposed General Law of Alter-
native Dispute Resolution Mechanisms, primarily focused on civil and family
matters, in Article 4. Like penal mediation, it aims to inform the parties
that they have the possibility of resolving their conflict through mediation.

"...The competent judge shall refer the plaintiff, whether an individual
or a legal entity through its legal representative, preferably prior to the
admission of the lawsuit, to the national center or the centers of the
federal entities as appropriate, as a principle of procedural efficiency, for
the conduct of a free informative session. The purpose of this session is
to ensure that the plaintiff is aware of the possibility of resolving their
conflict through dialogue..."

"...In the event that both parties voluntarily agree to participate, the ju-
dicial procedure shall be suspended for a period of two months, unless
both parties request an extension of the term. The purpose of this sus-
pension is to successfully conclude the dispute through the correspond-
ing alternative mechanism..."

A similar procedure occurs in labor matters and serves the same
purpose as the previous ones, informing the parties about the possibility
of reaching a settlement and the steps to follow before the specific com-
mencement of conciliation.

Article 684-E. The conciliation procedure shall be conducted according
to the following rules:

I. It shall begin with the submission of a conciliation request to the Fed-
eral Center for Conciliation and Labor Registry or the local Conciliation
Center as applicable. The request shall be signed by the applicant and
accompanied by a copy of the official identification referred to in Article

684-C, Section I. In the case of companies or unions, it shall be signed by their legal representative.

II. Conciliation Centers may receive conciliation requests through personal appearance of the parties, in writing duly signed, or electronically through the computer system implemented for this purpose.

III. Conciliation Centers shall assist interested parties, upon request, in preparing their petition. They must provide free legal advice regarding their rights, the applicable prescription periods, as well as the conciliation and jurisdictional procedures for resolving labor disputes.

IV. Upon receiving the request, the conciliation authority shall designate a date and time for the Conciliation Hearing, which shall take place within the fifteen subsequent days. The notice shall be served personally to the employer, at least five days before the hearing, with a warning that, should they fail to appear either in person or through their legal representative, or through an authorized representative with sufficient powers, a fine ranging from 50 to 100 times the Unit of Measure and Update will be imposed, and the employer will be deemed as not in agreement with any conciliatory arrangement.

Outside the realm of criminal and labor judicial procedures, pre-mediation is also recognized in private processes when there is no prior consensus between the parties to engage in mediation. In this scenario, the administering institution in the case of institutional mediation or the mediator in the case of Ad-Hoc mediation, similarly assists the parties in solidifying the procedure. We can observe this, for instance, in the ICC Mediation Rules.

"ARTICLE 3.–When There is No Prior Agreement to Submit to the Rules. When there is no agreement between the parties to submit their dispute to these Rules, a party wishing to propose that another party submit the dispute to these Rules may do so by sending a written Request to the Centre containing the information specified in Article 2(1) sub-paragraphs a)–g). Upon receipt of the Request, the Centre shall inform all other parties of the proposal and may assist the parties in considering the proposal.

1.- Along with the Request, the party or parties submitting the Request shall pay the registration fee as set out in the current Appendix on the date of submission of the Request.

2.-When the parties reach an agreement to submit their dispute to these Rules, the Procedure shall commence on the date on which the Centre sends written confirmation to the parties that such agreement has been reached.

3, -When the parties do not reach any agreement to submit their dispute to these Rules within 15 days from the date of receipt of the Request by the Centre, or within any additional period reasonably fixed by the Centre, the Procedure shall not be initiated."

Mediation

This stage is the heart of the conflict management and resolution procedure. It is important to note that there are numerous types of regulations, each seeking to leave its imprint. However, they all share two common aspects: initiation through the Opening Statement of Mediation (OSM) and conclusion through the mediation agreement. We mention this because each procedure is entirely distinct depending on the type of conflict, making the procedure itself guidelines that the mediator should follow, though not necessarily enforce.

It is equally important to consider that current existing regulations do not distinguish between the various existing models of mediation. This may be due to legislative technique employed in the creation of these regulations. This poses a true challenge for all mediators since the techniques we use and the nuances we give them depend on the specific case. Consequently, the regulations serve as a guide for initiation and conclusion, indicating what can and cannot be done. However, the essence of conflict management relies on the mediator's practice and intuition. Performing a caucus in a commercial dispute is not the same as in a family, civil, or criminal dispute, to provide an example. Similarly, think about empathy, rapport, brainstorming, or the not-so-simple act of formulating questions.

This has compelled all mediators to adapt to the conflict itself and the specific type of conflict, as well as to the parties' desires – their perceived subjective interests. As a result, our in-depth knowledge of various media-

tion techniques and methods becomes crucial, as well as our understanding of the conflict. Relying solely on intuition is not sufficient to achieve effective conflict management.

We also take on the challenge of precisely understanding the regulations that govern the management procedure, along with the legal context of the conflict and the mediation agreement. This comprehensive knowledge is essential to facilitate a valid and enforceable mediation agreement. It is our primary responsibility as professionals of resolution, as mediators, to achieve this.

Re-Mediation

Re-mediation is one of the most valuable stages of the mediation procedure. Nevertheless, it has both positive and negative aspects. The positive facet involves adaptation, as it allows the parties to renegotiate the terms of the original mediation agreement when circumstances change. This is particularly evident in long-term or ongoing agreements, such as spousal support payments in cases of divorce conflict.

This is positive in terms of sustaining the mediation agreement, allowing the parties to adapt to the evolving circumstances defined by time. With changes occurring, the agreement can continue to remain effective and fulfilled. This translates into a mediation agreement with partial fulfillment — for instance, consider tuition payments when some of the children have reached adulthood and are no longer studying. Due to the passage of time, only a portion of the agreement remains in force, or the obligation itself has changed.

This is observed in various regulations, as indicated by the following excerpts:

> Article 2, XV. Re-mediation: A procedure after mediation, used when the agreement reached in mediation has been partially or completely breached, or when new circumstances arise that require the matter to be submitted to mediation once again. LAW OF ALTERNATIVE JUSTICE OF THE SUPERIOR COURT OF JUSTICE FOR THE FEDERAL DISTRICT (Last amendment on August 20, 2015)

Article 2, XIII. Remediation: A subsequent stage of Mediation that takes place when the agreement reached in mediation has been partially or completely breached, or when new circumstances arise that necessitate returning to Mediation for the modification of the original agreement. REGULATION OF THE LAW OF ALTERNATIVE JUSTICE OF THE STATE OF DURANGO

This matter is also addressed by the Draft Decree Initiative for the issuance of the General Law of Alternative Dispute Resolution Mechanisms, which will be applicable to civil and family matters.

Article 2, Section XLII, of Remediation: It is the procedure after medi-ation, resorted to when the agreement reached has been partially or completely breached, or when new circumstances arise that require the matter to be submitted to mediation once again.

Article 59. Execution of the Agreement. In any case, in the event of par-tial or total non-compliance with the agreement by one or more of the obligated parties, the construction of a solution should be prioritized through the reopening of the chosen alternative mechanism or the opening of a new one. This shall be recorded in the clause of the respec-tive agreement unless the parties agree otherwise.

However, the negative aspect involves returning the agreement to mediation due to non-compliance. Two hypotheses arise from this: the first involves a poorly managed agreement that led to non-compliance, and the second involves genuine non-compliance due to the intention to breach or the inability to fulfill the agreement. In both scenarios, the burden of non-compliance is shared with the mediator due to the failure to ensure proper management, unless circumstances beyond the parties' control pre-vent fulfillment, such as a sudden job loss or a death – a third hypothesis.

Considering these scenarios, the possibility of re-mediation arises because of post-mediation. Addressing the first two hypotheses, the proper course of action would be to demand enforcement through legal means rather than pursuing re-mediation, unless it meets the conditions of the third hypothesis. It is highly likely that a return to non-compliance may occur. Regarding this matter, the regulation stipulates:

"...Whenever the agreement has been signed and raised to the status of res judicata, in the event of non-compliance, either of the two parties may request before the competent judicial authority or an autonomous body exercising jurisdictional activities its enforcement through coercive means or through execution of judgments, in accordance with the relevant procedural law."

Re-mediation has been technified to the extent that it is already defined in organizational manuals, as is the case with the Procedures Manual of the Alternative Justice Center of Oaxaca:

Re-Mediation Procedure.

30. Contact the parties to understand the reason for non-compliance and offer the option of re-mediation.

31. Were both parties contacted? a) Both parties, and they accepted re-mediation. Proceed to step 34. If they did not accept re-mediation, proceed to step 35. b) Only one party. Proceed to step 33. c) None. Proceed to step 32.

32. Reserve the mediation code.

33. Send a single invitation to the corresponding party with the date and time for the re-mediation session.

34. Conduct the re-mediation session. Do the parties reach agreements? No, proceed to step 35. Yes, proceed to step 36.

35. Safeguard the parties' rights, conclude, and file the mediation code.

36. Prepare the re-mediation agreement, specifying the date, time, and place for its signing.

37. On the specified date, time, and place, obtain the signatures of the parties and provide each of them with a copy of the agreement.

38. Submit the mediation code for archiving to the Alternative Justice Center's Directorate. Judicial Mediator.

Post-Mediation

There is no specific definition of post-mediation that precisely determines its elements. However, we can deduct from various existing regulations that post-mediation involves monitoring the fulfillment of the mediation agreement(s). This implies a certain influence over the parties before and after the conflict resolution process, as is the case in Mexico in the field of criminal mediation, whereby law, follow-up for the fulfillment of restorative agreements (mediation agreements) conducted by facilitators (mediators) from the prosecution offices established.

One could think that post-mediation is only feasible in this type of mediation, where the LNAMSCMP expressly establishes it in its Title Three concerning Agreement Monitoring. This aims to ensure the fulfillment of the agreement or, in some cases, to impose a penalty for the committed offense. This consideration is always focused on the victim, as it also opens the door to re-mediation, provided it doesn't lead to a process of re-victimization. This aspect is part of the humanistic imprint of mediation, serving as an intangible value.

> Article 36. Follow-up Area: The Authority shall have a follow-up area, which shall be responsible for monitoring and promoting compliance with the Agreements reached by the Participants in the Alternative Mechanism. The follow-up may consist of: I. Warning the Participants in case of non-compliance with the Agreement; II. Verification visits; III. Phone calls; IV. Receipt or delivery of documents, payments, goods, or objects; V. Summons of Participants and other necessary persons; VI. Sending correspondence or communication, using electronic means if necessary, and VII. Any other necessary measure to ensure compliance with the Agreement in accordance with the principles and provisions established in this Law.

> Article 37. Composition: The Authority shall designate personnel whose function shall be to follow up on the Agreement reached in the Alternative Mechanism, to inform the Facilitator, the Public Prosecutor, the competent Judge, and the Participants about the compliance with the Agreement or, if applicable, its non-compliance, to determine the respective legal consequences.

Article 38. Review Meetings: The follow-up area shall communicate pe-riodically with the Participants, according to the nature of the case, to verify or facilitate the fulfillment of the obligations contracted. In case of non-compliance by the obligated Participants, the follow-up area may encourage compliance or call for a review meeting, preferably with the Facilitator who originally handled the matter. The Facilitator and the Par-ticipants shall review the justification for the reasons for non-compliance and, if necessary, propose the modifications that need to be made to be satisfactory for all parties without affecting the effective restitution of damages. In case a review meeting is not considered appropriate due to the risk of re-victimization or because compliance becomes impossible, the following article shall apply.

Article 39. Communication: If a review meeting is not held due to the risk of re-victimization, or if it is determined from the review meeting that compliance with the Agreement cannot be achieved, the follow-up area shall immediately communicate this to the Facilitator, the Public Prosecutor, and if applicable, the Judge, to continue with the criminal proceeding if the victim so decides.

Certainly, in cases where an institutional bond is in place between the parties, it is feasible to provide follow-up even without being part of a legal process. This is particularly applicable when the parties are associated with an institution that, through its influence, can facilitate the enforcement and monitoring of the mediation agreement. An example of this scenario is school mediation, where specific protocols are established to ensure the follow-up of the agreement. In such cases, both parties remain connected to the educational institution, whether the conflict was between students, between students and teachers, or involving administrative staff (Garcia Villaluega & et.al., 2014).

This institutional connection can significantly enhance the possibility of effective post-mediation follow-up and ensure the continued adherence to the mediated agreement. The existence of established protocols and procedures within the institution can contribute to a seamless process of monitoring and ensuring that the terms of the agreement are being upheld by all parties involved. This type of arrangement showcases the adaptability of mediation in various contexts and highlights its potential to provide lasting solutions within institutional settings.

Absolutely, the case of a pilot school mediation program highlights the crucial role of post-mediation follow-up. Ensuring that the agreements reached during mediation are being respected and upheld by both parties is essential for the success and effectiveness of the program. Without proper follow-up, the program's positive outcomes can be challenging to achieve.

In this context, this type of mediation could be considered an "imperfect mediation" in the sense that some students might participate due to the fear of consequences or sanctions rather than a voluntary desire to engage in the process. However, this imperfection can be turned into an opportunity for education and cultural development. By introducing mediation to manage conflicts, students are being taught valuable skills in conflict resolution and communication. This educational aspect emphasizes the importance of post-mediation follow-up, as it reinforces the lessons learned during the mediation process.

Effective follow-up not only ensures compliance with the agreements but also contributes to the long-term goals of teaching students how to handle conflicts constructively and encouraging a culture of dialogue and resolution. This highlights the transformative potential of mediation within educational settings, where its impact extends beyond immediate conflict resolution to fostering valuable life skills and promoting a positive school environment.

The approach outlined here highlights the integral role of post-mediation follow-up in ensuring the effectiveness of the mediation process. To achieve this goal, the mediator maintains regular interviews with each party involved to verify that the agreements reached are being upheld. In cases where new conflicts arise or existing ones persist without progress, a reevaluation of the mediation process is conducted, and a new mediator may be appointed if necessary.

Central to this approach is the active commitment of all parties to the resolution of the conflict. They are encouraged to maintain an attitude of proactive engagement and communication throughout the follow-up process. If any difficulties, anomalies, or breaches of agreements arise, parties are encouraged to reach out to the mediator for assistance.

Moreover, each party is expected to put forth effort toward problem-solving and fulfilling the agreed-upon terms. This collaborative effort is essential for sustaining the positive outcomes of mediation and ensuring that conflicts are effectively managed and resolved over the long term.

This approach aligns with the transformative nature of mediation, which aims not only to resolve immediate conflicts but also to empower parties with the skills and mindset necessary for ongoing constructive dialogue and resolution. By emphasizing continuous communication, active commitment, and shared responsibility, the follow-up process becomes a key component in realizing the potential for lasting change and improved relationships.

In conclusion, school post-mediation works and serves a dual purpose: resolving the conflict and educating in conflict management and transformation, ensuring a culture of its future use in various conflicts beyond school settings.

When analyzing these variables in private mediation, its logic is different and more challenging to implement, though not impossible. Without an institutional link, conducting post-mediation becomes quite complicated. It is particularly challenging to achieve follow-up without such a link, even in cases involving ongoing obligations like rent payments or family alimony, where there is no specific factor to exert influence over the non-complying party. With this reasoning, we do not intend to completely dismiss post-mediation in this scenario. If the parties return to the mediator and undergo the process again due to non-compliance with the original agreement, we would be witnessing a form of re-mediation, albeit with elements of post-mediation.

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Chapter 6

Situation and Scope of Penitentiary Mediation in Spain within Violent Environments

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Abstract

Conflicts generated in the prisons show the need to articulate mechanisms aimed at re-education and at maintaining peaceful coexistence in an environment that is hostile. The disciplinary regime is aimed at guaranteeing security, good order, and orderly coexistence to stimulate the sense of responsibility and the capacity for self-control of people within the correctional facility, however, it does not guarantee the full resolution of conflicts, nor does it contribute to improving coexistence in prison. Mediation in the penitentiary context offers numerous benefits for both the inmate and the penitentiary community, promoting a culture of dialogue, that contributes to understanding in future relationships, which will be maintained throughout the period of imprisonment.

The objective of this research is to analyze the functioning of mediation in this context, to assess its advantages and benefits. For this, an analysis has been carried out using qualitative, as well as descriptive and exploratory methodologies.

The results show the positive impact of this method in resolving conflicts that occur between inmates, assessing its importance in subsequent coexistence, as well as its enormous social impact.

Keywords: *prison, conflict, mediation, reinsertion, restorative justice*

Introduction

Coexistence in an environment as hostile as a prison is not easy. In any organization, conflict is normal, but in prison, any situation can lead to controversy. The admission to prison for any person generates a great impact and restlessness, due to the lack of contact with the outside world, the loss of daily life and for all that entails the deprivation of liberty, which affects the balance of social relations, reducing self-control in difficult times. Added to this is the fact that the opposing parties will remain living together, for a long period of time, in the same space, except in extreme cases of isolation.

Life in a correctional facility causes significant psychological effects, due only to prison architecture, since prisons built with concrete and barriers in different spaces, represent a hostile environment to live in, although architectural evolution has improved the quality of life, cells have become rest units and the other common activities are carried out in common spaces that favor contact between inmates, humanizing their stay in prison.

For this reason, after a prolonged period of deprivation of liberty there are consequences that are not easily eradicated, such as hearing problems due to the intensity of the noise in closed spaces or vision problems caused by not being able to look beyond a few meters from the yard due to the obstacles. All these conditions favor the appearance of conflicts between inmates and with the prison staff. For this reason, we focus on conflicts between inmates and the articulated measures for their resolution through the so-called Mediation.

In this sense, according to Pastor and Huertas (2012), as in any civil or mercantile mediation process, mediation in the penitentiary context also offers numerous benefits not only for the inmate, but also for the prison community. According to the "Guide for Professional Mediators of Spain" (2021), among the benefits aimed at penitentiary treatment, some of the benefits that stand out are the assumption of part of the responsibility for the offending behavior and their participation in the interpersonal conflict, learning behaviors aimed at recognizing the truth as well as learning to listen aimed at understanding the position of the other, understanding guidelines for the creative and peaceful solution of conflictive relationships and finally, the adoption of personal and autonomous decisions about the conflict. For this, due largely to the high benefits that penitentiary mediation generates for prisoners, it is convenient to consider not only its regulation and normative development but also its practical application. For this, the work of Associations such as the Association of Mediation for the Pacification of Conflicts (AMPC) is fundamental since it has allowed us to study and analyze the promotion of penitentiary mediation thanks to its experience in this field.

Discussion

State and development of Restorative Justice

As indicated by Moreno Álvarez (2016), Restorative Justice is a theory, as well as a social movement that seeks to reform criminal justice. This theory focuses on violations of legal norms and argues that, unlike traditional criminal law, where the state is the primary victim, crimes primarily harm individuals and society. Restorative Justice represents a paradigm shift that seeks to return to the parties and communities in conflict a leading role in conflict resolution with the help of professionals such as mediators or facilitators. States play a subordinate role in this new approach and are tasked with providing the legal basis for the recovery process.

In such a way that, unlike conventional criminal law, which gives the victim a subordinate role, Restorative Justice gives the real victim a main and central role. In this approach, the victim may seek some form of redress at the expense of the perpetrator (also known as the "offender" or "vic-

timizer"). For this reason, Restorative Justice offers an alternative to the notion of "delinquent" or "criminal", since it focuses on not stigmatizing the perpetrators, but on defending that they return to being an asset to their community or society. According to Varona Martínez (1998), "The concept of Restorative Justice was officially coined at the International Congress of Criminology held in Budapest in 1993 and continued to gain importance at the International Congresses of Victimology held in Australia in 1994 and in Amsterdam in 1997, as well as at the X United Nations Congress on the Prevention of Crime and the Treatment of Offenders." In such a way that, according to the Council of Europe (2018), "Restorative justice can be used at any stage of the criminal justice process. For example, it may be associated with the diversion of arrest, indictment, or prosecution, used in conjunction with a police or court order; it may occur before or in parallel with prosecution; between conviction and sentencing, be part of a sentence, or it may occur after, whether a sentence has been dictated or completed. Referrals to restorative justice may be made by criminal justice agencies and judicial authorities or may be requested by the parties themselves."

In this line, Van Ness and Strong (1997), indicate that the central values of Restorative Justice are: encounter, reparation, reintegration and participation or inclusion. The Encounter is about the personal and direct encounter between the victim, the offender and/or other support people. Reparation is the response given to the crime and may include restitution, monetary payment, or work for the benefit of the victim or community, always prioritizing the benefit of the specific victim. Reintegration focuses on reintegrating both the victim and the offender into the community, not only tolerating his/her presence, but also contributing to his/her reentry as an integral, cooperative, and productive person. Participation or inclusion consists of offering the parties the opportunity to be directly and fully involved in all stages of encounter, reparation, and reintegration. In such a way that, regarding its typology, according to Moreno Álvarez (2016) "the archetypal modality of Restorative Justice is Victim-Offender Mediation (VOM). In turn, this modality is broken down into 'prejudicial or community mediation (before the judicial-criminal gear is put into operation, it will be more in the field of social services), intrajudicial mediation (incardinated in the judicial process), mediation in the execution phase (probation) usually to determine the method of serving the sentence and penitentiary mediation

(once the prison sentence is being served and which in turn has modalities: for coexistence conflicts between prisoners, between prisoners and officials or the most important: mediation between the prisoner and the victim)."

Along these lines, according to the Council of Europe (2018), although Restorative Justice is generally characterized by dialogue between the parties, many interventions that do not involve victim-offender dialogue can be designed and executed in a way that is closely aligned with the principles of Restorative Justice, this includes innovative approaches to reparation, victim recovery and offender reintegration. For example, in addition to penitentiary mediation, there are community reparation plans, reparation boards, direct restitution to victims, support plans for victims and witnesses, support circles for victims, therapeutic communities, awareness courses for victims, inmate or offender education, problem solving courts, circles of support and accountability, offender reintegration ceremonies, and projects involving offenders and their families or other victims of crime.

