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SUMARIO / SUMMARY / RESUMO

Editorial

We are pleased to share the first issue of the year 2023 of the Law and International Politics magazine, which is integrated by great scientific contributions, which allow us to visualize the trend of knowledge growth in the areas of law, business and politics. It is important to note that the views of the writers in this issue provide a multifaceted panorama that leads us to rethink the legal-political action agendas for the world.

The first text in this edition deals with the feasibility of applying the Balanced Scorecard (BSC) to the management of resources in the Argentine National Gendarmerie (GNA), as a tool capable of converting the vision and strategies to the organization, communicating and relating objectives and indicators with the purpose of achieving administrative efficiency. To achieve this, a mixed methodology (qualitative, quantitative and descriptive) was used, based on the theoretical references linked to the BSC, the analysis of the administration of the Force, the budget, the organizational climate and the citizens' concept of the GNA.

The second research work focuses on a course of action for the solution of a calculation procedure within the energy purchase contract for the supply of an electricity distribution company in Guatemala. The difficulty of working with an uncertain indexation is explained, which causes different interpretations, leading to a problem of decision by the parties, since the correct procedure to be taken is not explicit, given that what exists in writing is ambiguous. The Economic Theory of Contracts is analyzed along with the most relevant aspects are: to analyze the international context of long-term contracts and the difficulties that arise in the application of indexation.

The third research article addresses the issue of the undermining of the right to work that has been a social problem in Guatemala, which has affected workers since past centuries, they were subjected to torture and slavery, in the present century slavery is no longer very notorious, thanks to the protection of human rights; even so, there is an abuse of the employer towards the worker, he does not pay a fair salary, not paying the indemnity is another factor to sue the employer before the Labor Court, once the administrative process is exhausted, he enters into a labor conflict with the employer before a jurisdictional Court, which hears and resolves, based on current law, with preferential legal protection, this awakens the interest to deeply analyze the human rights, principles of law, that the due process is not violated; the current norms in labor matters provide elements for the common good of the parties, taking the Principle of tutelary protection that assists all workers

The fourth scientific article that makes up this edition studies the scenario of female oppression that has taken hold throughout the world, stripping women of their most fundamental rights. This context began to change more effectively in the 20th century, when women began to climb the social ladder and claim their rights in a more assertive manner. In this context, this qualitative literature review article conducted a documentary research through the deductive method, seeking to understand the importance of female participation registered in the 1988 Constitution, responsible for chaining an important process of empowerment of women, triggering the right to gender equality, so necessary in view of the context of violence in the country.

The fifth scientific text is composed of a reflective analysis on the conceptualization and implementation of public policy as a mechanism for citizen participation, the

practical theoretical reflection, which incorporates several novel conceptual and methodological aspects related to systematic methodologies that have emerged in recent years. This theoretical/practical review is based on the concept of the interrelation of actors (public, private and civil society) as the primary entities of the social system, addressing the experience Colombia has had in identifying and understanding the social elements that constitute the design of the public policy route.

Finally, the magazine has integrated a sixth article in which an investigation is made regarding regulatory compliance, also known as compliance, has become an important topic of concern for companies around the world. In Mexico, legal compliance has become increasingly important due to the growing complexity of the regulatory framework and the more severe sanctions imposed by the authorities in the event of non-compliance. Regulatory compliance systems are established in Mexican legislation as mitigating and/or excluding factors of legal liability in any of the ramifications that through law establish the basis of sanctions to achieve compliance to which legal entities must comply without providing minimum standards of application without unifying criteria, regulations and procedures.

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BALANCED SCORECARD IN THE PUBLIC SECTOR: CASE STUDY OF THE ARGENTINE NATIONAL GENDARMERIE

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management of resources in the Argentine National Gendarmerie (GNA), as a tool capable of converting the vision and strategies to the organization, communicating and relate objectives and indicators to achieve administrative efficiency. To achieve this, a mixed methodology (qualitative, quantitative, and descriptive) was used, based on the theoretical references linked to the CMI, the analysis of the administration of the Force, the budget, the organizational climate, and the concept of citizens about the GNA. The samples were collected in three phases: in the first, the documentary analysis linked to the management and the available bibliography was carried out; in the second, interviews with senior officers, about knowledge about the instrument; staff survey to inquire about the organizational climate and lastly, an opinion survey of citizens benefiting from the GNA service; the third phase was designed from the BSC prototype applied to the Institution. The validation of the instruments was carried out through the Cronbach's Alpha Coefficient. It is appreciated that the application of this tool is feasible and that it can provide information in a timely manner to monitor activities, prioritize projects, measure the trajectory of the use of resources, align work, facilitate internal communications, and make appropriate decisions in search for efficiency in the use of resources.

Keywords: Argentine National Gendarmerie, Public Management, Balanced Scorecard, Budget, Efficiency.

CUADRO DE MANDO INTEGRAL EN EL SECTOR PÚBLICO: CASO DE ESTUDIO LA GENDARMERÍA NACIONAL ARGENTINA

Resumen. La presente investigación está orientada a verificar la viabilidad de aplicar el Cuadro de Mando Integral (CMI) a la gestión de los recursos en la Gendarmería Nacional Argentina (GNA), como herramienta capaz de convertir la visión y las estrategias a la organización, comunicar y relacionar objetivos e indicadores con el propósito de alcanzar la eficiencia administrativa. Para lograrlo se recurrió a la metodología mixta (cualitativa, cuantitativa y descriptiva), en función a las referencias teóricas vinculadas al CMI, el análisis de la administración de la Fuerza, el presupuesto, el clima organizacional y el concepto de los ciudadanos sobre la GNA. Las muestras fueron colectadas en tres fases: en la primera se realizó el análisis documental vinculado a la gestión y la bibliografía disponible; en la segunda, entrevistas a los oficiales superiores, sobre el conocimiento sobre el instrumento; encuesta al personal para indagar sobre el clima organizacional y, por último, una encuesta de opinión a los ciudadanos beneficiarios del servicio de la GNA; la tercera fase se diseñó del prototipo de CMI aplicado a la Institución. La validación de los instrumentos se realizó a través del Coeficiente de Alfa de Cronbach. Se aprecia que es viable la aplicación de esta herramienta y que puede aportar información en tiempo y oportunidad para

monitorear las actividades, priorizar los proyectos, medir la trayectoria del uso de los recursos, alinear el trabajo, facilitar las comunicaciones internas y tomar adecuadas decisiones en búsqueda de la eficiencia en la utilización de los recursos.

Palabras clave: Gendarmería Nacional Argentina, Gestión pública, CMI integral, Presupuesto, Eficiencia.

Introduction

The physicist and mathematician Thomson Kelvin (1824 - 1907) coined the phrase: "What is not defined cannot be measured. What is not measured cannot be improved. What does not improve, always degrades". Precisely, this principle is one of the distinctive characteristics of public administration in the 21st century and it is even the constant demand to those responsible for managing the resources of the State: that they have the appropriate skills and aptitude to face the problems, fight corruption, insecurity, violence and drug trafficking. Undoubtedly, achieving these objectives requires economic and financial efforts, proper coordination of utilization and demonstration of results. Drucker considered that the business leader had to be efficient and that efficiency was not something innate, but a capacity that can be learned by internalizing a series of habits.

On the other hand, Law No. 24156 "On Financial Administration and Control Systems of the National