Regarding the regulation of Restorative Justice, according to Rebollo Revesado (2022) various countries of the European Union have laws on Restorative Justice, however, in Spain there is little regulatory reference in this regard, and we lack a specific regulation. Specifically, in 2011, 2013 and November 2020, bills to reform the Criminal Procedure Law were proposed, however, these bills have not been effectively implemented and codified.

In this sense, during the year 2021, the Spanish section of the European Judges Group for Mediation (GEMME) formed a work team dedicated to Restorative Justice, which produced a document with specific suggestions for its implementation and development. In this same sense, they announced that work was being done on the creation of a Restorative Justice map that would show the existing projects in the national territory that promote Restorative Justice, including initiatives that seek to repair the damage caused to the victim, hold the offender accountable and raise the offender's awareness, facilitate the offender's reintegration and recovery into society, as well as encourage the participation of the community in general.

The objectives of the work carried out by GEMME have been to discover and highlight the projects in Spain that offer Restorative Justice and penal mediation. In addition, they have worked as a meeting point to share experiences and knowledge between the different projects and have proposed ideas to contribute to the implementation and consolidation of these practices in the country whose conclusions establish, among many other

points, the need to approve procedural and substantive legislation that regulates Restorative Justice, guarantee its equal access throughout the national territory and at different levels (local, community/neighborhood, intrajudicial, penitentiary, school…) as well as provide personal and material resources to inform, refer and care for victims. Among these resources we must mention the Restorative Justice Service as provided for in the Victim Statute, by planning and managing, directly or indirectly, public Restorative Justice services, without prejudice to other programs, promoting the training and specialization of facilitators as well as providing Restorative Justice with adequate physical space in the judicial bodies themselves and in correctional facilities and managing to integrate the district attorney's office and victims' associations into the programs (GEMME, 2023). All of this leads us to ask: What is the situation of penitentiary mediation as a tool of Restorative Justice in Spain and what are the practical experiences that we find? This information will be analyzed in the next section.

Penitentiary mediation in Spain: practical scope and regulatory application

The Spanish Constitution states in Article 25.2 that "custodial sentences and security measures will be oriented towards re-education and social reintegration and may not consist of forced labor." In the same way, the Spanish Organic Law 1/1979, of September 26, General Penitentiary Law of 1979, includes this constitutional mandate in several articles of the Preliminary Title, of which we highlight the following: Art. 1 "Penitentiary institutions regulated by this Law have the fundamental purpose of the re-education and social reintegration of those sentenced to custodial sentences and penal measures depriving of liberty, as well as the retention and custody of detainees, prisoners and convicts. They are also in charge of aid and assistance work for inmates and released persons." Art. 3 "Penitentiary activity will be carried out respecting, in any case, the human personality of the inmates and their legal rights and interests not affected by the sentence, without establishing any difference based on race, political opinions, religious beliefs, social condition or any other circumstances of a similar nature." From the reading of these two precepts, the humanity of the sentences, the personality of the inmates and the relevance of re-education and social reintegration are observed.

The penitentiary legislation establishes disciplinary measures aimed at solving and reducing interpersonal conflicts, through a gradual system of sanctions and rewards. The disciplinary regime is aimed at guaranteeing security, good order, and orderly coexistence to stimulate the sense of responsibility and the capacity for self-control of people within the penitentiary center (Art. 231 of the Penitentiary Regulation 190/1996). In this way, some violent behaviors are prevented, due to the intimidation that submitting to a process entails and the application of a sanction that, in addition to its direct effects, generates a series of collateral negative consequences such as the loss of permits or the difficulty to progress grade. Therefore, this method can reduce some conflict, but in most cases the parties hide them, to avoid their negative consequences. In this way, a latent conflict remains, which harms the re-education and social reintegration of the individual and contributes to the acquisition of prison habits such as hierarchical submission, the adoption of prison jargon, normativization or incidence in health.

In this context that we have just described, the importance of conflict resolution in the penitentiary field is placed in a relevant place, hence mediation acquires a fundamental role. This is since mediation is based on a series of assumptions that, in addition to debugging the responsibility of the generated conflict, mediation has the purpose of improving the relations of the parties that face the conflict, giving them the leading role in resolving the problem, and contributing to understanding in future relations, which will be maintained throughout the period of confinement. Regarding the regulation of penitentiary mediation, according to the information provided by AMPC[3] through the ad hoc interview carried out for this investigation, it is stated that "penitentiary mediation has no legal regulation as such, although in 2005, AMPC launched the first prison mediation pilot project in our country at the Madrid III Valdemoro Penitentiary Center, which has given rise to a multitude of replicas in other prisons in the state and in other

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3   "The Mediation Association for the Pacification of Conflicts (AMPC) debuted in 2005 in the Valdemoro Penitentiary Center, Madrid III, turning this center into the 'first restorative prison in Spain', allowing the entry of dialogue, honesty, and non-violence, in the management of conflicts in correctional facilities. From there, the program has evolved over the years thanks, in part, to the support and trust of Penitentiary Institutions, and to the work, effort and involvement of each of the people who have collaborated and collaborate with AMPC" (AMPC, 2022).

countries." Along the same lines, the authors who work in penitentiary mediation tend to agree, in general terms, regarding the phases of the mediation process in this area.

In this sense, from the analysis of the phases of the mediation process, described by Brea Pallares (2010) and other authors, such as Castilla and González (2011), it is worth remembering in general terms the following phases:

1. Derivation phase.
2. Collection and information phase: This phase begins with the referral of the inmates who have a conflict to the mediation service.
3. Acceptance and commitment phase: Before starting this phase, it is important to hold an interview with each of the parties. At this moment, the mediator must formally introduce him/herself, taking care, as far as possible, of the importance of the physical space where the sessions will take place. At this time, the content of the document is verbally explained (document which the parties have previously read and reflected on, and which has been submitted in the previous phase). In general, the mediation process is mentioned again, and, above all, the rules that must be respected are established. Doubts that arise are explained and if everything is clarified, the informed consent is signed.
4. Follow-up phase: Compliance with the agreement must be supervised, to verify the degree of compliance with the agreements, the relation between the parties, and possible changes in their regimental situation because of mediation. It is advisable to carry out an initial follow-up within 15 days of the dialogue meeting session, depending on the people, the conflict and the agreements that have been adopted. This follow-up can be done through an unstructured and quite informal interview to obtain said information.

Then, the mediation process and, therefore, the file are closed definitively. Finally, the opportunity to use the service is always offered at any other time when it may be considered appropriate, through a request to the center management. In relation to the phases mentioned above, according to AMPC, despite the fact that currently in Spain there is no specific regulation on penitentiary mediation, the truth is that various protocols have been created in order to extend mediation in the various correctional facilities, more specifically, it is indicated that "AMPC created a penitentiary

mediation protocol, which is the one that we present and agree on with the correctional facilities where we implement the program. In this sense, the protocol that is followed refers to derivation, initial individual interview with the parties, acceptance and commitment, individual interviews, meeting, signing of the agreement and follow-up." In such a way that, according to the Association, the requests for mediation that reach AMPC are received in various ways: through requests that the inmates themselves send or by referral from the DC (Disciplinary Committee and/or technical teams), either due to incompatibilities and/or sanctions.

Of all of them, according to AMPC, the most common violent conflicts that usually occur and with which mediation is subsequently performed, are mainly fights between the inmates themselves, including aggression, as well as gangs and robberies between them. An example that the Association shared to illustrate this investigation dealt with an assault by two inmates on a third party, which caused physical injuries that required medical attention and caused a broken denture. As a result of this conflict, a criminal proceeding derived from the aggression was initiated, at the request of the prison. Therefore, the possibility of mediation was offered to the parties and all three accepted. As a result of the process, not only were they able to clarify the reasons that led to this situation, but each party was able to identify their responsibility and the consequences of their actions, as well as recognize the needs and feelings of the other. From this perspective, agreements could be reached that also included the assumption of the costs of the new teeth by the aggressors. This agreement was sent to the court handling the assault case and was ratified by the court.

According to AMPC, the greatest difficulty arose at the beginning of the process, when each party had to assume its involvement in the conflict itself, overcoming initial feelings of anger or desire for revenge, to reach recognition of the other and the assumption of their own responsibility. Additionally, since there was a parallel criminal proceeding, it was important to combine both contexts (criminal and penitentiary) for the agreement to be valid.

Therefore, the figure of the mediator is essential to carry out an adequate management of the conflict and compliance with the principles required by the Spanish National Law on Mediation. At this point, we must remember that, currently, the only national law that regulates mediation is Law 5/2012, of July 6, on mediation in civil and mercantile matters, whose

article 6 and following mention the importance of compliance with the principles that govern mediation and therefore, an essential requirement to be fulfilled by the mediator, among the principles referred to in the Law that stand out are voluntary action, equality of the parties and impartiality of the mediators, neutrality, as well as confidentiality. In relation to this last principle, according to AMPC "the mediator is the one who leads the process, this being totally confidential between the parties and who mediates, without supervision by corrections officers. (...) For this reason, in mediations the principles of mediation are complied with and, in addition, flexibility on the part of the mediators and a great tolerance for frustration are very important, since the judicial process is carried out within a framework of very rigid action, subject to rules and guidelines to which we must abide (schedules, permits, vis a vis, communications, etc.) At the beginning of the implementation of the project in a prison and due to ignorance or mistrust in the process, more situations of difficulty or suspicion tend to appear, which time and experience allow us to eliminate." (...) It is also important to consider, "the fact that being able to be actively listened to by someone who does not judge brings peace of mind. Additionally, beyond the opportunity for an agreement, the individual meetings that are held from the initial phase allow for the incorporation of another vision of the conflict, its impact, and the level of involvement of each person, which on many occasions translates into a pacification or de-escalation of it."

Therefore, as can be seen, the purpose of mediation in the penitentiary field refers to improving coexistence between inmates as well as reducing the number and intensity of incidents, recurring offenses, and administrative interventions between oneself and to achieve the principles of fairness, opportunity and procedural economy and thus provide opportunities to persons deprived of liberty through interpersonal differences in conversation, respect and listening to others. That is, rather, it is presented as the ability to learn to recognize and interpret conflicts from multiple angles considering the interests of others, as well as their own. (Serrano Pérez, n.d.) Along these lines, AMPC indicates that "the objectives pursued by mediation for the convict are, among others, learning to recognize the truth; assumption of the part of responsibility; learning skills such as listening, dialogue; improvement in coexistence; anxiety reduction; feeling of control; reduction of prejudices... Regarding penitentiary benefits, in general terms there is no direct and automatic benefit associated. Although, it is the decision of each correctional facility to assess each specific case to decide if mediation has

any repercussions regarding the possible sanction, treatment process or elimination of incompatibility" and so that all this is possible, as indicated by the AMPC "the association commits to penitentiary mediation being put into practice in the largest number of correctional facilities so that people deprived of their liberty have the possibility of being able to resort to this means of conflict management. The dissemination work that we have been doing among the different people who, in one way or another, work with the population deprived of liberty is essential to publicize penitentiary mediation and its usefulness, as well as to be able to gradually dispel possible resistance to its implementation. We also believe that it must be known from university degrees to professional training that are related to working with people. In addition to training, it is important that there is a real commitment on the part of the prisons to achieve a greater impact."

However, according to Serrano Pérez (n.d.), because of this initiative, other professionals with a similar vision on the transformation of conflicts and relationships in prison and committed to working with inmates have launched projects with similar objectives in several Spanish correctional facilities. The project was launched as a different program with different but complementary approaches and results, with all participants contributing their own efforts, work, and energy. From these diverse experiences the Spanish Federation for Restorative Justice was born, which allowed its collaborative growth.

In this line, according to the research carried out by Fernández-Caballero et al (2012), other experiences already carried out in penitentiary mediation carried out in different prisons throughout Spain refer to the Association Pro-Mediation in Galicia, also known as APROMEGA. This Association created the first mediation program in prisons in Galicia, specifically in Module 4 of the Pereiro de Aguilar Penitentiary Center in Ourense. This program consists of two complementary projects that are interconnected. During a period of 12 months, mediation of the proposed cases is carried out and a workshop that uses group dynamics to teach skills for conflict management in prison is given. Starting from the sixth month, another workshop is given that trains prisoners to be peacemakers, but it is necessary to successfully pass the first workshop to be able to participate in this second workshop. The objective of this last workshop is to provide prisoners with tools to prevent future conflicts and resolve the existing ones.

For its part, the Conflict Resolution Mediation Association, known as ENMEDIACIÓN, also stands out. This association carried out a project in the Navalcarnero prison, Madrid IV, in which conflict mediations were carried out and prevented the opening of a file sanctioning the parties involved and whose results brought enormous benefits. In relation to this point, it is interesting to mention that, as in any civil or mercantile mediation process, mediation in the penitentiary context also offers numerous benefits not only for the inmate, but also for the penitentiary community. In such a way that, according to the *Guía de Mediadores Profesionales de España 21/22* (Asociación Española de Mediación, 2021), among the benefits aimed at penitentiary treatment, the following stand out:

- Assumption of part of the responsibility for the offending conduct and their participation in the interpersonal conflict.
- Learning behaviors aimed at recognizing the truth.
- Learning dialogue behaviors in conflicting interpersonal relationships and that can promote preparation for life in freedom.
- Listening learning aimed at understanding the position of the other.
- Learning keys for a creative and peaceful solution to conflicting relationships.
- Learning to adopt personal and autonomous decisions about the conflict.

On the other hand, among the benefits that people deprived of liberty obtain, we highlight the following: mental learning; reduction of anxiety and tension levels; no reduction/elimination of rights/sanctions, nor freedom (permits, level progressions); avoidance of damages to the family of the inmate that are generated with the consequences of the application of the disciplinary regime, for the commission of crimes that must be prosecuted through ordinary criminal proceedings; the reduction of the sentence by one or two levels for the application of the mitigation of reparation of the damage (art. 21.5 Spanish Penal Code); and positive assessment by the administrative and judicial authorities for carrying out a mediation process insofar as it provides keys for learning personal responsibility.

Therefore, the advantages that mediation offers, when compared to the legal route, refer to a lower economic and emotional cost, faster and more positive resolution of the conflict, as well as the creation of satisfactory agreements for all parties involved, thus generating great benefits for

all parties involved. Considering this, it should be noted that, according to data provided by AMPC, "in 2022, 59 cases were treated, of which, in 100% of the cases in which both parties accepted mediation, there was a positive agreement. The distribution in case management in 2022 has been as follows: 7 were non-specific requests from the mediation program, so the pertinent steps have been taken to refer the appropriate resources or professionals; 18 processes have been interrupted or not started due to transfer or release; 18 cases have been closed because one of the parties involved does not agree to participate in mediation; 1 case has been closed at the request of the mediation team, due to not meeting the necessary cognitive conditions to start a process of these characteristics by any of the people involved; and of the 15 cases that do accept mediation, 100% have been closed with a positive agreement, of which 3 of them have been closed with a meeting, but without a record."

Methodology

To complete the analysis and achieve the objective of the research, a qualitative analysis was carried out in the form of an interview, which has allowed us to describe and contrast the proposed theoretical framework of reference. In this sense, the participants and the techniques and procedure used to analyze the application of mediation in violent environments are indicated, starting with the Spain case study.

Participants: This research was developed with the collaboration of the AMPC, a founding member of the Spanish Federation of Restorative Justice (FEJR) established in 2010 with the purpose of coordinating various initiatives carried out by different entities dedicated to Restorative Justice in the penal and penitentiary context, within a framework characterized by the values of dialogue, peace, commitment, and social inclusion. This association arises from the need to implement and develop various initiatives in the field of penal and penitentiary mediation, carried out throughout the Community of Madrid, following the guidelines of the United Nations and the Council of Europe. In this sense, the UN, at the X Congress for the Prevention of Crime, already pointed out the need to promote "the development of restorative justice policies, procedures and programs that are respectful of the rights, needs and interests of the victims, the offenders, the community and all other parties."

For all these reasons, this Association has been selected as a penitentiary mediation entity, where possible areas of good practice related to the application of mediation in violent environments have been analyzed.

Techniques and procedure: The techniques/tools used to collect, process, and treat the relevant information was a semi-structured interview addressed to an expert mediator in the AMPC penitentiary environment. The interview consists of 20 questions, all of them semi-structured, and that correspond to various dimensions that relate conflict and mediation in violent environments within prisons, all carried out by telematic means.

Discussion-Results

The results presented in this article show the positive impact of mediation in the resolution of conflicts that occur between inmates within prisons. After analyzing the functioning of mediation in the penitentiary environment, based on the experience of the AMPC, we can affirm that mediation brings many benefits to the subjects involved in the conflict, in favor of coexistence among the inmates of the prison. The key to this improvement consists in addressing the conflict, since it is not resolved by simply applying the disciplinary regime, but rather the conflict is managed, so that the parties participate actively in its management, acknowledging their interests, reactions and proposing solutions. Even when an agreement is reached, mediation achieves the rapprochement of positions and a reduction in the existing tension between the parties, which leads to the restoration or improvement of communication, ultimately allowing the "pacification of the conflict."

Despite having used a broad approach, in the analysis of Restorative Justice, we consider its opportunity in the penitentiary field, since prison is possibly one of the fields most in need of spaces for dialogue and in this sense, the penitentiary mediation becomes a powerful weapon for understanding and meeting between the people who must necessarily live in the correctional facility. In addition to contributing to social reintegration and personal growth, if mediation has the weight of one more criterion in the hands of the center's disciplinary commission to decide on the immediate future of these people in relation to the consequences of the conflict.

For all these reasons, one of the aspects to be discussed and highlighted refers to the urgent and necessary regulation in Spain of said conflict resolution procedure specifically focused on the penitentiary area, as it constitutes a valuable and weighty tool in the resolution of violent and non-violent, endowed in turn with the necessary and long-awaited economic boost from the State Administration. However, other authors maintain that prison mediation is not appropriate in all situations, particularly those involving violent crimes or serious crimes, all due to lack of funds and the need to protect inmates. However, it is considered opportune to understand that, according to most of the analyzed investigations, the conclusion regarding the great advantages generated by having mediation as an available resource is reached, since it not only generates an improvement in the conflictive situation between the parties, but it can even have great positive mental effects on the inmates, as well as on the relationships between them and the corrections officers within the correctional facility.

Conclusions

It is necessary to have a procedural and substantive legislation that regulates Restorative Justice, guaranteeing its access, throughout the national territory. This legislation must, where appropriate, contemplate aspects as relevant as, for example, respect for Human Rights, the victim as focus of participation and the involvement or activity of the community as an essential and necessary factor when it comes to governing the process of mediation and repair of the damage.

The main barrier to penitentiary mediation refers to the lack of support from the Administration in the implementation of this type of conflict resolution services. For this reason, it is essential to provide all prisons with personal and material resources, so that they have mediation services, to which conflicts between inmates of the various correctional facilities can be derived. The percentage of processes that are referred to mediation is not very high. However, of those initiated, the number of agreements is high, in some cases exceeding 70%.

There is a great lack of knowledge related to this way of resolving conflicts, both by society, as well as by institutions and professionals, who in most cases do not contemplate other options different from those of the punitive culture, without considering the culture of peace and social reconciliation.

Among the advantages of penitentiary mediation, it stands out its ability to adapt to the specific case and submission to the fundamental principles of mediation such as voluntariness, neutrality, impartiality, flexibility, or confidentiality, thus giving greater security to the conflicting parties. In this respect, penitentiary mediation stands out for being faster and cheaper compared to judicial channels, in turn generating a possibility of reducing judicial hyper-judicialization by managing conflicts quickly and efficiently, improving the quality of life of the inmates while achieving a fundamental aspect within the prison system, that is, the reinsertion of the inmate.

The great pending issue of Penitentiary Law is to provide an effective response to the controversies that occur among the penitentiary population, which continues to grow and needs an alternative, in favor of coexistence, reintegration and social peace. For this reason, it is committed to an urgent regulation of penitentiary mediation, providing it with all the resources that are required, all based on the great benefits and advantages that the penitentiary mediation system entails in its entirety.

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Chapter 7

Access to virtual conciliation in Colombia and Mediation in the state of Nuevo León Mexico

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Abstract

Although mediation and conciliation have certain similarities that make them comparable, it is also true that they have palpable differences in their application. In Colombia, conciliation allows the conciliator to have more powers, while in the state of Nuevo Leon, Mexico the mediator cannot intervene or propose settlement formulas to the parties. One of the points in common of these methods of conflict resolution is the use of digital media both for its processing and its celebration. Therefore, the purpose of this document is to determine, through the methodology of critical analysis, bibliographic and documentary review, what are the differences between these two methods of conflict resolution, reaching the conclusion that one of their common points is the use of technological and digital tools that has contributed to strengthen its implementation in each of the states, for its ease and opportunity to bring the parties together in their differences.

Keywords: Conciliation, Mediation, ODR, conflicts, digital tool.

Introduction

Conflict is a complex and multifaceted phenomenon that can be interpreted in various ways. One way to understand it is as a struggle for scarce resources or when opposing values or interests exist. On the other hand, some authors consider conflict a functional process for social systems, recognizing that it is a natural element of the social structure and that its existence is necessary for the functioning of social systems. According to this perspective, conflict enables problem-solving and social change. Likewise, conflict can be understood as a struggle for power between groups or individuals trying to influence the behavior of others. Conflict can also be approached as a struggle over the lack of recognition of an individual's or group's identity, leading to tension and conflict. Finally, another way of understanding conflict is as a struggle for justice, as this perspective suggests that conflict arises when there is a struggle for justice, whether social, economic, or political (Maldonado & Velásquez, 2008).

To deal with conflict, figures such as conciliation and mediation have emerged. Mediation is a method of conflict resolution in which two or more parties involved in a situation seek to reach an agreement with the help of an impartial third party called a mediator. In mediation, the mediator acts

as an intermediary and facilitator of the dialogue between the parties but does not impose solutions or give an opinion on the conflict. Conciliation, on the other hand, is a method of conflict resolution in which two or more parties involved seek to reach an agreement with the help of an impartial third party called a conciliator, who plays a more active role and can propose concrete solutions to the parties (Ministry of Justice and Law [MJD]). These alternative dispute-resolution methods are gaining popularity worldwide due to their multiple benefits. In Latin America, Colombia is one of the pioneer countries in the implementation of conciliation to solve legal and extralegal conflicts, incorporating it, in 1998, as a procedural requirement to be able to go to judicial instances (Mera, 2016), while, in Mexico, each of the states of the Republic has developed a solid legal framework for mediation (Gorjón, 2013).

However, conflict resolution is a complex and crucial task in any society. Although mediation and conciliation are two methods of conflict resolution that have gained popularity in recent times, they should not be confused. Although both methods share similar elements, they also present essential differences (Morales, 2011). The main difference between mediation and conciliation lies in the figure of the professional involved in each process. In mediation, the mediator acts as an intermediary and facilitator of the dialogue between the parties in conflict but has no power to propose solutions or issue opinions on the conflict, his primary function being to help the parties to communicate and understand each other so that they can reach a satisfactory answer on their own. In conciliation, conversely, the conciliator plays a more active role in the process and can propose concrete solutions to the parties to help them build a negotiated solution to the conflict (Pérez, 2006).

The use of technological tools in the administration of justice is an area in which progress has been made in recent years. Decades ago, it was unthinkable to believe that the administration of justice or the application of alternative dispute resolution mechanisms could be carried out through a computer and that hearings before a judge would be conducted through a screen.

This is particularly relevant since the COVID-19 pandemic has given rise to the need for virtual solutions for conciliation and mediation. This has led to adoption of conciliation and mediation through information technologies that facilitate the remote participation of the parties in conflict. Hence the relevance of the topic being addressed, since conciliation and mediation are effective tools for conflict resolution, as they allow the participation of the parties involved in the conflict resolution process, which fosters collaboration and effective communication. In addition, online conciliation and

mediation have the potential to expand access to these dispute resolution methods, which can improve justice and the efficiency of the legal system. (Leal, et al 2021). Thus, incorporating ICTs into alternative justice processes has led to the development of flexible, fast, and inexpensive processes ideal for resolving disputes that can be derived from these mechanisms (Nava & Breceda, 2015).

Perhaps one of the most evident benefits resulting from the use of ICTs and the application of On-Line Dispute Resolution (ODR) is that using electronic tools, people immersed in a conflict could resolve their differences through virtuality despite being at a considerable geographical distance; as well as connect to these sessions at their workplace or home (Alzate, 2008; Montoya, 2014).

For all these reasons, it is necessary to analyze the impact of the measures COVID-19 on virtual conciliation until the issuance of the conciliation statute, law 2220 of 2022, which creates the national conciliation system and regulates conciliation in all areas of the law establishing a classification of the different ways in which it can be carried out, whether in person, digital or electronic and mixed; as well as the contribution of the Law of Alternative Dispute Resolution Mechanisms of the state of Nuevo León to the development of ODR.

Virtual conciliation in Colombia, as of Law 2220 of 2022

Different authors have referred to conciliation as a method of conflict resolution, which, seen from the Colombian Political Constitution, allows individuals to have the power to intervene in their capacity as conciliators to seek a peaceful way to untie the differences, when agreed end up being more in line with their interests (Meza et al., 2022, p.267).

Colombia, since the Constitution of 1991 and its article 116, entered into the exercise of seeking these alternative peaceful solutions, which resulted in rules such as law 446 of 1998 which included in its precepts the legal tool of conciliation, an example of them being article 65 which began to delimit which are those events that by their nature are susceptible to this legal institution, i.e. those that can be settled, desist and all those that the law establishes.

However, the law that came to include conciliation in a relevant manner was Law 640 of 2001, insofar as in civil and family matters and more specifically in its articles 35 and 38, it included rules of mandatory compliance

in declarative processes, referring to the exhaustion of the requirements for conciliation, regulating exceptions mentioned in the law of conciliation or others, such as, the divisional processes, the expropriation process, in those cases where one of the parties is undetermined, the address of notification of the summoned party is not known, precautionary measures are requested and in all those events that because they are expressed in the law, it was not necessary to exhaust, as the processes of restitution of leased property, which in Law 1564 f 2012, known in Colombia as the General Code of the Process, dispensed with such effect exhaustively.

Notwithstanding the above, there is no doubt about the effects of the Covid 19 pandemic worldwide by the year 2020, which forced concepts or tools such as virtuality to be implemented or accelerated in their application to maintain effective judicial protection. Thus, the judicial offices were forced to implement virtual hearings, framed in presidential decrees derived from the emergency of the pandemic, such as decree 806 of 2020, currently becomes law in 2013 of 2022, which makes the realization of virtual hearings and notifications through e-mails relevant among others.

The conciliation was not devoid of this need derived from the pandemic; for such reason, the national government, with decree 491 of 2020, gave more powers to the Conciliation Centers to be able to conduct virtual hearings and, in that sense, allow access to justice through conciliation, but maintaining the preventive isolation.

Although Decree 491 is no longer in force, Law 2220 of 2022 came into force in Colombia on January 1, 2023, establishing the conciliation statute and creating the national conciliation system reiterating the importance of virtual hearings.

This law compiles and regulates conciliation in all areas of law but simultaneously introduces a more robust regulation. Thus, the procedural requirement for access to initiate a declaratory process is expressly held in civil and family matters. In addition to excluding processes such as divisions, expropriation, restitution of leased property, and cancellation and reinstatement of titles, it adds the payment order process, being an innovation as a special declarative process in the General Code of the process to require the payment of contractual obligations, enforceable and in money of minimum amount, for some reason it had not been deprived of this obligation, which made it less expeditious and that by express provision of law 2220, this omission is corrected.

In any case, and as far as we are concerned, this chapter included a classification as to the way to perform it, by having a classification such as face-to-face, digital or electronic, and mixed conciliation, understanding

the first as the one in which the parties and the conciliator are present in a conciliation center, the digital as the one practiced through digital tools and the mixed one that is performed with the parties present and in turn with at least one of them in a virtual way. The digital and mixed involve the intervention of digital media, which will allow to conduct the hearings through applications such as Zoom, Teams, and Meet, among others, and apply the means of notification through emails to summon the parties or for the digital files of the conciliation itself, including its presentation by electronic means. The authenticity, integrity, availability, and confidentiality applicable to the documents and the conciliation procedure must be protected.

As mentioned in the previous paragraph, conciliation in Colombia is a procedure that even gives rise to requests for the convenor to correct the same when it does not meet the requirements mentioned in the law within the following five (5) days, under penalty of being understood as not submitted. If the summoning party in a hearing decides to initiate the conciliation process virtually, the entire process must be conducted similarly.

This being so in Colombia, conciliation by virtual means is a reality that although it does not have its initial source in Law 2220, it is true that its regulation not only affirms what is mentioned in pandemic decrees about the virtual hearing but also strengthens it to be applicable in a dominant manner, which facilitates access to the parties, and reduces the possibility of presenting excuses related to fortuitous events and force majeure, or being outside the municipality or the national territory where the hearing is intended to be held (Law 2220 of 2022, Art.58), since in the face of virtual instruments, the physical space is broken to highlight the interaction of the parties without the need for a material presence.

When writing this chapter, the Information System of Conciliation, arbitration, and amicable composition SICAAC, does not publicly generate the results of virtual conciliations in Colombia. However, the exercise of virtuality is part of a tool to stay at the service of the citizen, and more especially of the jurisdiction in Colombia.

Concept and applicability of ODR in Mexico

The administration of justice in Mexico is established in the second paragraph of Article 17 of the Political Constitution of the United Mexican States, which states:

Every person has the right to have justice administered by courts that will be expedited to impart it within the terms and periods established by law, issuing their resolutions in a prompt, complete and impartial manner. Their service will be free of charge, and consequently, judicial costs are prohibited (Chamber of Deputies of the H. Congress of the Union, 1917).

Also, that article in its fourth paragraph states that:

The laws shall provide for alternative dispute resolution mechanisms. In criminal matters they will regulate their application, ensure the reparation of damages, and establish the cases in which judicial supervision will be required (Chamber of Deputies of the H. Congress of the Union, 1917).

Among the alternative dispute resolution mechanisms most used in the Mexican context and indicated in existing legislation at national and state levels are negotiation, mediation, conciliation, and arbitration.

At the national level, there is only the National Law on Alternative Dispute Resolution Mechanisms in criminal matters, which stipulates mediation, conciliation, and restorative justice as mechanisms (Chamber of Deputies of the H. Congress of the Union, 2014).

However, to date there is no other national legislation that regulates the issue of alternative mechanisms in other matters other than the criminal context, which has given each state the freedom to determine the management of these procedures.

Regarding local legislation, each of the 32 states of the Mexican Republic has at least one legislation on alternative justice, and it is also possible to identify that there is a state center for the administration of these alternative mechanisms.

It is also possible to point out that 23 out of 32 Mexican states have an article alluding to the implementation of alternative mechanisms virtually, except for Aguascalientes, Colima, Chihuahua, Jalisco, Tabasco, Yucatan, and Zacatecas; for its part, the state of San Luis Potosi offers virtual mediation by video calls in its Center, and finally, Morelos has only one law on alternative justice in criminal matters (Martinez, 2022).

Virtuality in Alternative Justice: The Case of Nuevo León

The Law of Alternative Mechanisms for the Solution of Controversies of the State of Nuevo León points out in Article 2 fraction XX the use of alternative mechanisms at a distance using information and communication technologies (H. Congreso del Estado de Nuevo León, 2017). However, its use was not frequent in managing the conflicts between the parties.

As a result of the contingency generated by the COVID-19 disease that forced worldwide confinement, the country's judicial bodies needed to resort to implementing justice virtually.

In this sense, the Judicial Branch of the state of Nuevo León issued, as of March 2020, several agreements establishing a series of preventive actions to deal with the confinement situation.[4]

General Agreement 5/2020-II, the first in this list determined the temporary closure of the facilities, as well as the use and implementation of technological tools to develop its public function. Likewise, it is determined that the Institute of Alternative Dispute Resolution Mechanisms will offer the service of remote mediation to assist the parties in conflict (PJENL, 2020).

For this reason, the way of imparting justice had a big change. It was necessary to adapt tools and knowledge that would preserve the rule of law and continue applying the laws in a way that would not put the health of society at risk.

A study conducted by (Escalera et al., 2021) on the use of virtual mediation in the state of Nuevo Leon consisted of interviewing 25 public mediators belonging to the Judicial Branch of the State of Nuevo Leon to show a real scenario of how it was to use this virtual procedure during the times of the pandemic caused by COVID-19.

Table 1 has been created from the study results to summarize the advantages and disadvantages usually present in the development of virtual sessions.

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4 As the health crisis increased, agreements were reached to postpone the temporary closure of the facilities and thus continue with the procedures virtually. A total of 7 Agreements were issued in 2020, 4 Agreements during 2021, and 2 Agreements during 2022, in which the way of working during the Covid-19 pandemic was determined (PJENL, 2023).

Table 1. *Advantages and disadvantages*

ADVANTAGES	
Study Element	Interpreted Results Obtained
Less time invested.– Adequate time management in the service offered	For many, it became an advantage to carry out virtual mediation procedures, as it allowed mediators and parties to connect to the session from their physical location, as well as be punctual in the scheduled session start and end times.
Avoidance of work absences.– Healthy environment	Having virtual mediation sessions allowed mediators to stay at home without jeopardizing their health, as well as taking care of the conflicting parties.
Adaptation to change.– Generación de conocimiento	Generation of knowledge It became a challenge for both mediators and parties, as there was not much knowledge about the use of digital platforms, which required studying and preparing for the development of virtual procedures.
DISADVANTAGES	
Study Element	Interpreted Results Obtained
Experience of the online process.– Desarrollo del proceso	Process development in general, comments highlight that for the process to be effective, it was important and necessary for the conflicting parties to have knowledge of technological tools; otherwise, this lack of knowledge could create difficulties in conducting virtual mediation.
Effective communication. -Transmisión del mensaje	Message transmission It was considered that at times, it was not possible for the parties to express the situation in depth as it can be done in person, as well as the difficulty in recognizing feelings and emotions.

Connection problems.– Digital divide	The digital divide among people participating in mediation processes occasionally hindered virtual sessions due to technological issues related to internet connection, unfamiliarity with the platforms used, and even with mobile phones, tablets, and computers.
Mediating mothers. - Gender equality	The workload that mediating mothers had to bear at home sometimes complicated the development of virtual sessions, causing physical and emotional exhaustion, a situation not shared by mediating fathers.

Source: (Escalera et al, 2021). Own elaboration

In these scenarios, various complications can arise when citizens do not have the knowledge or access to electronic devices, making it difficult for people to access virtual alternative justice (Escalera et al., 2021).

However, virtually using these alternative mechanisms is a way of imparting justice that is here to stay. Therefore, greater involvement of the states is needed first to adapt the technology and the necessary knowledge within the Judiciary of each of the states of the Mexican Republic. Still, it is also required the involvement of governments to provide citizens with better conditions in terms of information technology and thus to provide a quality service of justice delivery.

Limitations and challenges of online dispute resolution (ODR) to ensure effective and equitable access to justice.

Conflict resolution is a common need in our society. However, the process can be costly, time-consuming, and complicated, especially if the parties involved are from different locations. The solution to this problem lies in ODR (Online Dispute Resolution), which allows disputes to be resolved online without the need to be physically present in one place.

One of the most outstanding advantages of ODR is its accessibility. People can access these online dispute resolution processes from any-where and at any time if they have access to the Internet. This is especially beneficial for those who live in remote areas or have difficulty attending face-to-face hearings. In addition, the technology used in ODR facilitates communication and document sharing, which speeds up the process and reduces the time it takes to reach a solution (Calderón et al., 2022).

Another advantage of ODR is its efficiency. Traditional dispute reso-lution processes can be costly and slow, requiring the physical presence of the parties involved and the mediators or conciliators. In contrast, ODR can be faster and cheaper, as neither the physical presence of the parties nor the mediators or conciliators is required. The technology used in ODR can also speed up the dispute resolution process, allowing for faster and more efficient communication between the parties involved.

In addition, ODR can ensure a more neutral and impartial dispute res-olution process. In traditional conflict resolution processes, unconscious biases or past experiences can influence human mediators and concilia-tors. In contrast, ODR uses standardized algorithms and procedures that are applied uniformly to all parties. This can increase transparency and accountability, as ODR provides a detailed record of decisions made during the dispute resolution process.

While ODR offers several advantages regarding accessibility, efficiency, and cost of dispute resolution processes, it also presents certain limitations and challenges that may affect its ability to ensure adequate and equitable access to justice (Mocletón, 2012).

One of the main challenges faced by ODR is the digital divide. Although Internet access has become widespread in many countries, communi-ties and groups of people still have difficulty accessing the technological tools needed to participate in online dispute-resolution processes. This can include older people, people with disabilities, people living in rural or remote areas, and people with low incomes. To ensure that ODR is genu-inely inclusive, there is a need to address these inequalities and provide support and training to those who may need it.

Another major challenge is the lack of personal contact. While ODR may be more convenient and less expensive than traditional courts, it does not offer the face-to-face interaction that may be important to some people.

Virtual or blended conciliation and virtual mediation may be a good solution for resolving disputes between parties not in the exact geographic location. Still, they may be insufficient for those who prefer in-person interaction.

Likewise, the impartiality and neutrality of ODR are also a concern. Although ODR procedures are designed to be impartial and equitable, there is a risk that technology, algorithms, and pre-set rules may generate unfair or discriminatory decisions. Measures must be implemented to ensure transparency and accountability in ODR processes and that decisions are fair and equitable for all parties involved.

Finally, it is essential to remember that ODR is unsuitable for all types of conflicts. Some issues may be too complex or emotional to be resolved through an online platform and may require the support of a conciliator or an experienced human mediator. Sometimes, ODR can complement traditional dispute resolution processes but cannot replace them entirely.

Conclusions

Conciliation is a process used to solve conflicts and controversies between the parties involved, which seeks to reach an agreement through the intervention of an impartial third party, the conciliator. The main advantage of conciliation is the possibility of getting a solution quickly and effectively, avoiding the judicial process and reducing costs for the parties.

The Covid-19 pandemic has sig all aspects of life, including justice and conflict resolution. Before the pandemic, most hearings and conciliations were conducted in person, with participants gathered physically. However, with the need for social distancing and limited movement, implementing digital tools to achieve these proceedings remotely has accelerated.

Law 2220 of 2022 is a legal regulation that aims to establish a more robust regulatory framework for conciliation in all areas of law. This law seeks to clarify how conciliation is carried out and develop new criteria for classifying it into different modalities, such as face-to-face, digital, or electronic, and mixed conciliation.

Virtual conciliation has become a fundamental tool in times of pandemic. Virtual conciliation allows the parties to communicate from their homes or workplaces, avoiding unnecessary travel and reducing the risk of spreading the virus.

In addition, virtual conciliation can also increase the efficiency and effectiveness of the conciliation process, as the parties can exchange documents and evidence more quickly and easily. Conciliation centers can offer parties secure virtual platforms for conducting virtual hearings and submitting evidence and documents, streamlining the process, and reducing costs.

In the legal field, it is recognized the important of understanding that virtuality allows us to access an asynchronous plane, which means that the parties involved can respond to alternative legal procedures at the time it is possible for them to do so. An environment of reflection will be created around what is to be expressed, improving the quality of the process. This flexibility in time allows the parties involved in a legal process to express their views more effectively, potentially improving the efficiency and quality of legal proceedings. In short, virtuality will enable us to conduct legal proceedings asynchronously, allowing detailed reflection on what one wants to express and greater efficiency and quality in the process.

If it is considered that through the screen, the interaction between the parties can be lost, an asynchronous environment in which the parties are not in connection at the same time could generate more sig complications in terms of determining the agreements; however, it is a reality that over the years it is possible to find.

In the Mexican legal context, it is vital to establish adequate national legislation on alternative mechanisms to provide access to justice virtually and to have a formal structure and precise specifications on how to carry out the procedures.

It is necessary to ensure that alternative mechanisms of access to justice are established in a legal framework that allows their use effectively and fairly. Adequate legislation in this area would allow people to access alternative justice procedures online without resorting to conventional methods, which would significantly improve the efficiency and accessibility of legal services in Mexico. Therefore, it is essential to have clear and specific laws regulating online access to justice in Mexico.

Hence the need to enact a Law on Alternative Dispute Resolution Mechanisms at the national level to determine the applicability of the procedures throughout the country and not leave it to the discretion of each state as is currently the case.

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PART III.

Public Policies

Public Policies with a Human Rights Approach for Social Inclusion in Latin America: Comparative Study

Jessica Marisol Vera Carrera
Jairo Iván Matus Contreras
Mario Isaías Tórrez Tórrez

Building communities with the capacity to resolve conflicts through peaceful means

Eduardo Antonio Palencia Ramos
Yahaira Berenice Martínez Pérez
Beliña Herrera Tapias
Paola Carvajal Muñoz

The unconstitutional state of things as a guaranteed mechanism of public policies in Colombia

Judith Hernández García de Velazco
John Rhenals Turirrago

Crisis and effects of Venezuelan migration on public policies in Colombia and Chile

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Chapter 8

Public Policies with a Human Rights Approach for Social Inclusion in Latin America: Comparative Study

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Abstract

Latin American nations grapple with profound challenges related to social inequality and exclusion, including persistent poverty and unjust income distribution. This comparative study examines public policies with a human rights and social inclusion focus implemented in Brazil, Chile, Colombia, Uruguay, Argentina, and Mexico. Analyzing flagship programs like Bolsa Família, Chile Solidario, Familias en Acción, Sistema Nacional Integrado de Cuidados, Asignación Universal por Hijo, and Programa Oportunidades "Prospera," the study identifies commonalities, differences, achievements, and challenges.

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Each program offers valuable insights into how effective policies can be designed to promote equitable access to education, healthcare, and social rights while reducing poverty and improving quality of life. Recommendations emphasize the need for adaptive, coordinated, and gender-inclusive policies tailored to local needs. Ultimately, this study provides practical strategies for enhancing social inclusion and reducing inequality in Latin America.

Keywords: Social Inclusion, Public Policy, Human Rights, Latin America

Introduction

Latin American countries face serious and significant challenges in terms of social inequality and exclusion. Persistent structural poverty and unjust and inequitable income distribution are two factors that impact this reality.

In response to these problems, several countries in the region such as Brazil, Chile, Uruguay, Colombia, Argentina, and Mexico have designed and implemented public policies with a human rights approach and social inclusion focus that have been successful. Therefore, this study conducts an analysis and comparison of some of these policies, with the aim of identifying effective intervention strategies that can serve as a guide for the implementation of similar policies in other countries.

The selected case studies include renowned programs such as Bolsa Família (Brazil), Chile Solidario (Chile), Familias en Acción (Colombia), Sistema Nacional Integrado de Cuidados (Uruguay), Asignación Universal por Hijo (Argentina), and Programa Oportunidades "Prospera" (Mexico). Through a comparative analysis, common factors and differences in the approaches and implementation of these programs will be examined, as well as the achieved results and challenges faced in each case.

The selection of countries and public policies studied here is not random but rather reflects successful models that have transformed the lives of many people in each of the mentioned countries.

Moreover, this study will reflect on how these case studies can inform and improve public policies for social inclusion in Latin America, considering the challenges and opportunities for policy implementation in the region. Finally, conclusions and recommendations will be presented based on the findings and lessons learned from the case studies, emphasizing the importance of adapting successful public policies to the local conditions and needs in each Latin American country, as well as the need for a comprehensive and multisectoral approach to address poverty and social exclusion.

Context of social inclusion in Latin America

Latin America is a region characterized by inequality and social fragmentation, resulting from the persistence of poverty and inequitable income distribution, which leads to high levels of exclusion. The new economy, according to Tedesco, highlights the increasing inequalities, geographical segmentation, and cultural diversification of populations (2005). Additionally, in the current context, Latin America and the Caribbean face uncertainty and a prolonged social crisis that affects education, well-being, and poverty (Economic Commission for Latin America and the Caribbean [ECLAC], 2023).

Regarding this, in the most recent reports on multidimensional poverty (MP) in the region, understanding it not only as a lack of economic income but as a phenomenon with various dimensions such as lack of access to social, cultural, or participatory rights (Florio & Labrunée, 2021), it was observed that from the period of 2000 to 2017, there was a significant reduction in MP indicators. The countries with the highest levels of poverty were the ones that reduced MP indices the most during this period, such as Haiti, Honduras, and Bolivia (United Nations Development Programme [UNDP], 2021).

Figure 1. *Percentage of the population living in multidimensional poverty.*
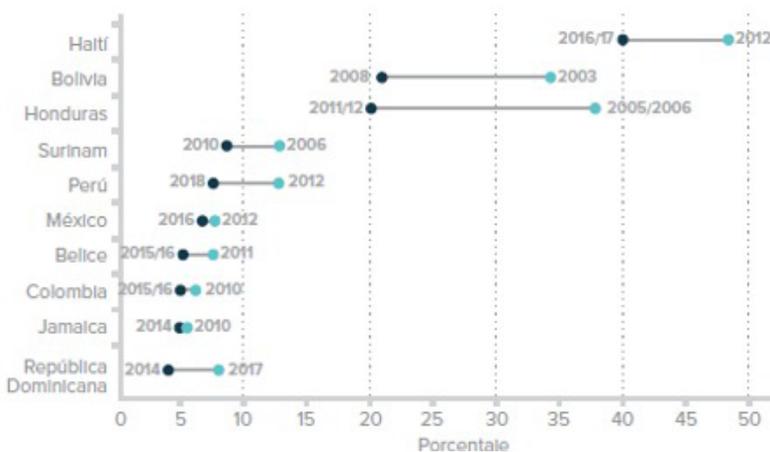
While the data on poverty in Latin America may seem encouraging, more recent numbers indicate that the progress achieved by 2017 has experienced a significant setback starting in 2020. This situation has been aggravated by the COVID-19 pandemic crisis, leading to an increase in extreme poverty rates that has persisted in recent years (CEPAL, 2023).

Figure 2. *Latin America (18 countries): Poverty and extreme poverty rates 1990-2021 and projections for 2022 (percentage).*

It is worth noting that according to the figures on poverty and extreme poverty and their recent increase in recent years, historically vulnerable groups continue to suffer the most. Therefore, people in rural areas, girls, boys, and adolescents, Afro-descendant and indigenous individuals, and those who have not completed primary education are the most affected by the inequalities that occur in the region (CEPAL, 2023). It is evident that there are a variety of circumstances that continue to generate inequalities, among which the following can be highlighted:

Table 1. *Inequalities in Latin America*

Expressions of inequalities present in Latin America	
Dimension	Description
Unequal distribution of educational opportunities	There is an improvement in access to primary and secondary education, but there remains a significant gap in access to tertiary education. The quality of education continues to be a privilege for those with higher incomes, resulting in school segregation in different socioeconomic environments.
Public services are not guaranteed for everyone.	Access to basic services such as clean water, electricity, and sanitation is still conditional for groups with higher income levels. Access to internet connection remains a challenge for certain households, particularly in rural areas, which has become an essential service today.
Unemployment and informality in the labor market	There is an increase in unemployment and informality in the region, particularly affecting women.
Gender inequalities	There is greater participation of women in the labor market, but they still have higher unemployment rates and are more likely to work in the informal sector. Moreover, there is a continued lack of recognition for the unpaid work predominantly performed by women. There is also a low representation of women in the fields of science, technology, engineering, and mathematics (CTIM).

Expressions of inequalities present in Latin America	
Dimension	Description
Ethnic and racial minorities lack recognition as political and economic actors.	These groups represent a significant percentage of the population that has achieved some demands regarding the right to association, respect for traditional authorities, and other aspects. However, they continue to be segregated due to resource exploitation and lack the same opportunities as other groups. They are commonly represented as the poorest sector in the region.
The LGBTQ+ community experiences discrimination at different stages of their lives.	In the region, a person's sexual orientation or gender identity can make them the target of discrimination and violence.

Nota. *Social Panorama of Latin America 2022, ECLAC;
Regional Human Development Report 2021, UNDP.*

In the matter of these inequalities that cause poverty and social exclusion, a variety of strategies have been developed at both the local and international levels. Among them, the 2030 Agenda for Sustainable Development stands out. It was approved by the United Nations in September 2015 and represents a consensus among states and stakeholders to create spaces that eradicate poverty and promote social inclusion (Economic Commission for Latin America and the Caribbean, n.d.). Within the 17 goals outlined in the agenda, the ones that explicitly address the issue of poverty and social inclusion are as follows:

Table 2. *Agenda 2030*

Agenda 2030 for Sustainable Development	
Objective	Target
End poverty in all its forms everywhere.	By 2030, eradicate extreme poverty for all people worldwide. By 2030, ensure that all men and women, particularly the poor and the vulnerable, have equal rights to economic resources and access to basic services.
Reduce inequality within and among countries.	By 2030, enhance and promote social, economic, and political inclusion of all individuals, regardless of their age, sex, disability, race, ethnicity, origin, religion, economic status, or any other condition.
Achieve inclusive, safe, resilient, and sustainable cities and human settlements by 2030.	By 2030, significantly increase the number of cities and human settlements adopting and implementing integrated policies and plans to promote inclusion.

Nota. Own Elaboration.

Source: "The 2030 Agenda and the Sustainable Development Goals: An Opportunity for Latin America and the Caribbean," United Nations. https://repositorio.cepal.org/bitstream/handle/11362/40155/24/S1801141_es.pdf

Many states are working along these lines, promoting regulations and public policies to achieve social inclusion and fulfill this agenda. By using comparative analysis in this article, we seek to identify and study effective strategies and approaches that address inequalities and promote sustainable development in the region. By examining successful experiences in Latin America, this study aims to provide valuable information for the implementation of public policies that promote social inclusion. Thus, it is expected that this comparative analysis can be a useful tool to reflect successful cases and contribute to overcoming the challenges faced by the region in terms of equity and well-being.

Relevant theories and concepts in the field of social inclusion and public policies.

In the construction of spaces and tools to achieve social inclusion, including public policies, various theories and concepts have been developed by scholars to facilitate the understanding of the phenomenon and its different dimensions, as well as the importance of their implementation in addressing the inequalities present in Latin America. This section will briefly discuss some of these theories.

Theory of social justice

This theory, proposed by John Rawls, states that a just society is one in which socioeconomic inequalities are designed to benefit the most disadvantaged. Social justice is based on two fundamental principles: equality of opportunity and redistribution of resources to ensure a minimum level of well-being for all (Vidal, 2009). This stance opposes the current order of societies where the least favored must deal with limitations for the greater good of society in general.

Social capital

Social capital is a concept developed by Robert Putnam, which refers to the network of reciprocal relationships, shared norms, and trust among individuals and communities to achieve mutual benefits, enabling sustainable development and a more cohesive society (Urteaga, 2013). A high level of social capital can enhance social inclusion by facilitating cooperation and solidarity among members of society.

Public policies

Public policies are a series of actions or tools implemented by the state through a government to respond to a societal need or address a social problem that may be affecting a specific social group (Wilson, 2018), applying a range of sociological theories to find a response to these issues.

Theory of Empowerment

Empowerment is a process through which individuals gain greater control over their lives and actively participate in decision-making that affects their well-being (Banda & Morales, 2015). The theory of empowerment argues that public policies should be designed to strengthen the capacity and autonomy of disadvantaged individuals, so that they can improve their situation and fully participate in society.

Human Rights Approach

The human rights approach in public policies involves recognizing and promoting the fundamental rights of all individuals, without discrimination, as this is essential for achieving sustainable human development, analyzing the obstacles generated by inequalities and how they can be eliminated (United Nations Sustainable Development Group, n.d.). Human rights-based public policies seek to ensure equitable access to resources and opportunities, as well as the active and meaningful participation of all individuals in social, economic, and political life, particularly those social groups that are most excluded and discriminated against.

The implementation of these theories and concepts in public policies for social inclusion promotes the elimination of various dimensions of poverty and inequality, leading to sustainable human development and creating more equitable and prosperous societies.

Methodology

To address the objectives of this research, a qualitative approach was applied through a comparative case study design focusing on successful cases in Latin America related to social inclusion. The qualitative method enables a profound understanding of contexts, processes, and outcomes in the implementation of public policies.

The methodology was developed in the following stages:

1. Thorough literature review: A comprehensive review of academic studies, government reports, documents from international organizations, and other relevant materials was conducted to identify successful public policies in the region.

2. Selection of case studies: Six successful cases in Latin America were chosen for in-depth analysis, considering the diversity of approaches and contexts in different countries. The selected countries were Brazil, Chile, Colombia, Uruguay, Argentina, and Mexico, based on criteria such as recognition and awards from international organizations.

3. Data collection: Relevant data from each case study was gathered from primary and secondary sources, including official studies and documents, reports from international organizations, and evaluations of programs and interventions.

4. Detailed analysis of the case studies: The objectives, strategies, actions, and outcomes of each public policy were examined, identifying key elements that contributed to their success in promoting social inclusion.

5. Comparison of the selected cases: The case studies were compared, focusing on the similarities and differences in approaches, implementation, and outcomes. Key aspects that contributed to the success of each program in promoting social inclusion were analyzed.

6. Summary of findings and development of conclusions and recommendations: Based on the comparative analysis, the findings were synthesized, and conclusions and recommendations were formulated to provide valuable information and guidance to decision-makers in the formulation and implementation of effective public policies for social inclusion in Latin America.

Description and analysis of case studies (8 pages)–Objectives, implementation, results, and lessons learned

The Bolsa Família program (Brazil).

The Bolsa Família Program (PBF) in Brazil is a nationwide public policy based on Conditional Cash Transfer Programs (CCTs), which essentially involves "providing cash subsidies to beneficiary households instead of in-kind transfers under certain conditions" (Inter-American Development

Bank [IDB], 2016). The PBF was established in 2003 to consolidate other similar programs (Bolsa Escola, Auxílio-Gás, Bolsa Alimentação, and Cartão Alimentação), formalizing it under Law No. 10,836 on January 9, 2004. This consolidation aimed to avoid duplication of efforts and operational expenses, focusing on the family unit for poverty elimination and reducing inequalities, while also ensuring access to health and education services for Brazilian families (Peixoto Ávila, 2013).

The specific objectives of the program can be observed in Decree No. 5,209/2004, which regulates Law No. 10,836 of the Bolsa Família Program. The decree states the following objectives:

1. Promote access to the network of public services, especially health, education, and social assistance.
2. Combat hunger and promote food and nutritional security.
3. Stimulate the sustainable emancipation of families living in poverty and extreme poverty.
4. Combat poverty;
5. Promote intersectoral collaboration, complementarity, and synergy of social actions by the Public Power.

Based on these guidelines, the Bolsa Familia Program aims to achieve social inclusion and improve access to social rights (education and health) to break the intergenerational cycle of poverty reproduction (Mundo sin pobreza, 2015).

The Bolsa Familia Program is a non-contributory distribution policy, which means that it is granted regardless of whether the beneficiaries have previously contributed to the state financial system (Peixoto Ávila, 2013). This financial assistance is provided to poor and extremely poor families only if they meet a series of conditions in the areas of education and health (Ministério de Desenvolvimento Social e Combate à Fome (MDS), 2005).

The Single Registry functions as a form that families must fill out to gather information and determine their eligibility for the program and the type of benefit they will receive. The operating body of the registry and the payment of benefits is the Caixa Econômica Federal, which is responsible for processing the registry data and assigning the Social Identification Number to each registered person. The amount of the benefit is generally given to the woman responsible for the family and depends on the monthly per capita income and family composition (Gazola Hellmann, 2015). It is established as follows:

Table 3. *Bolsa Familia*

Benefits established in Bolsa Familia		
Benefit	Amount	Allocation criterion
Basic Benefit (BB)	R$77.00 (U$15.42)	Exclusively to families in extreme poverty, that is, those whose monthly income per person is less than 77 reais. This benefit is received regardless of family composition and even if there are no individuals under 18 years old.
Variable Benefit (BV)	R$35.00 (U$7.01)	Families in poverty or extreme poverty that have pregnant or lactating women and/or children and adolescents up to 15 years old in their household composition. Each family can receive up to five of these benefits, one for each eligible individual.
Variable Youth Benefit (BVJ)	R$42.00 (U$8.41)	Families in poverty or extreme poverty that have youth members between the ages of 16 and 17. Each family can receive up to two of these benefits. The benefit is received until the month of December of the year in which the teenager turns 18.

Benefits established in Bolsa Familia		
Benefit	Amount	Allocation criterion
Extreme Poverty Overcoming Benefit (BSP)	Variable value, corresponding to the amount necessary to overcome R$ 77.00 per person per month.	Payment to families who, even after receiving the financial benefits from the PBF, continue to be in a situation of extreme poverty (that is, less than R$ 77 per person)
Variable Benefit for Pregnant Women (BVG)	Nine installments of R$ 35.00 (US$7.01) (starting from the moment the pregnant woman is identified).	It is linked to the Social Identification Number (NIS) of the pregnant beneficiary of the PBF and can be granted for multiple periods within the same family, if it does not exceed a maximum of five benefits.
Variable Benefit for the Infant (BVN)	Six consecutive installments of R$35.00	This benefit is intended for families with children up to six months old.

Nota. Own Elaboration.

Source: Inter-American Development Bank. Brazil Bolsa Familia Transfers. https://www.iadb.org/es/toolkit/programas-de-transferencias-condicionadas/brasil-bolsa-familia

A family in extreme poverty can accumulate multiple of these benefits up to a monthly maximum limit of R$336 (U$67.28) (Inter-American Development Bank [IDB], n.d.). Families who wish to opt for these benefits must meet the following conditions:

1. Keep children and adolescents in school with regular attendance.
2. Maintain the vaccination schedule of children and adolescents up to date.

3. Attend scheduled medical appointments for pregnant women and children under 7 years old.

Monitoring compliance with the conditions in the health field is the responsibility of the Ministry of Health, while the Ministry of Education is responsible for education-related matters. Both ministries will send compliance reports to SENARC (Gazola Hellmann, 2015).

Regarding the results of the Bolsa Familia Program, according to recent data from the Economic Commission for Latin America and the Caribbean (ECLAC), it is estimated that by 2021, it has benefited 14,695,095 Brazilian families, which is equivalent to 59,304,936 individuals, approximately 27.7% of Brazil's total population (Economic Commission for Latin America and the Caribbean, 2021).

The Bolsa Familia Program has achieved significant results since its implementation. Some of the most notable achievements include:

1. Reduction of extreme poverty and inequality: The program has contributed to the reduction of extreme poverty in Brazil and inequality, allowing millions of people to escape extreme poverty and gain access to basic resources for their survival (Rivera Castiñeira, Currais Nunes, & Rungo, 2009).

2. Improvement in child health and nutrition: The program has helped combat child malnutrition, as beneficiary families must meet health and education requirements to receive the benefit. This has led to increased vaccination coverage and overall improvement in children's health (Mundo sin pobreza, 2013).

3. Increase in school attendance: The Bolsa Família Program has incentivized regular school attendance, as families must ensure that their children are enrolled and attending classes. This has contributed to greater educational inclusion and reduced school dropout rates (Amaral & Gonçalves, 2015).

4. Empowerment of women: The program is designed to ensure that benefits are delivered to the women of the families, recognizing their fundamental role in managing family resources. This has fostered women's economic autonomy and promoted their participation in family decision-making (Gazola Hellmann, 2015).

In summary, Brazil's Bolsa Familia Program has been a crucial tool in reducing poverty and inequality in the country. Through its implementation, it has successfully improved the living conditions of millions of people, particularly those in extreme poverty, promoting social inclusion.

Chile Solidario (Chile)

Chile has demonstrated a strong commitment to public social policies aimed at alleviating poverty and improving access to social services for its population. Thanks to strategies implemented since 1990, the country ranks among the top three in the region with the highest poverty prevalence, according to data from Statista. In their ranking of Latin America and the Caribbean by the number of people below the poverty line in 2020, Chile appeared as the country with the lowest poverty rate in the region, with a percentage of 10.8% (Statista, 2021).

This achievement is not recent nor surprising. Since the 1990s, the Chilean government has been working to reduce poverty. In that decade, the South American nation had a poverty rate of 38.6% within its social composition. The decrease of that figure to 10.8% today is the result of the knowledge gained through years of implementing programs and public policies progressively aimed at socially recognized groups entitled to rights, and which are an integral part of its social policy.

These policies have been praised by various international organizations. In 2002, the "Chile Solidario" program was launched, considered the most important program to combat poverty. Coordinated by the Ministry of Planning, it was implemented continuously for 15 years (2002-2017). Its objective was to "Incorporate low-income families into the State's Social Protection Network, which in turn facilitated access to benefits and services that were mostly already provided by the state, but to which these vulnerable groups did not know how to access" (Borzutzky, 2009).

This program had an approach that sought to bring existing social rights or benefits closer to the population, allowing the population itself to generate local demand from their municipalities, which in turn generated recognition of those rights. Additionally, it aimed to understand at the municipal or local level which priority services the population was frequently requesting. We will now address the most important points of

this public policy. "Chile Solidario" focused on providing preferential access to the "Unique Family Subsidy" (SUF) for low-income families. This program was designed as an incentive mechanism to promote increased investment in health and child education (Neidhöfer & Niño-Zarazúa, 2019).

The program was implemented in a dual manner. The first component provided intensive psychosocial support to households in extreme poverty for a period of two years. This support was provided by a social worker who assessed the specific needs of the household and worked with them to develop a personalized strategy to overcome extreme poverty in the short term. According to Galasso: "This process involved designing a 'life project,' which included developing a set of steps to enable their exit from extreme poverty within a two-year period" (2011).

The role of social workers was crucial for the successful implementation of the program. They helped members of these family groups to formulate, understand, and activate their social demands, and worked on address-ing feelings of discrimination (Currie, 2004). In this way, households could recognize themselves as citizens, rights holders, and deserving of state assistance that strictly fostered the development of their capacities, thus enabling them to overcome the threshold of extreme poverty in a solid and sustainable manner over time.

According to Galasso's explanation, the second component worked from a supply-side approach, ensuring coordination among different existing programs. [...] The long-term objective was to move away from a single-program-based approach towards "social protection systems" where programs would be tailored to meet the needs of hard-to-reach households (Galasso, 2011).

This led "Chile Solidario" to focus on a central axis of action that sought coordination among different available social programs. From this perspec-tive, we can infer that the public policy recognized that extreme poverty is a multifaceted problem that cannot be effectively addressed through isolated and sectoral programs. According to data obtained by Galasso: "The program was implemented in four different phases, covering a target population of 225,000 households, estimated to be households living in a state of indigence" (Galasso, 2011). Thus, the main objective was to alleviate extreme poverty.

Even though the public policy we are referring to, "Chile Solidario," is no longer in effect, its impact and the lessons learned during its 15 years of implementation are of great importance. While each context is unique and requires tailored solutions to specific circumstances, these learnings can be utilized in the creation of successful complementary public policies

and some of its components can be considered as part of a new policy within the region. Thus, the experience of "Chile Solidario" remains relevant and valuable for the future development of effective poverty mitigation strategies that aim to improve the lives of its most vulnerable citizens.

Familias en Acción (Colombia)

The Familias en Acción program in Colombia is also a Conditional Cash Transfer program that started operating in 2000, driven by former President Andrés Pastrana with resources from the Inter-American Development Bank (IDB), the World Bank, and the Plan Colombia. Initially, the program focused on vulnerable groups in rural and urban municipalities with few inhabitants. However, through Constitutional Court Sentence T-02519 in 2004, it was expanded to include victims of internal forced displacement in Colombia, which led to a reformulation of the program, also expanding its coverage to municipalities with larger populations. President Juan Manuel Santos promoted the program to be considered a state policy, leading to its formalization as Law 1532 on June 7, 2012 (Arboleada Suarez, 2014).

Article 3 of Law 1532 establishes the objectives of the program, stating that it aims to contribute to overcoming and preventing poverty and the formation of human capital. Although the law does not explicitly state it, the program also seeks to promote education and improve the health and nutrition of Colombian families.

El Departamento para la Prosperidad Social (DPS) is the delegated entity responsible for achieving the effective implementation of the program, through the Directorate of Monetary Transfers, which manages the payment of subsidies to beneficiaries, classified as follows according to the regulations:

i) Families in poverty, according to the criteria established by the National Government through the Administrative Department for Social Prosperity, in accordance with the provisions of articles 1, 2, and 3 of this law.

ii) Families in a situation of displacement.

iii) Indigenous families in poverty, in accordance with the procedures of prior consultation and targeting established by the program, as well as Afro-descendant families in extreme poverty, according to the validated instrument for this purpose (Article 4, Law No. 1532).

To locate and identify beneficiaries who meet the criteria established by the regulation, the following mechanisms are used:

The System for Identification of Potential Beneficiaries of Social Programs (SISBEN), which measures the standard of living, and official records that validate vulnerable conditions. The official records include the registry of beneficiaries of the extreme poverty combat strategy Red Unidos, the Unique Victims Registry (RUV), and the indigenous census (Inter-American Development Bank, 2016).

Once beneficiaries have been validated through any of these mechanisms, they can receive two types of incentives, namely the health incentive and the education incentive, which will be provided as follows.

Table 4. *Familias en Acción*

Incentive	Description	Amount
Health	It is granted to families with children under 6 years old, to complement the family income and improve the health of children and adolescents during the critical stage of their growth. Only one incentive is provided per family, regardless of the number of children.	Group Sisben and Red Unidos: 174,650 pesos Displaced and Indigenous Group: 203,700 pesos
Education	It is granted to families with children and adolescents of school age, who are enrolled in grades Transition to Eleventh, to encourage school attendance, increase years of schooling, and reduce school dropout. An incentive is given for each child and adolescent, with a maximum of three beneficiaries per family.	This amount varies depending on the grade level and cities, but the amounts range from 43,800 pesos to 160,050 pesos.

Nota. Own Elaboration.
Source: Familias en Acción. https://familiasenaccion.online/montos-pago

To maintain these benefits, families must fulfill the health and education responsibilities, which basically involve ensuring that all children under 7 years of age attend the necessary medical check-ups according to the growth and development control (CCD) established by the Ministry of Health, and ensuring that children and adolescents between 5 and 18 years old are enrolled in the appropriate grade level according to their age and meet the required percentage of attendance in classes.

Regarding the impact of the program on the population, recent information indicates that in 2021, 2,128,960 families were benefited by this program, which is equivalent to 8,515,840 people, representing 16.6% of the national population (Economic Commission for Latin America and the Caribbean, 2021). Similarly, according to the National Planning Department, the program "reduced the multidimensional poverty index by 3.6% and the extreme poverty index by 9.1%. It also demonstrated a significant improvement in the school attendance of children beneficiaries of the program" (Government Subsidy, 2023).

Sistema Nacional Integrado de Cuidados (Uruguay)

The Integrated National Care System (SNIC) is a policy created by Law No. 19,353 on November 27, 2015. The main objective of this policy is "to promote the development of autonomy for people in situations of dependency, their care and assistance, establishing a solidary and co-responsible model among families, the state, the community, and the market" (Article 2 of Law No. 19,353). Therefore, it aims to promote social inclusion of groups in situations of dependency and improve the quality of life of the general population.

The body responsible for directing this system is the National Care Board (Created by Article 11 of Law 19.353 and regulated by Decree 445/016). This board operates based on interinstitutional cooperation and is composed of several government institutions such as:

Ministry of Social Development (MIDES), Ministry of Economy and Finance (MEF), Ministry of Education and Culture (MEC), Ministry of Public Health (MSP), Ministry of Labor and Social Security (MTSS), Planning and Budget Office (OPP), Social Security Bank (BPS), National Administration of

Public Education (ANEP), Institute of Children and Adolescents of Uruguay (INAU), Congress of Intendants, and National Institute for Women (Ministry of Social Development [MIDES], 2019).

Care is conceived in Uruguay as a social function and right, which is why this Care System is made up of public and private actions, all aimed at providing the best care to people in situations of dependency. The system seeks to "socialize the costs associated with care tasks, as well as generate public services or stimulate and regulate private provision" (MIDES, 2022).

The entity responsible for coordinating and implementing the system according to the guidelines of the National Care Board is the National Care Secretariat, in accordance with Article 11 of Law 19.353. The Secretariat will be responsible for providing all the tools to the rights holders established in Article 8 of the same legislation, which are:

A) Those who are in a situation of dependency, considering as such those individuals who require specific support for the development of their activities and the satisfaction of their basic daily needs. Therefore, the following individuals are in a situation of dependency:

1. Children up to twelve years old.
2. Persons with disabilities who lack autonomy to carry out activities and attend to their basic daily needs on their own.
3. Individuals over sixty-five years old who lack autonomy to carry out activities and attend to their basic daily needs on their own.

B) Caregivers/Those who provide care services.

To become a beneficiary of the National Integrated Care System (SNIC) in Uruguay, it is necessary to go through an evaluation process that determines eligibility and care needs, apply, and provide personal, medical, and socioeconomic documentation, as well as any other information that supports their dependency situation. The services offered by the system are varied, some of which include Care spaces for children of students; Child and Family Care Centers (CAIF); Home Teleassistance; Personal Assistants; Socio-educational Inclusion Scholarships (BIS); Early Childhood Care Centers (CAPI), among others (MIDES, n.d.).

According to the latest official figures published by the Care System, for the year 2020, Uruguay has the highest level of coverage of care and education for early childhood in the region, with 16,647 children aged 0 to 3 years attending public health and education services. It is also reported that

there are 6,125 individuals with severe dependency who have a personal assistant to support them in their daily tasks, and there are 4,681 individuals working as personal assistants. Additionally, there are 1,533 individuals using the home teleassistance service, and 5 authorized companies providing nationwide care services (MIDES, 2020).

The SNIC has shown significant improvements in the care and quality of life of beneficiaries. There has been an increase in the coverage of care services nationwide, allowing a greater number of individuals to access specialized and personalized care according to their needs. Additionally, the SNIC has contributed to job creation in the care sector by promoting the creation of new positions in various related areas, such as home assistance and care in specialized centers.

Asignación Universal por Hijo (Argentina)

The Universal Child Allowance (AUH) is a social program implemented in Argentina with the aim of providing economic support to families in vulnerable situations and promoting the protection of the rights of children and adolescents. This public policy, implemented since 2009 through Decree DNU 1602/2009, is an extension of the Family Allowance Regime of the contributory and non-contributory subsystems, targeting workers who are not registered in the social security system, earn wages below the Minimum Vital and Mobile Salary, and unemployed workers who do not receive unemployment benefits (Presidencia de la Nación de Argentina, 2019).

The AUH is a non-contributory allowance that is paid monthly to only one of the parents, guardians, or legal representatives, for each child or adolescent under the age of 18 who is under their care. There is no age limit when the child or adolescent is in a situation of disability. This allowance is provided when the parent is unemployed, emancipated, or not receiving any other family allowances. The maximum amount that can be received is based on the allowance for up to five children (Article 5 of Decree DNU 1602/2009).

Similarly, to access this benefit, it is necessary to meet a series of requirements related to the integral development of the child or adolescent. These requirements are:

a. The child must be Argentine, the child of a native or naturalized Argentine, or a resident with legal residence in the country for a minimum of three (3) years prior to the application.

b. The identity of the beneficiary and the child must be proven through a National Identity Document.

c. The relationship between the person receiving the benefit and the child must be proven through the presentation of corresponding birth certificates, and in the case of adoption, guardianship, and curatorship, relevant judicial testimonies.

d. The certification of the disability condition will be determined in accordance with Article 2 of Law No. 22,431 and certified by a competent authority.

e. Up to four (4) years of age, inclusive, compliance with health checkups and the mandatory vaccination schedule must be proven. From five (5) years of age up to eighteen (18) years of age, attendance of the child at public educational institutions must also be proven.

f. The beneficiary must submit a sworn declaration regarding compliance with the requirements specified herein and the invoked conditions. If the falsity of any of these data is proven, the benefit will be revoked, without prejudice to the corresponding sanctions (Article 6 of Decree DNU 1602/2009).

As a benefit derived from the social security system, the responsibility for delivering this social benefit lies with the National Social Security Administration (ANSES). ANSES will pay eighty percent (80%) of the amount monthly, and the remaining twenty percent (20%) will be held in a savings account and paid out annually (Article 7 of Decree DNU 1602/2009).

The impact of these allowances has been significant for the Argentine population, as it is estimated that 2,481,097 families benefited from this provision in 2021, which corresponds to 4,373,733 individuals, representing 9.59% of Argentina's population, with 51% being men and 49% being women (CEPAL, 2021).

The implementation of AUH has had significant impacts on reducing child poverty and improving the living conditions of beneficiary families. Some notable results include:

Reduction of child poverty: The AUH has contributed to reducing child poverty in Argentina, helping millions of children and adolescents escape extreme poverty (Quiroga, 2022).

Increase in school enrollment and healthcare attendance: The requirement for school enrollment and health check-ups has incentivized regular school attendance and medical check-ups. There has been an increase in school enrollment and access to healthcare services among beneficiary children and adolescents (Argentina Municipal, 2014).

Programa Oportunidades (Prospera) de México

This program started under the name Programa de Educación, Salud y Alimentación (Progresa) on August 8, 1997, serving 300,000 families in rural areas. By 2002, it was supporting 2.4 million families, including some indigenous communities. In the same year, the program transformed into Oportunidades and achieved national coverage, benefiting 4.2 million Mexican families. On September 5, 2014, a Presidential Decree once again transformed the program, strengthening it and renaming it PROSPERA, Programa de Inclusión Social (Government of Mexico, n.d.).

Prospera is a social program aimed at reducing poverty and promoting human development among the most vulnerable families in the country. Like other similar programs that have been studied, Prospera is a conditional cash transfer program with the following specific objectives:

a. Improve the conditions of education, health, and nutrition for families in extreme poverty through access to quality education, health, and nutrition services, and the provision of monetary support.

b. Integrate education, health, and nutrition actions to ensure that academic performance is not affected by illnesses or malnutrition, nor by the need to engage in work that hinders the school attendance of children and youth.

c. Contribute to children and youth completing basic and upper secondary education through increasing scholarships and providing them with the possibility to pursue higher education.

d. Address the health and nutrition needs during the stages of pregnancy and growth of boys and girls through the provision of nutritional supplements, medical surveillance at health units, and information for self-care and proper nutrition.

e. Empower women: Prospera aims to strengthen the role of women in communities by providing them with access to opportunities for

personal development, training, and entrepreneurship (Municipal Government of Mezquiti).

The support includes direct cash transfers to families, conditioned on fulfilling commitments in education and health. Additionally, training services, technical assistance, and access to complementary programs are provided to promote the comprehensive development of beneficiary families (Ministry of Social Development).

The program has had significant impacts on reducing poverty and improving the living conditions of beneficiary families. According to the Economic Commission for Latin America and the Caribbean (CEPAL), in 2021, approximately 6,519,330 families were beneficiaries of the program, with an estimated 31,245,838 individuals receiving support, which represents approximately 24.76% of Mexico's population (CEPAL, 2019). This has undoubtedly had an impact on various aspects. Some of them include:

1. Reduction of extreme poverty: Prospera has contributed to reducing the incidence of extreme poverty in Mexico by providing economic support to the most vulnerable families. (Secretaría de Bienestar, 2016)

2. Increase in school attendance: The program has incentivized the attendance and retention of children and youth in school, contributing to the decrease in school dropout rates and promoting education as a means for personal development. (Parker & Vogl, 2019)

3. Improvement in health and nutrition: Prospera has contributed to improving access to healthcare services and nutrition for beneficiary families, especially for children under 5 years old. (Gertler & Boyce, 2001)

4. Empowerment of women: The program has promoted active participation of women in decision-making processes and in the development of their communities through training and access to personal development and entrepreneurial opportunities.

Summary table of social inclusion programs in the región

Table 5. *Prospera*

Program	Objectives	Implementation	Results	Lessons learned
Bolsa Familia (Brasil)	Reducing poverty and inequality, improving the health and education of beneficiary families.	Conditional cash transfers tied to school attendance and regular medical appointments.	Reduction of poverty, improvements in health and education, increase in labor market participation.	The importance of coordination among different government sectors and targeting the most vulnerable populations.
Chile Solidario (Chile)	Overcoming extreme poverty and promoting social inclusion.	Comprehensive and personalized support to families in extreme poverty for 24 months.	Reduction of extreme poverty, improvements in quality of life, and access to social services.	The importance of a comprehensive and personalized approach in supporting families in vulnerable situations.
Familias en Acción (Colombia)	Improving the health, nutrition, and education of children in poverty.	Conditional cash transfers linked to school attendance and health check-ups.	Increase in school enrollment, improvements in children's nutrition and health.	Targeting the child population as an effective strategy to break the cycle of poverty.

Program	Objectives	Implementation	Results	Lessons learned
Sistema Nacional Integrado de Cuidados (Uruguay)	Creating a care system that ensures access to quality services for all.	Creation of an integrated care system for children, older adults, and people with disabilities.	Expanding access to care services and reducing gender gaps in unpaid care.	The importance of addressing care as a shared responsibility among the state, society, and families.
Asignación Universal por Hijo (Argentina)	Reducing child poverty and ensuring access to education and health for all children.	Universal cash transfers for families with children under the age of 18.	Reduction of child poverty, increase in school enrollment, and improvements in children's health.	The impact of universal cash transfers on reducing poverty and inequality.
Programa Oportunidades (Prospera) de México	Reducing poverty, improving health and education, and empowering women.	Conditional cash transfers linked to health, education, and women's empowerment.	Reduction of poverty, improvements in health and education	A leading program in the region that integrates all family members and empowers women as family heads.

Nota. Own Elaboration

Comparative analysis of successful public policies in the region

Below is a comparative analysis of successful public policies in Latin America, considering the mentioned programs: Bolsa Familia (Brazil), Chile Solidario (Chile), Familias en Acción (Colombia), Sistema Nacional Integrado de Cuidados (Uruguay), Asignación Universal por Hijo (Argentina), and Programa Oportunidades (Prospera) in Mexico. Common factors and differences in the approaches and implementation of the programs will be analyzed, as well as the achieved results and challenges faced in each program.

Common factors and differences in the approaches and implementation of the programs:

1.- Common factors:

    a. Most of the programs focus on the implementation of conditional cash transfers (CCTs), which are intended to improve the health, education, and nutrition of families in vulnerable situations.

    b. All the programs aim to address inequality and poverty in their respective countries, although with different approaches and specific objectives.

    c. Targeting the beneficiaries is a key aspect in all the programs, ensuring that resources are directed to the neediest families.

2.- Differences:

    a. The Sistema Nacional Integrado de Cuidados (Uruguay) has a specific focus on individuals with disabilities, promoting equal opportunities in accessing quality services.

    b. Chile Solidario stands out for its comprehensive approach, linking social inclusion programs with other social services and programs.

    c. The Asignación Universal por Hijo (Argentina) addresses inequality and poverty by providing a fixed subsidy to families with children under 18 years old.

Results achieved and challenges faced in each program:

1.- Bolsa Familia (Brazil)

Results achieved: Reduction of extreme poverty, improvements in health and education, and reduction of inequality.

Challenges faced: Fiscal sustainability and strengthening of social protection networks.

2.-Chile Solidario (Chile):

Results achieved: Increase in access to social services and improvements in the quality of life of beneficiary families.

Challenges faced: Improving efficiency in beneficiary identification and coordination between programs and services.

3.-Familias en Acción (Colombia):

Results achieved: Increase in school enrollment, improvements in nutrition, and reduction of poverty.

Challenges faced: Ensuring the financial sustainability of the program and improving the quality of health and education services.

4.- Sistema Nacional Integrado de Cuidados (Uruguay):

Results achieved: Expansion of care coverage, promotion of gender equality, and creation of employment in the care sector.

Challenges faced: Ensuring the quality-of-care services and adapting the system to the needs of an aging population.

5.-Asignación Universal por Hijo (Argentina):

Results achieved: Reduction of child poverty and improvement in the education and health of beneficiary children.

Challenges faced: Maintaining the financial sustainability of the program and improving efficiency in delivering the benefits.

6.- Programa Oportunidades (Prospera) de México:

Results achieved: Reduction of poverty, improvements in health and education, and strengthening of social protection networks.

Challenges faced: Improving beneficiary targeting, ensuring program sustainability, and increasing the quality of health and education services.

In summary, the programs analyzed in the Latin American region share some common factors, such as the implementation of conditional cash transfers and a focus on vulnerable families. However, they also present differences in their approaches and implementation, leading to different results and challenges. Despite these challenges, these programs have proven successful in addressing inequality and poverty in the region, improving the health, education, and quality of life of beneficiary families.

Discussion

Reflection on how these case studies can inform and improve public policies for social inclusion in Latin America.

1. Adaptation of public policies to local needs: Each country in Latin America faces specific challenges regarding poverty and inequality.

It is essential that public policies be adapted to the specific conditions of each country and address the needs of vulnerable populations.

2. Intersectoral and coordination: The analyzed programs have shown the importance of collaboration between different government sectors, as well as coordination with non-governmental organizations and civil society. This ensures effective implementation and broader coverage of beneficiaries.

3. Monitoring and evaluation: The implementation of robust monitoring and evaluation systems is key to measuring the impact of public policies and making necessary adjustments. This allows for the identification of areas for improvement and evidence-based decision-making.

4. Sustainability: Social inclusion programs require economic and human resources to ensure their long-term sustainability. It is essential for governments to prioritize these policies and secure their funding.

Challenges and opportunities for the implementation of public policies in the region.

Challenge: Reducing persistent inequality and poverty in the region.

Opportunity: Learning from successful programs and adapting them to local needs.

1. Challenge: Improving the targeting of beneficiaries and avoiding the exclusion of vulnerable populations. Opportunity: Using technology and information systems to enhance the identification and tracking of families in vulnerable situations.

2. Challenge: Strengthening institutional capacities and coordination among different stakeholders. Opportunity: Promoting collaboration and the exchange of experiences between countries and organizations to improve the implementation of public policies.

3. Challenge: Ensuring financial sustainability and continuity of public policies over time. Opportunity: Encouraging public-private partnerships and mobilizing national and international resources for the financing of social inclusion programs.

In conclusion, the analyzed case studies can inform and improve public policies for social inclusion in Latin America by providing lessons learned and best practices in the implementation of successful programs. By addressing the identified challenges and seizing the opportunities, countries in the region can continue to make progress in building more inclusive, equitable, and just societies.

Proposals

Considering the mentioned models, the following recommendations can be made to promote public policies for social inclusion in the Latin American region:

1. Implementation of Conditional Cash Transfers (CCT): Establish CCT programs that adapt to the specific needs of each country and focus on improving health, education, and nutrition, as successful programs such as Bolsa Familia (Brazil), Familias en Acción (Colombia), and Programa Oportunidades (Mexico) have done.

2. Promote gender equity: Include gender components in social inclusion programs, as in the case of the Sistema Nacional Integrado de Cuidados (Uruguay), to ensure an equitable distribution of caregiving responsibilities and promote equal opportunities in accessing quality services.

3. Integration of services and social programs: Develop integrated systems that link social inclusion programs with other social services and programs, as done by Chile Solidario, to ensure comprehensive and coordinated support to vulnerable families.

4. Strengthen targeting and monitoring mechanisms: Implement efficient mechanisms for identifying beneficiaries and monitoring outcomes, which will allow for continuous adjustment and improvement of social inclusion programs.

5. Promote citizen participation and transparency: Involve civil society and beneficiaries in the design, implementation, and monitoring of programs, fostering transparency and accountability in the management of public policies.

Conclusion

In conclusion, the comparative analysis of successful public policy case studies in Latin America has allowed us to identify both common factors and differences in the approaches and implementation of the programs. Through this research, significant results have been highlighted in terms of poverty reduction and the promotion of social inclusion in the region, as well as the challenges that countries face in the pursuit of sustainable and inclusive development.

The lessons learned from the case studies demonstrate the importance of adapting public policies to the local conditions and needs in each country of Latin America. The implementation of successful programs requires considering the specific characteristics of each context and addressing the particularities of vulnerable populations.

In addition, to effectively tackle poverty and social exclusion in Latin America, it is necessary to adopt a comprehensive and multisectoral approach that involves various actors and sectors. Collaboration between government institutions, non-governmental organizations, and civil society is crucial to ensure effective implementation and a lasting impact on the lives of the most vulnerable individuals.

In summary, the findings of this research underscore the relevance of learning from successful public policies in the region and adapting them to local needs to comprehensively address the challenges of poverty and social exclusion. By continuing to share experiences and knowledge among Latin American countries, we can continue to make progress towards more inclusive, equitable, and just societies.

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Chapter 9

Building Communities with the Capacity to Resolve Conflicts Through Peaceful Means

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Abstract

This chapter refers to the construction of peace through community pathways, since it must be considered that the existence of peaceful societies is not a reality without citizen participation. For the above, the Colombian experience was considered since its reality allows understanding how through the constitution of 1991 there were a series of paradigmatic changes, not only from the strictly normative, but from the conceptual valuation regarding justice, peace, and the way to solve conflicts. For this purpose, a descriptive hermeneutic methodology was used in which public policies implemented in Colombia were analyzed on solving the most common problems of violence and community controversies.

Keywords: Governance, public policies, community peace, conflict resolution.

Introduction

The materialization of peace in Colombian territory generates the need to achieve social transformation at multiple levels, among which are: mental health, the ability to forgive, and the competence to resolve conflicts through means dissimilar to violent ones. This latter aspect deserves careful study because it implies citizen responsibility in the construction of peace, understood not only as a commitment that concerns governmental entities and the so-called groups outside the law.

Communities develop an active and transcendental role within the framework of peace, given that its members directly experience the rigors of conflict, not in vain from their victims arise. In Colombia, a nation that has experienced an almost inveterate war, the proposal towards a society that emphasizes the application of dialogical methods not only emerges as a relevant element but is imperative. However, the normative and constitutional existence of special jurisdictions tasked with imparting solution measures, such as the so-called peace judges, is not enough; comprehensive mechanisms that involve the conglomerate are needed, hence the proposal to create a public policy aimed at building communities with the ability to resolve conflicts through peaceful means is considered.

The coming into force of the Political Constitution of 1991 allows, in turn, the configuration of a restorative justice model that promotes comprehensive repair and the purpose of national reconciliation. This teleological vision can be achieved through the implementation of mechanisms such as mediation and conciliation, as previously mentioned, not detached from popular sectors but with their involvement.

In accordance with the, this chapter emphasizes the need to consolidate the application of self-composing conflict resolution methods at the popular level, since, from the implementation of these, peace will be understood as a social construct not conditioned to agreements made by governmental entities. In this order, this writing will address the following sections:

Governance for peace, in which the importance of applying conflict resolution methods will be developed, with special emphasis on mediation, in an inclusive and comprehensive manner from the popular layers; and public policies to mitigate community conflicts, by virtue of which measures aimed at identifying problems, inclusion, citizen participation, collective visions, and peaceful coexistence are proposed.

Governance for Peace

In the Political Constitution of Colombia, peace acquires a multidimensional vision as it is consecrated from the preamble as an end and, dually, as a right and duty, in the dogmatic part. The 1991 political charter was designed to achieve a peaceful society, coexisting, founded on respect for difference through values and principles as stated by Ramos, Carvajal & Palencia (2022), duties of great dimension that point to "a community founded on values that eliminate expressions of violence, social exclusion, inequality among others" (p.91). It is worth remembering that before the promulgation of the superior norm, the country was going through one of its most bloody stages due to a gradually increasing disturbed public order situation. Therefore, the allusion to peace was assumed as a general commitment since both the leading state and its associates are compelled to establish parameters that are distanced from virulent actions.

In accordance with the noted, and as a somewhat premature epitome, the materialization of peace is not limited to a development of political leadership because the confluence of various actors and factors is needed for it to become a reality.

One of the great bets of the 91 constitution was the consolidation of citizen participation, not in vain since its article 3 postulates popular sovereignty as an essential principle, by virtue of which the idea of participative democracy (Calbet, 2012) is prioritized, where the citizen is involved in state affairs, no longer as a mere spectator but as a leading actor who leads the necessary transformations and determines the course of their reality.

As briefly alluded to before, the conditions of historical conflict experienced in the Colombian nation have driven the modification of the justice model (Palencia, Herrera, & Carvajal, 2018), specifically to one where the victim has an impact and in turn stimulates a society committed to solving conflicts originated among its members.

It should be noted that without popular integration, the processes aimed at achieving peace do not crystallize mainly because they would be devoid of one of their central axes, society. Considering the above, from a systematic hermeneutic approach, the 1991 political charter opens the possibility of solving conflicts through agreements between people who do not have the quality of public authority when in article 116 it confers on individuals, temporarily, the function of administering justice as conciliators or arbitrators. Therefore, authors like (Bermejo, 2017) establish that conciliation has a constitutional source.

In connivance with what has been exposed so far, it is possible to determine that alternative conflict resolution methods (ACRM) are the ideal tools for achieving peace and are even considered a human right (Nava & Breceda, 2017). In that order, ACRM are more than simple strategies used for judicial decongestion or prerequisites of procedurability since their nature tends towards the transformation of society through voluntariness and agreement between the parties.

It is primarily these considerations that become the doctrinal substrate of this section, as it is considered, taxatively, the immense importance that ACRM acquires in human beings and their social repercussions.

The use of ACRM must be integral, which means that the transformation of the conflict must be aimed at from language. The word is an effective solution element, at times, human beings are unaware and inadvertently its power, its good use is incalculable, hence the phrase often attributed to Aristotle becomes increasingly substantial: "the word among men is a true instrument of peace", therefore its plausible use devoid of pejorative

epithets and disqualifications is required. ACRM and restorative practices allow sensitization, awareness, agreement creation, prevent confrontations, and provide a space for dialogue (Sauceda Villeda & Martínez Pérez, 2018).

Thus, from ACRM an alternative communication is proposed whose intention is to promote peace (Castellano Caridad, 2017). How important these considerations are in a context like the Colombian one where violence has been an endemic evil and seems, unfortunately, entrenched in social bases up to the center of power or vice versa. In this sense, it is significant how from the current Colombian government, led by Gustavo Petro, a resolution is established where government officials are ordered to use the qualifier of "rebel organization" in favor of the ELN guerrilla, by virtue of the dialogues that will be held with the members of this insurgent group (El Espectador, 2023). Of course, such a decision generates huge controversies because it is a group that has committed various crimes, in turn, perpetrated actions against human rights; however, the government's action, in addition to recognizing political status to the ELN, is consistent and adapts to the nature of the negotiations since the first thing that must be done to de-escalate the conflict is to use language devoid of disqualifications and insults.

Just as there is a need for alternative communication, a model of justice consistent with a society that tends towards peaceful coexistence is also needed. In that order of ideas, restorative justice stands as the most suitable since its principles lead, as already mentioned, to the preponderance of the victim. The becomes increasingly relevant in Colombia specifically because various episodes in republican history repeatedly prompted some means such as pardons and amnesties (Bernal, 2010) for the termination of conflicts that arose between the same political sectors, or between groups of citizens who formed insurgent structures and the state, or between guerrillas and paramilitaries. The above resulted in the following: 1) increase in conflict because retaliation feelings persisted by not founding a solution on the objective causes that originated the contests but simply to cease hostilities, believing that the absence of conflicts is an absolute peace criterion. 2) Non-existence of victim repair which resulted in desolation and illegitimacy towards state authorities.

The implementation of a justice model that hoists the dignity of the victims and guarantees them the repair of the damage caused in a comprehensive way finds its axiological base in the social and democratic state of law contemplated in the 1991 constitution, therefore, for the sake of the

constitutionalization process experienced in the Colombian legal system (Suarez-Manrique, 2014), laws related to comprehensive repair are created, such as 1448 of 2014, where it establishes that five elements are needed for its configuration, namely: indemnification, restitution, non-repetition, rehabilitation, and satisfaction measures. Given the above, the state notes that it is not enough to deliver money to those who have been victims, but other multidisciplinary factors such as psychosocial care are needed, for example. From this point of view, the application by the State must be considered fundamental to place justice in a way closer to the needs of people, for the purpose of seeking damage repair deepening the importance of the restorative result (Martínez Pérez, 2018).

As has been mentioned, the existence of justice models different from traditional ones is necessary, which are oriented to the solution or transformation of a, where the affected individuals participate directly in their resolutive decisions. Thus, from the 1991 constitution, the figure of peace judges is created, understood according to the political charter as a special jurisdiction, whose purpose is to resolve neighborhood disputes and those that occur in rural areas. It is a true community justice, alternative to the state, in which the constitutional values of pluralism, coexistence, and equity are integrated, which is aimed at conflict resolution and satisfaction of interests under equal conditions (Martínez, 2003).

The existence of peace judges in Colombia was surrounded by laudable intentions because it attends to the axiological substrate constitutional proposed from the preamble of the political charter, that is, coexistence, an end that has not been able to crystallize in a nation historically characterized by violence among compatriots. In function of the referred, and, despite the creation of figures of the constitutional and legal type, Colombian society has not experienced the expected transcendental changes by the constituent of 1991, because the rates of community violence continue to be high, to the point of being in continuous growth, so much so that in 2023 violent episodes increased by 10% compared to the immediately preceding year (Caracol, 2023). The level of aggression suffered can be attributed to factors such as social networks, ideological polarization in terms of politics, and the absence of emotional control. It is convenient here to emphasize several points: 1) building peace is not enough with the creation of laws. As important as these are, they will be necessary criteria, but not sufficient. 2) The qualification of those who must oversee solving neighborhood conflicts is required, in that order of ideas, those who act as peace judges must, in

turn, be trained by experts who meet academic and experiential qualities in these matters. 3) Processes must remain away from clientelist interests, that is, the criteria for selection, training, and orientation cannot be "politicized".

The truth is that this model implies ostensible changes that range from the attitude of the individual, as a linked subject, to its dogmatic consideration, which in the words of (Gorjón, 2015) urges to apply a theory of justice impetation, in which citizenship is present, in addition to linking peace and conflict resolution methods.

The basis of community justice is also found in the methods that must be used for its proper achievement, in relation to this, mediation and conciliation are considered the most suitable because their autocompositive nature preaches towards the solution of disputes agreed between the involved parties. Hence, it is considered that the best justice is the one that is agreed upon and not the one that is imposed, since only under the second condition are the satisfied interests of the linked parties reflected. On mediation, it must be pointed out in the following of this section, especially because a criminal and penitentiary reform has been proposed in Colombia.

The application of criminal mediation in Colombia takes immense value due to the prevailing tradition of retributive justice, therefore, the insertion of this solution method incorporates the component of friendly composition as it promotes dejudicialization and in that same orientation leads to a culture of peace (Serje, 2023). In accordance with the, mediation is a decisive method for the realization of peaceful spaces due to its characteristics of flexibility and participation, in addition, to having principles such as voluntariness, impartiality, neutrality, among others, but mainly because it approaches to envision the solution of controversies as a joint work between the parties and not as a scenario of opposing subjects. (Orientados, SF). The above implies that understanding is achieved among peers, proscribing the distance posed by adversaries whose solution is complex, expensive, arduous, and prolonged.

From social psychology, complexity is established as an aspect inherent to human beings (Moral Jimenez, 2017), for this reason, the disagreements that arise in society tend to be common, in that sense, this situation compels resorting to mediation as an ideal solution method, not only for the qualitative elements mentioned above but for the importance it has played throughout history. It has been determinant in acculturation, primarily because through its human beings have found a way to address controversies without resorting to violence (González, 2021).
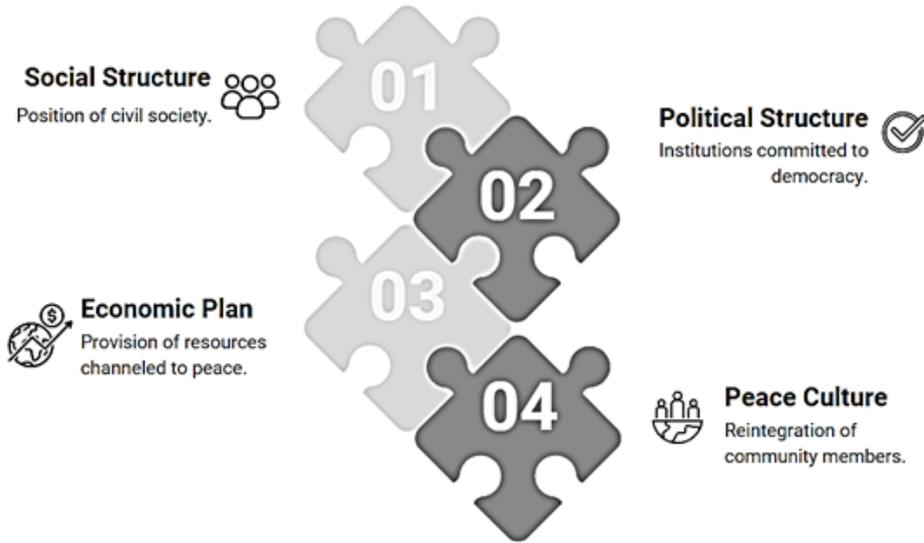
Finally, it is necessary to consider the importance of mediation as a method that approximates the consolidation of restorative justice, specifically because of its teleology, since, among others: it links the parties to the solution, promotes dialogue, transforms the conflict, clarifies differences, and helps to defuse hostile contexts (Mazo, 2013).

Public Policies for Mitigating Community Conflicts

The previous section is immensely substantial because it provides early conclusions regarding the study and understanding of peace. Firstly, the 1991 Constitution stands as a pivotal political norm in Colombia's history, as it presents a disruption against the traditional notions that had been considered about peace. Thus, the conception of peace as a space absent of conflict is surpassed, and it is assumed as a value, duty, and right, attributing a significant responsibility to the state in its promotion, permanence, and consolidation. It also contemplates the possibility of employing creative strategies for the transformation of controversies. Secondly, with the rise of the 1991 Constitution, a new modality of justice comes into force, in which the restoration of victims prevails, and it urges the use of conflict resolution methods, such as mediation and conciliation, thereby encouraging individuals to resolve their contradictions.

In the sense noted above, peace is understood as a social construct, where all actors contribute to its formation. According to Richmond (2013), an infrastructure for peace is necessary, involving various action structures. These can include the social, prioritizing the strengthening of civil society; political, based on strengthening democracy through the existence of committed institutions; economic, based on the allocation of resources channeled to peace; and cultural, aiming at the reintegration among community members.

Figure 1. *Infrastructure for Peace*

Social Structure
Position of civil society.

Political Structure
Institutions committed to
democracy.

Economic Plan
Provision of resources
channeled to peace.

Peace Culture
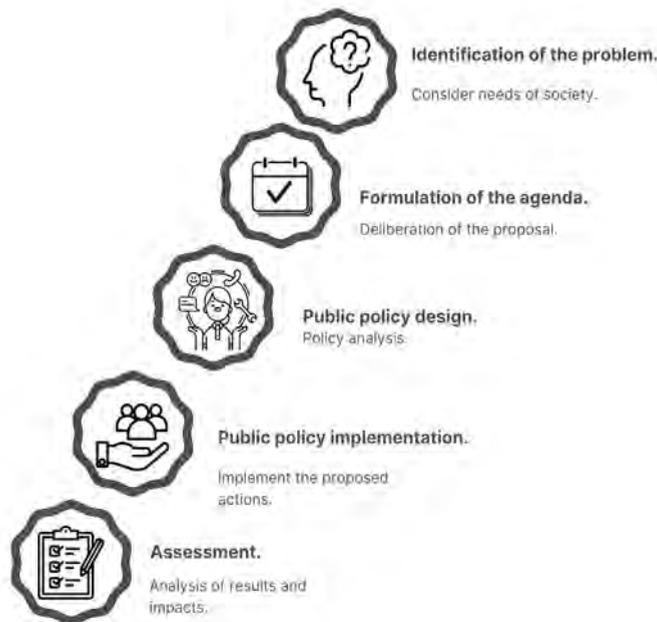Reintegration of
community members.

Nota. Own Elaboration. According to Richmond (2013).

The above graph denotes the urgent need to achieve multi-sectoral articulation for the formation of social peace. The mere existence of community will be not enough, but also, the state's involvement is required. Such participation is feasible through public policies. According to Martínez (2017), a public policy is a process that aggregates actions, agreements, tools, and decision-making measures by public authorities with the involvement of individual subjects, focused on solving or preventing a problematic situation.

The notion of public policy establishes a relationship between two components, namely: normative production and political and administrative actions taken both by authorities and society members. In the first scenario, laws, decrees, rulings, among others, are integrated. In the second, the execution of what the state has normatively produced is proposed (Roth Deubel, 2020). The author agrees with the appreciations expressed earlier in this text, since public policy is complex as it requires articulation between various sectors.

As mentioned, public policies are processes that contain stages, each necessary to achieve the satisfaction of collective interest. Therefore, it is important to mention that, within the referred policies, problem identification must be made, as the public authority must perceive society's needs. This is undoubtedly a basic element if effective measures that respond to the context are to be created. Likewise, it is necessary to formulate an agenda, as the order of political actions must be specified. This stage could also be called deliberative. Similarly, design is needed, where a general analysis of the policy to be materialized is made. This includes cost-benefit study, data collection, proposal of possible solutions, among others. Execution follows, in this phase all previously established actions are implemented. For this, it is important to train people, assign resources, among others. Finally, evaluation is needed, in which it is determined whether it meets the expectations outlined from its conception. Here, an analysis of results and impact is made.

Figure 2. *Public policies process*

Identification of the problem.
Consider needs of society.

Formulation of the agenda.
Deliberation of the proposal.

Public policy design.
Policy analysis.

Public policy implementation.
Implement the proposed actions.

Assessment.
Analysis of results and impacts.

Nota. *Own Elaboration. According to, Roth Deubel, 2020.*

Once the concept and importance of public policies are understood, it is substantial to consider them in terms of community peace. It is key to determine the relevance they present in a nation, like Colombia, where violence has occurred for decades. Therefore, two investigative experiences implemented in the country are subsequently mentioned, aimed at building peace from popular bases. Consequently, reference is made to the inquiry titled: peacebuilding in Bogotá: the community experience of the PT foundation by Amaya Valero (2020). It studies what happened in the community located in the Kennedy Locality (Bogotá), profiling towards social changes regarding social, cultural, economic problems, and more. What is truly significant is that this community has been the collection center for several victims of armed conflict. The foundation's work focuses on childhood and adolescence. Its lines of action are generation of free recreation spaces, by which it seeks to provide children and adolescents with affection, motivating attitudinal development, promoting their gifts in various scenarios. In short, placing them in a leading place. Application of pedagogical models for out-of-school population. Within this line, participation between victims and perpetrators is encouraged, which consequently has achieved reconciliation between them. Through this experience, a series of situations, even unforeseen, such as the transfer of what was experienced in the armed conflict to the community, have been elucidated. It is also important to highlight the promotion of the productive plane, since enterprises have been created that allow satisfying the basic needs of people. One of the results that the investigation yielded is that the reality and particularities of the context must be considered, as the existence of dissimilar conflictive dynamics is assumed, before starting any study. To achieve their eradication, the study points out the coercive character adopted by the Colombian state in problematic aspects such as child labor, bypassing the solution aimed at guaranteeing rights.

From the above, the need to listen to children and adolescents also arises, that is their participation, and not consider them as second-tier individuals in relevance. Considering the above, it is important to reflect on the approach outlined by Rivera & Vázquez (2019), where they determine the importance that public policies play in democracies, since this system is strengthened with their existence. In this order, governments have had significant experiences when implementing them in the orbit of conflict

resolution, landing them as community mediation. In this way, overloads in judicial offices are avoided, and dialogue is promoted as an essential means of coexistence.

It is worth considering that, although traditionally, public policies were focused on social rights, an activity that allows the state to provide satisfaction for them, currently, it is necessary to channel them towards the resolution of neighborhood controversies, which implies citizen participation and consolidation of governance. (Tobón, 2018).

The construction for peace from community spheres, especially if the state executes it as public policy, promotes the culture of peace in society. Consequently, it will have plausible repercussions such as respect for human rights. It is appropriate to say that these are individual prerogatives, caused by the culture of peace, therefore, they will also be because with their materialization attitudes and educational values favoring the social fabric arise.

The public policy aimed at solving conflicts in communities has a double dimension of favorability in terms of its results, since it will not only serve to solve a private problem but will also have repercussions for society, from the above it follows that its relevance is holistic since applied, diligently, committedly, and qualifiedly, it leads to social peace.

Conclusions

The need for peaceful societies has determined the refoundation of various aspects that until some time ago seemed intact and axiomatic. The first of them is peace, because it ceases to be understood as the mere situation of absent conflicts to be considered as a value, right, and duty. Hence, it is precise, for its achievement, the commitment of all interested parties and not only of governmental entities or groups in dispute, overlooking society. Likewise, peace is directed at the ability to manage and transform human conflict, the latter also assimilated as an opportunity for improvement and not in its traditional vision of undesirable and at all costs avoidable condition.

Much of these changes can occur, in Colombia, thanks to the constitution of 1991, a political letter that is characterized by its disruption with traditional formalism and that brought with it the entry of new models and essential axes, among them justice and of course peace. From this

fundamental organizational norm, power is granted to the people to build the course of their historical destiny. Given this, it is understood that peace must be materialized from popular bases, since it is from there that the foundations that will support the entire state structure are formed, thus consolidating governance.

Through the application of conflict resolution methods, peace is established as a possible reality, particularly mediation and conciliation since its elements may be more viable in relation to their implementation in the community.

Governance for peace is proposed as the way to guarantee a better coexistence scenario among citizens, urges dialogue, and impacts aspects as transcendental for a nation as the decongestion of judicial offices and the configuration of social peace.

For the realization of governance for peace, the state's voluntariness and commitment are required, therefore, public policies aimed at resolving community controversies must be built. These public policies will be noticed as the most diaphanous way to achieve human dignity and participatory democracy.

From these public policies, the contribution to the culture of peace is expected, which in turn, deploys a series of values such as education and respect that not only benefit a private level but are extended to the social sphere.

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Chapter 10

The Unconstitutional State of Things as a Guarantee Mechanism of Public Policies in Colombia

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Abstract

Constitutional Justice in Colombia has achieved a decisive development in the political, social, and humanitarian context by implementing the (SUA) State of Unconstitutional Affairs, mainly due to the scope and supra-legal effects this tool grants. Unquestionably, the task of the Constitutional Judge

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has been progressively acquiring in the national legal order a strategic and determining importance within the systematic vision of the State, structurally for becoming the legitimate defender of the Political Charter to guarantee its supremacy. However, this legitimacy does not end with the controls that by nature are the responsibility of the Constitutional Court but rather implies a whole sociopolitical, economic, and human phenomenon of the judicial order, represented by the intervention and comprehensive restriction that it makes of the policies and actions of the executive, intervention that acquires justification within the sociological notions of the guarantee model due to the imperative recognition, functionality, and operability of the Fundamental and Human Constitutional Rights. This dynamic is aided by the development of judicial activism, where justice operators faced with the globalization of the economy and justice create law thanks to the conformation of the constitutional precedent and the block of constitutionality; In this way, the present study contributes to consolidate to a high degree the vision and interpretation that the Law must acquire, based on the jurisprudential and doctrinal References produced by the application of the State of Unconstitutional Affairs -SUA-, given that the methodical review Judicial Law that results from the exercise, argues the transformation of Law as an interdisciplinary science, conceived from the perspective of social and legal sciences.

Keywords: *Public Policies, structural orders, Fundamental Rights, gender perspective*

Introduction

The Plenary Chamber of the Constitutional Court of the country, through the milestone sentence SU020 (Constitutional Court, 2022 P. 22), declared the State of Things Unconstitutional–STU- for the non-observance of the Peace Agreement signed by the Colombian State once the systematic transgression was verified of the right to life, to personal integrity and peace of ex-combatants of the former Farc, extending to the protection of the family nucleus and human rights activists. The central argument of the providence was rooted in the manifest weakness in implementing minimum guarantees for the cataloged population in the reincorporation process.

The political, social, and humanitarian scope of the indicated judicial order is not due in any way to a sudden isolated decision of the Constitutional Court. However, it is part of a series of serious antecedents evidenced in the progressive development of an interventionist nature carried out by the judges of this Corporation in different actions of supra-legal protection on categorical violations of human rights, which are not, in principle, attributable to an official body, but rather, on the contrary sense, configure the ineffectiveness of various bodies, on issues clearly defined in judgment SU 559 (Constitutional Court, 1997 P. 13) such as a) the violation of the right to equality for teachers, concerning the sources of government funding; b) The impairment of the fundamental rights of persons deprived of their liberty, specifically of human dignity, life, and health from the perspective of resocialization in the face of the deterioration of the penitentiary system. (Constitutional Court of Colombia, Judgment T-388, 2013. P.22)

The political and judicial precedent of the previous constitutional order, has its genesis in the accumulation of different lines of pronouncement of protection actions, which in the last decades progressively the national supra-legal Court has been resolving on matters related to the massive violation of Rights Human rights, whose causes are not attributable to a specific public entity, but rather involved several State bodies *by action or omission, have shown inefficiency and negligence* in cardinal aspects such as: a) when national teachers paid with the resources of the Municipalities have the right to be treated on an equal footing with respect to other teachers, regardless of their source of funding, implying their eventual lack of affiliation with the National Fund for Social Benefits for Teachers, a violation of the fundamental and human right to equality , especially taking into account that the vast majority of teachers who are financed with resources from the fiscal situation enjoy this guarantee (Colombian Constitutional Court, SU.559 of 1997, P.12). ; b) the fundamental rights of persons deprived of liberty, especially human dignity, life, health, and resocialization, due to the deplorable conditions of confinement, caused by the severe overcrowding that these types of institutions are experiencing, despite be a structural situation, which is not precisely the responsibility of any of the accused authorities in such proceedings . (Constitutional Court of Colombia, Judgment T-388, 2013. P.22)

According to the review of the jurisprudence lines of the SUA–punctually the sentence T-025 (Constitutional Court of Colombia, 2004. P. 27) begins by indicating that the applicability of this institute begins from the

moment in which the operator of constitutional justice establishes its configuration through a weighting exercise that allows it to identify the events in the facts and realities that implicitly contradict the constitutional order, causing an ostensible tension between the political structure and the abundant expression of principles, values, and rights established in the Fundamental Charter, as well as the verifiable reality of the ineffectiveness and inapplicability of the ideals of justice and equity.

In this way, it is decisive from the perspective of the trinomial *State-Fundamental Law-Politics and human dignity* to analyze the scope and effects that the Unconstitutional State of Things–SUA- as an integrating and transforming element of said articulation offers both in the present and for the future attending to the construction of Constitutional States that advance towards effectively Humanized societies.

Development

The Doctrine of the State of Unconstitutional Things –SUA- and the Principle of Unity of Criteria in the Administration of Constitutional Justice.

The Constitutional Justice Corporation was assigned to preserve the probity and hegemony of the introductory text; *formal and material constitutional control* characterize the so-called concentrated type of control in the domestic system. Meaning, that even though justice operators nominally hold a specific jurisdiction, the nature of the interpretation and application of the norms contained in the Constitution allows any of them, without prejudice to the respective judicial hierarchy, to assume with total integrity the investiture of guardianship judge, at the time of processing and ruling on the merits against a superior Amparo´s action, they will proceed unavoidably within the criteria and binding guidelines pre-established by the closing body.

The meaning of the aforementioned legal model becomes radically important from the guidelines established in judgment C-824 (Constitutional Court, Judgment, 2014, P.44); that is, the logic of such a structure pursues–*the unity of criteria in the administration of constitutional justice*–spec-

ifying that regardless of the variety of jurisdictions, the guidelines of legal hermeneutics must maintain particular affinity and consolidation in the different lines of pronouncements, always delimiting their scope in favor of the unification objectives that this jurisdiction tends to.

The prototype of judicial administration under analysis guarantees the coherence of the decisions favoring the security and legal stability of the judgments, mainly when they cover the review and the approach of the dimensions that imply the essential purposes of the State, opening the horizons of a function of the judiciary with shades of permanent constructivism, which expand the development of *constitutional pedagogy* based on the recognition of human dignity as a right and value. Dynamics that is manifested in the consequent recognition of fundamental rights in the Charter and by the validity of the group of actions and institutions instituted and aimed at the effective guarantee of the fundamental rights; this is the dogmatic part and the organic part (Ramírez, 2009), *sine qua non-requirements* or essential elements of a constitution to be considered as such. (Gallego, C, Martines, J, Nitola Cardozo and D, Niño Hernández, W, 2019)

A specific conceptualization of the "State of Unconstitutional Affairs" is not identified jurisprudentially because its creation is the product of the dynamism of constitutional precedents and the block of constitutionality. In other words, the notions result from the sequential analysis of the judicial reasoning concerned with legal problems and maintained in a certain period, which is why they are also called jurisprudential lines (López, 2002). In such a way, that it is the judges themselves who, when specifying situations of special attention and manifest humanitarian and social gravity, proceed to declare unconstitutional circumstances, whose assumptions must, in principle, be framed in a massive, severe, and generalized affectation of fundamental rights, especially verifying that these affectations do not contract to a specific event, but report an irradiation effect, known as causes of a structural nature. (Romero, 2012).

The constitutional judge has determined with sufficient clarity the factors that must be present to determine when an SUA exists (Lyons and Navarro, 2011):

1. The collective and widespread breach of different supra-legal rights concerning many individuals.
2. Government entities' systematic ineffectiveness or negligence in their obligations to protect and protect rights.

3. The implementation of unconstitutional actions and the validity of a constitutional process of protection action that seeks to avoid damages or abuses.

4. The inexistence of decisive legislative, administrative, economic, or budgetary actions to avoid the transgression of fundamental privileges.

5. The validity of a social problem that involves a co-responsible solution from different state entities in different aspects, such as the design and execution of plans and actions around resources that require a powerful budgetary dynamic.

6. Based on the hypothesis or eventuality, the perspective is that if all the subjects involved in the social and humanitarian situation resorted to the guardianship procedure, it would lead to a critical situation for the judicial apparatus.

Superior control fragmented or contradictory pronouncements, making the functions of the branches of public power impossible, promoting the emergence of other transgressions. Consequently, declaring an SUA involves the validity of unconstitutional structural causes that seek, through judicial proceedings, to amend or correct deficiencies in the political decisions of the executive and, in this way, compel it peremptorily to assume reactions and solutions to complex circumstances, through the efficient and effective concurrence of all institutional actors so that State institutions that can contribute to their solution are coordinated so that, in a coordinated and programmatic manner, they combine strategies in overcoming generalized circumstances of collective affectations of Constitutional Fundamental Rights of massive violation and generalization of fundamental rights. Despite these expectations, in these events, the intervention of the justice operator is not feasible to deploy without an exhaustive analysis of the structural and complex factors of its declaration, given that it is a priority in favor of the principle of unity of jurisdiction decisions in headquarters.

It can be concluded up to this point that the coercive nature of the figure analyzed is valid to the extent that judicial intervention not only tends to achieve *equal legal treatment* but is also aimed at consistently overcoming the massive damages derived from systematic or supervening *structural situations.* , without trying to usurp the natural functions of the other branches or estates of official power and determining or recommending in the con-

tent of its rulings the neuralgic lines of planning and priority action in order to counteract the pachydermic culture of government organizations that, for democratic reasons or excessive control are late in complying with the purposes of the Rule of Law.

Simple and structural Orders as a judicial intervention mechanism in the SUA scenario in favor of the development and application of Public Policies in Colombia.

The fundamental reason for the SUA consists of a priori of the guardianship judge's special powers that are not limited to exposing a scenario of impairment to the *iusfundamentality* without establishing actions *to avert them*. The teleological focus of the verdict is to jointly ensure, from the independence and collaboration of the branches of public power, the material effectiveness of the higher-order protection regime. The power is possible procedurally speaking through the issuance of *structural orders* that, according to the conditions outlined by constitutional jurisprudence, are directed: a) to declare, reiterate, modify, or consider an unconstitutional situation as superseded, b) to guide or redirect the strategy of overcoming a constitutional situation, or c) imply the formulation and execution of public policies. A notable judicial reference on this matter is configured by the structural measures taken by the supra-legal jurisdiction in compliance with Judgment T-025 (Constitutional Court, Judgment, 2004, p.23).

In that order of References, judgment T-025 (Constitutional Court, Judgment, 2004, p.52) offers us a procedural methodological description of the subject when he details how *simple execution* orders are the consequence of particular petitions for Amparo, taking into account the accumulation of constitutional defense actions, they translate into *complex orders,* aimed at granting structural solutions to recurring violations of the rights of the first legal order. Everything in this context, as has already been said, has the purpose of evaluating and recognizing the execution of regulated state tasks within the scope of public and national policies.

Similarly, judgment T-267 (Constitutional Court, 2018 P. 33) advanced in the modulation concerning the object and types of *structural orders* as an interventionist judicial device. Thus, these resolutions were classified

according to different variables such as a) the number of actions or abstentions that are incorporated into the order, b) the number of subjects and authorities to whom the order is directed, and c) the term determined for compliance (Constitutional Court ruling SU 092, 2021, P.44).

As a result of the preceding, the Constitutional Court of Colombia established in the following set of sentences the prerequisites that all guardianship judges must previously consider when deciding to issue complex orders to resolve situations that, at their discretion, alter the statutes of political harmony and humanitarian, rules that in their order are:

1. Establishes the appropriate weighting when determining the solution to the scenario in judgment T-762 (Constitutional Court, Judgment- 2015 P, 28). The guardianship judge must, in any case, seek to intensify actions that help to superimpose the *institutional blockade* and under no circumstances intend to determine the direct responsibility of public bodies, much less replace functions related to implementation or evaluations to resolve in-depth priorities.

2. Judgment T-306 (Constitutional Court. Judgment, 2015 P, 43). Reports on the need to institute a term for observing complex orders. In such a way, it is inconsistent with establishing impertinent deadlines that can eventually be met without effectively controlling their materialization.

3. In decision T-399 (Constitutional Court, Judgment T-399, 2013 P. 33). Unrestricted openness to dialogue is called for. The fulfillment of complex orders presupposes collaborative and co-responsible dialogue scenarios between different official bodies, including members of civil society. Decision T-086 (Constitutional Court, Judgment, T-086, 2003 P, 22) regulates the unfailing requirement to determine the effects of the sentence in each case and to emphasize that the guardianship process ends when the observance of all the orders that seek to restore the violated fundamental rights fully is verified.

The jurisprudential lines outlined how the Colombian Constitutional Court is recognized as a pioneer in the promotion and jurisdictional formulation of the neo-constitutionalist canons in the world. Doctrines such as that of the block of the constitutionality of that Court have been genuinely revolutionary since they left behind basic notions of Law and the theory of the modern State to advance the guarantees of the Social State. Through

Amparo's actions, the SUA undoubtedly opened a new perspective for the doctrine of protecting the fundamental rights of neo-constitutionalism. (Carbonell, 2005).

In the analysis of this first part, it cannot fail to emphasize that in the development of these antecedents by the Constitutional Court, the postulates of Robert Alexy's theory of fundamental rights (2002) have been adopted as deductive elements of postulates incorporated in the enforceability, guardianship, and unification rulings. This dynamic allows us to glimpse into this school of Law, the contemporary source of the constitutional doctrine of the State of Unconstitutional Things.

The legacy of the theory of fundamental rights carried out by Alexy has emphasized in its *irradiation to the legal system*, having repercussions, of course, in the political and social, cooperating to overcome the problems of the philosophy of constitutional Law penetrating all branches of Law, mainly public function and management (Alexy, 2004). Based on this current, the jurisprudential production on the subject from the indicated theoretical horizons is evidenced in the impact determined by applying the EIC, which has given rise to specific *public problems* and, therefore, *specific public policies*, whose results we discuss below.

Application of the State of Unconstitutional Things (SUA) as a mechanism for effectively protecting Fundamental Rights within Colombia's Public Policies Framework.

To contextualize the scope and effects within the state responsibilities in the development and compliance of public policies, considering that by themselves, the efficiency and effectiveness of these imply the protection or affectation of Constitutional Fundamental Rights, are analyzed the jurisprudential References that evidence such precedents in Colombia.

Before the comments are indicated, it is essential to contextualize the iconic difference between rules and principles, which in our opinion, the Constitutional Court uses to clarify the nature and effects of the SUA. The principles are optimization mandates, which can be fulfilled to different degrees since their observance is subject to actual and legal eventualities. On the contrary, the rules are considered definitive mandates; they are

normative canons that can only be fulfilled or not: if a rule is legally valid, precisely what the same demand must be made. The difference between rules and principles is *qualitative and not of degree*. (Ramon, 2012)

The Unconstitutional State of Things in the Prison –STU- and Penitentiary System.

The legal, political, and social problem, which is proposed at this point, categorically describes the methodological thought of Mejía (2018), proposing the traceability of the political, economic, and humanitarian categories. In judgment, T-267 (Constitutional Court. Judgment T-267, 2018.P.25), private women's sustained breach of the fundamental rights to personal integrity, health, and human dignity were studied from the application of the SUA of freedom in a penal establishment.

The budgets revised in ruling T. 080 (Constitutional Court. 2018. P.33) based on the importance of inter-institutional dialogue with the competent entities, centered on the determination of the SUA from the study of the prison infrastructure of the Buga Prison-Colombia and the quality of the aqueduct service in these locations. The hermeneutic approaches of social and public order as bases for the sociological validity of human rights were aimed at protecting supra-legal rights from the perspective of gender and women's rights. The population segment of women incorporated into the penitentiary system comprises individuals with limited resources and incursions in other conditions of vulnerability who, from their daily experience, experience high levels of violence and discrimination based on gender.

In addition to having been verified by the constitutional judge in the previous sentence, a *penitentiary and prison public policy with no gender perspective,* the justice operator verified notable infrastructure deficiencies, materialized in massive human coexistence within a pavilion that does not lack the essential provision of the prison authorities at the national level, and consequently, made invisible by the State.

Identified the dehumanizing circumstances that undermine the ius-fundamentality of the prison population, the Protection Corporation of the Political Charter issued protection resolutions that were materialized to: 1) Order the -INPEC-, the Penitentiary and Prison Services Unit -USPEC- and the Municipal Mayor's Office of Guadalajara de Buga (Valle del Cauca), the practice of a joint visit to the facilities of the Women's Pavilion to corroborate

the existing anomalies; 2) the preparation of a diagnosis regarding the situation of the inmates of the Women's Pavilion of the Buga Medium Security Penitentiary and Prison Establishment was required, covering aspects such as basic sanitation, access to water, health care, sanitary infrastructure, and plumbing, distribution of inmates and overcrowding index, among others.

Harmonizing the system of precedents on the matter, judgment T-762 (Constitutional Court. Judgment. 2015. P.38) stipulated for the effectiveness of penitentiary and prison public policies at the national level, in collaboration with the Ombudsman's Office, Ministry of Justice and Law, as leader of the Interdisciplinary Committee. The actions for the formulation of Technical Standards, which record the needs of women prisoners in terms of infrastructure and public services, follow the provisions of the motivating part of this sentence.

The Declaration of the Unconstitutional State of Things –STU- in the Department of La Guajira–Colombia-.

In the development of Judgment, T-302 (Constitutional Court, Judgment, 2017 P, 10), the socio-humanitarian problem was aimed at establishing the violation of the fundamental rights of minors concerning water, health, and food of the Wayúu people. The government's insufficiency caused the intervention to resolve the widespread malnutrition and mortality in the Department of La Guajira due to the negligence of said estates in formulating and developing plans to sustain the reality of indigenous community needs based on the uses and customs to which they belong.

This case mainly implies a vital contribution and judicial and political precedent to *interculturality, human dignity, and the integral health of indigenous peoples* in Colombia. On this occasion, the Court confirmed that the communities located in Alta Guajira suffered severe and persistent abuse of the right to drinking water, specifying its degrees of *availability and accessibility* since a large group of communities did not have sources of drinking water, and those who eventually had these, presented obstacles to make use of them.

The judge concluded in the judgment mentioned above that despite the nation's efforts to resolve the anomalous situation, the genesis of the concurrent violation lay in. a) the lack of universal coverage and long-term sustainability in the programs and actions, b) the non-existent coordination

between the competent and responsible national and territorial bodies; c) the lack of an accurate and updated census of *the Wayuu population*, harmed the construction of indicators on basic needs of this population and, ultimately, the design and construction of the different procedures that the State could carry out and d) the government representatives lacked the cultural knowledge of these ethnic groups.

Other categories addressed by the same sentence confer in practice the constitutional and humanitarian foothold of this mechanism in his order the constitutional judge indicated:

- The long neglect of the territorial organizations to ensure the protection of the rights of this population had ended up endorsing the National Government with the burden of solving the hunger problem of the Wayuu people, and no measures focused on solving the difficulties were arrogated.

- Were verified *unconstitutional practices* such as the optional choice of the popular communities of different programs, and concomitantly the gross negligence of not carrying out prior consultation, as well as assigning actions inconsistent with the culture of these communities.

- The absence of legislative, public management, or budgetary decisions necessary to prevent rights infringement is especially verified in the non-existence or non-execution of territorial plans to ensure access to drinking water.

Judgment T-466 (Constitutional Court. Judgment, 2016 P. 34) allows us to close the cycle of the examination carried out on the fundamental rights in favor of indigenous communities in the Colombian legal system when articulating the political, legal, and social security is treated under the parameters of the SUA since the jurisprudence documented in this pronouncement indicates *the control phases* that imply the effects of this category of failures: 1) the declaration itself of the SUA with guidelines that support the precautionary measures; 2) the orders formulated to the authorities so that they cooperate strategically, collaboratively and resolutely under the coercion of the ultimatum established by the judge to overcome the situation; 3) the follow-up to the sentence to decide whether or not to lift the SUA according to the improvement of the individual situation.

In the case of the *Wayuu population,* concerning the rights affected, the judicial, political, and population action was demarcated by plans that promote the availability, accessibility, and quality of water, the improvement of care and food security plans, the formulation of health policies for the Guajiro territory, and essentially qualify the information available to make urgent and prospective decisions that are favoring human development, through *equal treatment* and *social dialogue*, will promote the constitutional guarantee for overcoming the SUA of the Wayúu people.

Methodology

Among the methodological resources used for the preparation of this analysis are:

Speech analysis. As a technique that tries to extend its scope to the semantic and pragmatic relations that link the text with the context, that is, to something more than the content of the text.

Jurisprudential analysis. Understood as the variety of procedures, principles, or guidelines that allow the applicator of the Law, to know the true scope, meaning, meaning of the legal norm, precisely establishing its essential purpose, either mediately or immediately, clarifying its thesis of protection or preservation of legal interests or goods in the personal, social, political, economic, legal, or cultural order (Monroy, 2004).

Discussion-Results

The methodologically exhausted study and analysis can open several lines of discussion, among them those that can question the severe nature of SUA, where the Constitutional Court can incur political abuses due to the power that this mechanism exercises in the essential purposes of the State. However, if these mechanisms maintain their objectivity and fidelity to the theory of principles and rules in matters of Fundamental Law, from which efficiency emerges, structural orders will maintain their humanitarian and solidarity purposes within societies.

Conclusions

The State of Unconstitutional Things makes its way as a supra-legal doctrine that, after many decades of the insufficiency of the states in their obligations and responsibilities towards citizens, is gradually incorporated, demanding coherence and efficiency from public entities promptly, in the commitment to promote and protect fundamental rights in public, social and human problems. The tool has demonstrated its efficiency without breaking the autonomy of the branches of public power since it legitimizes itself by procuring the functionality of adequate protection of iusfundamentality. However, there is still a long way to go to demonstrate and consolidate its efficiency and effectiveness, and this last objective will be likely to be achieved to the extent that the Constitutional States become genuine Humanized States, that is, where public policies are genuinely linked to international justice and human rights agreements of the exact nature in favor of human dignity and equal treatment of human beings.

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Constitutional Court, Judgment, T-762, 2015, P,28

Constitutional Court, Judgment T-306, 2015, P, 43

Constitutional Court, Judgment, T-086, 2003, P, 22

Constitutional Court, Judgment, T-302, 2017, P, 1

Chapter 11

Crisis and Effects of Venezuelan Migration on Public Policies in Colombia and Chile

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Abstract

Migration is a complex and global phenomenon that has been part of human history. In the case of Latin America, the political and economic crisis in Venezuela has led to a recent and massive migratory flow towards neighboring countries such as Colombia and Chile. The main objective of this research is to study migration as a historical and human phenomenon that must be protected and guaranteed through the safeguarding of fundamental rights. Additionally, the research examines how this global phenomenon interacts with the public policies of countries such as Colombia and Chile. Partial results have identified challenges in the socio-political structure and criminal prosecution within these countries due to the rise of organized crime and other offenses resulting from forced migration caused by the Venezuelan crisis. The conclusions highlight cultural difficulties faced by migrants in adapting to new realities and an insufficient response from public policies in addressing this issue.

Keywords: *Venezuelan crisis, human rights, borders, migration, public policies*

Introduction

Migration is a phenomenon that has become established in our region with characteristics. It is also a well-known and publicly analyzed fact that this phenomenon is a permanent and globally impactful movement, which requires a comprehensive approach to understand its various aspects fully. The purpose of our work is first to present some relevant data that, in our understanding, are present in our countries (Chile and Colombia), triggered explicitly by the political, social, and economic crisis in a South American country, namely Venezuela, whose effects are felt not only by the countries in the region but also worldwide.

The contemporary debate on the effects of migration often revolves around the economic impact on the host or transit countries, the security concerns, and the safeguarding of fundamental rights for those who enter a country, including issues such as degrading treatment, xenophobia, or human trafficking for sexual exploitation or slavery. Venezuelan migration has significantly impacted both the destination countries and Venezuela

itself. The arrival of many Venezuelan migrants has created significant pressure on public services in host countries, such as healthcare, education, and social services.

This has resulted in an economic impact on some destination countries, as the influx of Venezuelan migrants has positively contributed to the informal sector and the creation of new businesses. However, migration has led to labor competition, precarious employment, and increased unemployment rates in other countries. Venezuelan migration has posed challenges to the social and cultural integration of migrants in host countries. In some cases, migrants have faced discrimination and exclusion; in others, they have successfully integrated into the host society (Acosta, 1844, p. 25).

In this regard, it is worth highlighting that Venezuelan migration has also influenced the politics of destination countries, particularly neighboring countries of Venezuela. The migration crisis has been a topic of debate during elections and has influenced public policies related to immigration and security. Additionally, the massive migration of Venezuelans has significantly impacted the country of origin, affecting its economy, politics, and society. The brain drains and the need for more skilled human resources have hampered Venezuela's ability to address its internal crisis (Beaufils, 2005, p. 14).

Discussion

Latin America was considered a "land of opportunities" for much of its history. From the periods of colonization by the Spanish Crown to the Napoleonic Wars and later the World Wars, the South American continent was seen as a kind of "El Dorado," a place of prosperity that became highly attractive to Europe and Asia, which began to see it as a destination rather than just an investment (Bulmer, 2003, p. 23). However, this scenario changed from the 1960s onwards, with the transformation of the region, shifting from being an essential destination for migrants to becoming a significant source of migrants within the region and beyond (Sánchez, 2019, p. 5), due to various geopolitical changes in the countries of the region. These effects or historical observations indicate that this is not a new phenomenon, but rather a permanent activity in the sociological and democratic development of people. However, in the specific case of our research, it has a particular cause, which, in our view, is triggered by

a country plagued by a political crisis under a regime of terror, leading its inhabitants to leave their natural living space in search of new horizons and opportunities to build their own lives (Carmagnani and Casetta, 1980).

The dictatorship in Venezuela and regional social problems.

Latin America is experiencing the most significant exodus in the history of the Western Hemisphere: the migration crisis from Venezuela, primarily caused by the ultra-leftist regime of Nicolás Maduro (United Nations High Commissioner, 2020). Since 2015, the region has been characterized by high levels of emigration, and neighboring countries have never experienced migratory flows of this magnitude before. The receiving countries have largely maintained an "open-door" approach to Venezuelans, with significant policy innovations that allow many to enter, stay temporarily, obtain legal status through existing visa categories and special regularization programs, and accept asylum applications. However, the COVID-19 pandemic that hit the region in early 2020 has added a new level of complexity. Receiving countries are now faced with the challenge of managing a public health crisis while addressing the needs of displaced Venezuelans and the communities they live in (Chávez and Echeverria, 2020).

Most countries in the region have had relatively low entry requirements, especially for Venezuelans, but this is beginning to change. Several countries, including Chile, Ecuador, Peru, and Trinidad and Tobago, have started to require visas, which are difficult for most Venezuelans fleeing their country to obtain, and Ecuador and Peru have implemented new passport requirements (Fawcett and Posada Carbó, 1998). Rather than stemming migration, these requirements have led to the use of irregular border crossings, often empowering organized crime, primarily human traffickers, and smugglers. Efforts to harmonize entry requirements among regional countries have largely failed thus far but remain an important aspiration (Selee and Bolter, 2020, p. 6).

The number of refugees and migrants from Venezuela has exceeded 7 million worldwide, according to data from the governments hosting them, making it the second-largest external displacement crisis in the world, second only to the situation in Syria (Martínez and D'Amato, 2022).

Figure 1. *Migrant Population from Venezuela in Latin America*[5]

Mexico
72,000

Trinidad and Tobago
21,000

Guyana
17,000

Costa Rica
29,000

Venezuela

Colombia
1,631,000

Ecuador
385,000

Brazil
224,000

Peru
864,000

Chile
371,000

Argentina
145,000

Uruguay
14,000

>1 million
500,000-1 million
100,000-500,000
<100,000

Own Elaboration.

All the above objectively reflects that one factor that potentiates massive and unprecedented migration is the lack of political control and international safeguards to curb this crisis. We pause in this part of our research to highlight the significant political responsibilities that trigger

5   Taken from Selee and Bolter (2020, p. 6).

these displacements of individuals who are not illegal, as no person is illegal, but instead they become citizens under an irregular category, forced into a process beyond their will, unprecedented in Latin American history. The Venezuelan migration crisis has become one of the most significant migration crises in the world (Vidal and D'Amato, 2015).

Since 2015, millions of Venezuelans have fled the country due to the political, economic, and social crisis that Venezuela is going through. It is estimated that over 6 million Venezuelans have left the country in recent years, searching for better living conditions and opportunities in other countries in the region and worldwide. Most Venezuelan migrants have headed to countries in the region, such as Colombia, Peru, Ecuador, Brazil, and Chile, but significant flows of migrants have also been recorded towards the United States, Spain, and other European countries (Hobsbawm, 1998, p. 45).

This migration crisis has generated multiple challenges and complexities in destination countries, such as pressure on public services, increased unemployment and job precariousness, xenophobia, and discrimination. In addition, the Venezuelan migration crisis has also impacted regional and international politics, as it has generated tensions and challenges regarding migration management, security, human rights, and regional cooperation (Vidal and D'Amato, 2013).

Migration in Colombia.

Colombia has traditionally been a country of migrants and has had few historical moments as a recipient of international immigration, such as in 1940 with the arrival of North Americans, Germans, Italians, and French before the Second World War. However, in recent decades, Colombia has become a significant recipient of forced migration due to internal conflict and, more recently, the arrival of millions of Venezuelans "in search of job opportunities, and in some cases, seeking refuge from the curtailment of their political rights" (Fernández and Luna, 2018, p. 5). The systematic violation by the far-left dictatorship in Venezuela has unfortunately been met with complicit silence from the region and international organizations, where the defense of an ideology prevails over the protection of the human right to develop in one's own land and within one's own culture.

The Venezuelan migration crisis represents a significant challenge for Colombia as the country has had to deal with the complexity of massive migration and the consequences it has brought, such as resource scarcity and xenophobia. The Colombian government has implemented policies and programs to assist migrants, but some sectors of Colombian society have shown attitudes of rejection and discrimination towards Venezuelans, leading to tensions and violence.

The deterioration of diplomatic relations between Colombia and Venezuela has further complicated addressing the migration situation, making a binational approach to the crisis very challenging. "Despite the commercial deterioration experienced between the two nations in recent decades, Colombia and Venezuela have unbreakable historical ties. There is a border of 2,219 km with more than seven Colombian departments bordering the neighboring country. However, beyond a geographical space, the Colombia-Venezuela border possesses its own dynamism that has allowed for creating and establishing a border identity among its inhabitants, with areas where large proportions of citizens have dual nationality and where a process of transculturation is continuously experienced. There is a historically built cultural closeness at the border, given by kinship ties and social relationships in general, which occurred as knowledge of customs, tastes, and values between both societies was exchanged and deepened. Moreover, it has been collectively built, blurring the boundaries of national identity in border regions" (Fernández and Luna, 2018, p. 5).

All the analysis above highlights the centrality of one of the objectives of our research, which is to provide an answer to the question of the origin of the migratory conflict affecting the region. It is necessary to reconsider the original idea of what needs to be done in Chile and Colombia to halt or redirect the massive arrival of individuals in irregular and complex situations.

Venezuelan migration in Colombia is one of the most significant in the region. It is estimated that since 2015, over 1.7 million Venezuelans have arrived in Colombia, fleeing their home country's economic, political, and social crisis. This migration has posed significant challenges for Colombia, especially in health, education, and housing, as many of the migrants are vulnerable individuals in need of support for their integration and adaptation in the country (Martínez, 1997).

Additionally, Venezuelan migration has also had an impact on the Colombian economy, as many migrants have entered the informal labor market, leading to increased job competition and job precariousness. The Colombian government has implemented various measures to address the migration crisis, including creating humanitarian aid programs, regularization of migrants, and improvement of infrastructure and public services in areas with high migration influx. However, Venezuelan migration in Colombia remains a significant challenge, particularly in terms of its impact on the economy and society of the country.

This situation presents an additional challenge for addressing the Venezuelan migration crisis in Colombia, as migrants face a new reality in a different country and must adapt to a region where cultural identity is complex and dynamic. Despite this, the solidarity and support of the local population towards the migrants have been significant, reflecting the importance of border relations in constructing a more inclusive and welcoming society (Fernández and Luna, 2018, p. 5).

In general terms, according to the Integrated Household Survey (GEIH) conducted by the National Administrative Department of Statistics, in 2019, the population from Venezuela (refugees, migrants, and returning Colombians) tended to be young, with a higher level of education compared to the Colombian average and resided in cities such as Bogotá, Barranquilla, Medellín, Cúcuta, Cali, Bucaramanga, Cartagena, Santa Marta, Valledupar, and Riohacha (United Nations High Commissioner for Refugees, 2020, 2022, p. 7). However, due to this process's massive and irregular nature, it brings about cultural and labor adjustments, particularly in Colombia. The positive aspect lies in the levels of education that this group of migrants can contribute. Nevertheless, the sheer number of migrants transforms migration into a complex integration process to provide genuine support in Colombia.

As of October 2019, Migración Colombia reported a total of 1,630,903 Venezuelan citizens in the country, of which 719,189 had regularized their administrative status, while 911,714 were in an irregular situation (United Nations High Commissioner for Refugees, 2020, 2022, p. 6). Migración Colombia's information system has generated a quarterly report on

migrations from Venezuela since the second semester of 2018. This report focuses on counting and classifying foreign migrants into two main categories. On the one hand, some regular migrants possess visa permits, foreigner identification cards, and special residence permits (PEP), or are in the process of obtaining these documents. On the other hand, there are irregular migrants who have exceeded the permitted length of stay or entered the country without authorization. With reliable and objective data, all of this reflects that irregular migration has caused significant disruptions in Colombia's internal development.

Regarding regular migrants or those irregular migrants who have exceeded their allowed stay, the information is relatively precise as it comes from cross-verification among different administrative records. However, it should be noted that information on irregular migrants who entered the country without authorization may be less precise since these individuals are not officially registered in administrative records. Despite this, the quarterly reports serve as a valuable tool for understanding and monitoring migratory dynamics in Colombia, enabling better management of the migrants' situation, and implementing appropriate public policies for their care and protection (United Nations High Commissioner for Refugees, 2022, p. 6). This effort made by Colombia's public apparatus is also overwhelmed because there is no territory capable of withstanding the influx of people seeking new horizons, essentially starting from scratch in reclaiming spaces for the development of their lives.

Regarding the impact on the labor market, "between 2016 and 2019, nearly 500,000 refugees and migrants entered the labor market as informal self-employed workers. This figure reduced the monthly earnings of this occupational group below the reservation wage of local workers, which tends to be higher than that of workers from Venezuela. This may explain, at least partially, the exit of over 600,000 local workers from this occupational group in 2019. Another 400,000 Venezuelans entered the informal wage labor market, which tends to adjust in terms of quantities, which may explain the increase in informality rate among wage workers in 2019. This analysis is consistent with econometric exercises carried out by the Banco de la República" (United Nations High Commissioner for Refugees, 2022, pp. 7-8). The figures are evident and compelling. The massive arrival of Venezuelans to Colombia reduced the economic prospects for Colombians and brought about radical changes in the labor market (Tribín, Adhvaryu, y Anzola, 2020).

Figure 2. *Indices of the Increase in Venezuelan Migrants Passing Through Colombia*[6]

TREND FOR COLOMBIA
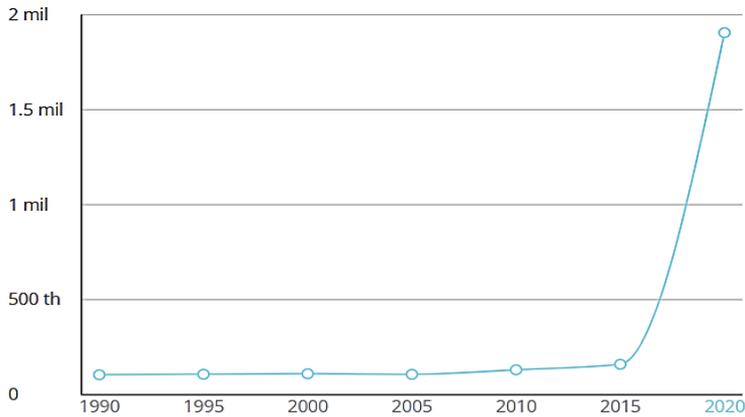
Own Elaboration.

Migration in Chile.

In the case of Chile, the phenomenon has been familiar to what has occurred in Colombia. In a way, and the data confirms this, Colombia has served as a transit country for reaching Chile. However, Chile became the country that raised greater expectations for those displaced from their cultural space. We can identify different stages of Venezuelan migration in Chile. The first stage involved a significant departure of skilled professionals accompanied by substantial capital to generate investments and ventures in Chile. They settled in different regions of the country and yielded valuable economic and social development outcomes.

6   Taken from the United Nations High Commissioner (2022).

The second stage witnessed a massive arrival of professionals who came to meet the demand for skilled labor that a young country requires. Subsequently, a population with minimal academic training arrived to fulfill lower-paid job needs. Lastly, due to the lack of security at our borders, criminal gangs could enter, putting the country at stake and exporting unusual crimes uncommon in Chilean culture. Today, these crimes top the statistics of the Public Prosecutor's Office and the police, challenging the public forces in an immense effort to curb this wave of violence and organized crime originating from Venezuela. While this research work does not aim to analyze this phenomenon specifically, we want to acknowledge this complex process (Vidal and D'Amato, 2016).

Data on Venezuelan Migration in Chile.

Below are statistical data regarding the Venezuelan migrant population in Chile. Based on administrative records from the National Migration Service (SERMIG), the estimates of residents, the number of residences permits, and the socio-demographic characteristics of those who obtained such licenses are presented.

Firstly, estimates of individuals from Venezuela residing in Chile between 2002 and 2021 are presented, according to the population census results and the collaborative work between SERMIG and the National Institute of Statistics (INE) for the years 2018, 2019, 2020, and 2021. Secondly, statistics based on residence permits processed by the Service between 2012 and 2022 are provided, including requested temporary residencies, granted temporary residencies, and requested and granted permanent residencies. Finally, data on nationality requests and grants for individuals from Venezuela are presented.

Figure 3. *Estimation of Countries with the Highest Number of Emigrants*[7]
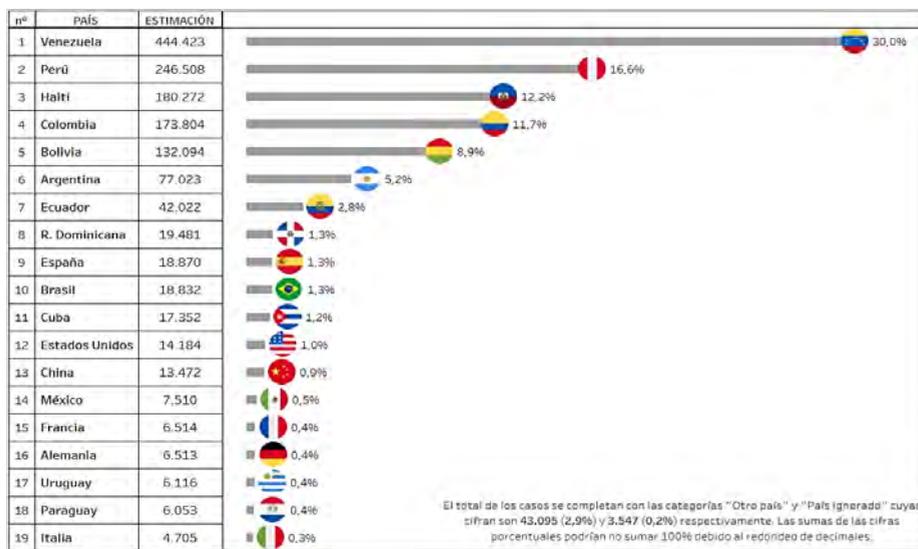
Own Elaboration.

On their part, the declared residences by individuals who applied for temporary residencies from Venezuela between 2012 and 2022 are predominantly in the major cities of Latin America and the Caribbean.

Figure 4. *Metropolitan Region of Santiago with 66.6% of the applications*[8]
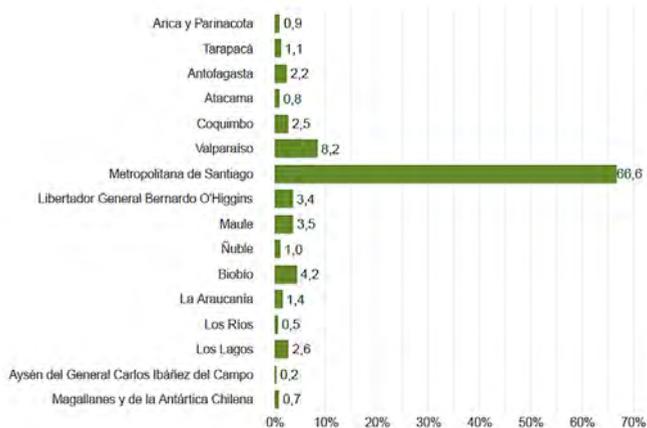
Own Elaboration.

7   Taken from United Nations High Commissioner (2022, p. 26).
8   Information taken from Servicio de Migraciones Chile (2023).

Regarding the motivations for migration, in the case of the Venezuelan collective, the political and economic crisis is mentioned as the main reason for leaving the country. The data and graphs, in the case of Chile, reveal an unprecedented phenomenon in national history, with devastating social effects. The social structure has been incapable of efficiently channeling this recent surge of irregular migration, demonstrating that the migratory phenomenon has regional coverage and significantly deteriorates Chile's country image. So far, we have been unable to fully assess the consequences of this fragile state's unable to respond to organized crime, which is the main result of irregular migration. These effects include the exodus of investments from the country and a decline in various international rankings.

Methodology

Table 1. *Methodology of study.*

Type of Study	Socio-legal, focusing on the transformations of Colombian and Chilean societies caused by the Venezuelan migratory phenomenon.
Approach	Qualitative, using inquiry and case studies that focus on public policies in Colombia and Chile regarding the management of the Venezuelan migration crisis.
Method	Inductive, starting from specific premises and building on information found in previous studies, analyzing the public policies of Colombia and Chile for the attention and control of Venezuelan migrants.
Level	Descriptive.
Population	Venezuelan migrants settled or passed through the territories of Colombia and Chile.
Sources of information	Primary: Data collected through data collection instruments. Secondary: Journal articles, foundation data, jurisprudence, and current regulations, agreements, and laws.

Discussion – Results

The following points can be asserted regarding the effects of Venezuelan migration in the contexts of Colombia and Chile:

1. Migration is a universal phenomenon with historical characteristics, reflecting the evolution of peoples as they adapt to different territories and regions. Throughout history, humans have migrated for various reasons, primarily to improve their quality of life or seek new economic opportunities. However, it is essential to acknowledge forced migration, which aims to escape situations of violence, political persecution, armed conflicts, or, as in the core of this situation, to escape an ultra-leftist dictatorship that has plagued and oppressed seven million people who likely never wanted to leave their land, roots, and culture. Forced migration must be condemned by society since it is not a free and voluntary choice but an abnormal outcome of a failed experiment. At the same time, it is necessary to provide the required assistance and solidarity to ensure the protection and well-being of those affected.

2. Current migration is very different from the migration of the 1940s or 1950s when strategic plans were in place to invite orderly migration that would contribute to the enrichment of other cultures in different territories. In many cases, it is forced migration resulting from violence, poverty, social exclusion, and lack of opportunities in the countries of origin. In other cases, it is voluntary migration for better living conditions, work, or education.

3. Colombia has experienced complex and massive arrivals of Venezuelans. Despite the efforts of public policies, the numbers demonstrate a phenomenon that has come to stay and currently has not found a solution. As a neighboring country, Colombia has been one of the leading destinations for forced migration from Venezuela, both as a destination and as a transit country, due to the political, economic, and social crisis caused by Nicolás Maduro's dictatorship. This situation has presented significant challenges for Colombia in terms of ensuring the protection and rights of migrants and meeting the needs and demands of a population that has grown significantly in recent years. Despite the government's and civil society's efforts to address the migrants' needs, the magnitude of the phenomenon

has made it difficult to provide an effective and sustainable long-term response.

4. In the case of Chile, the numbers and data reflect different stages but currently reveal a process with complexities that demonstrate the fragility of the state in rebuilding or reorienting those forced to migrate. Forced migration from countries such as Venezuela, Haiti, and others has become increasingly visible in Chile. In many cases, these migrants have had to leave their homes, families, and jobs for a better and safer life due to the political, economic, and social crises in their countries of origin. In Chile, the culture is significantly different from Venezuelan and Caribbean culture in general, especially regarding celebrations and festivities, which has caused a cultural clash. Migrants may feel disoriented and misunderstood by Chilean society. Furthermore, this lack of understanding can generate prejudices and negative stereotypes towards migrants, which can be particularly harmful when they need to integrate and adapt to a new culture.

5. The migration figures in Colombia and Chile reveal increased organized crime and other types of offenses that have sown violence and terror in these societies. This situation has led to a heightened perception of insecurity and constant concern among the citizens, challenging the socio-political structure and the criminal prosecution by our authorities. It is necessary to develop public policies that allow for orderly and secure migration, respecting the human rights of migrants while protecting the host society. It is essential to work together to identify and combat migration-related crimes, thus ensuring peaceful and respectful coexistence among people from different origins and cultures.

Conclusions

We can draw the following conclusions from our research work and initial questions. The massive and irregular arrival of Venezuelan citizens currently triggers the migratory process and its effects in Colombia and Chile. In Venezuela, a dictatorial political phenomenon has taken place, which has propelled a historically unprecedented mass exodus in our region, causing

significant devastation in our countries. These effects pose challenges to our nation's political and social structures in accommodating and reintegrating many Venezuelan citizens into the workforce.

We can also conclude that this political and cultural phenomenon has a precise and identifiable cause, as both states provide evidence of the figures and periods of Venezuelan citizen arrivals in our territories. Additionally, we can assert that international organizations have been complicit, as despite the claims made by the states, they have remained ominously silent, prioritizing their own ideology over the plight of seven million citizens, which Colombia, Chile, and other countries in the region have experienced.

In practice, this has meant a tremendous effort to address the immense needs of these seven million individuals, which include challenges in healthcare, education, housing, as well as public and border security expenses. The ultra-leftist government of Nicolás Maduro has used its citizens as a destabilization tool in the region, challenging the states now more than ever.

It is important to remember that migration is a fundamental human right recognized by the United Nations and the international community. Migration can be driven by various factors, some of which have been mentioned, but it can also be motivated by the pursuit of a more favorable environment for personal development or the realization of specific projects. In any case, it is a voluntary and autonomous decision that must be respected and protected by states and society. However, it is also crucial to condemn forced migration resulting from violence and political repression, which forces people to leave their homes and seek refuge elsewhere. International organizations should condemn the origins of such forced migration.

The challenges we face regarding analyzing these events indicate the need to objectively study the effects of Venezuelan migration in the region within academia. Moreover, there is a need to shift focus away from solely examining the impact of migration and instead uncover the origins of this phenomenon. The academic sphere must demonstrate, through the scientific method, who the true culprits are in the systematic violation, not only of the rights of Venezuelan nationals but also of the citizens of the receiving countries in the region. The challenge is to denounce the egregious violations committed by a regime whose ideology has condemned seven million citizens to genuine political, social, economic, and emotional distress.

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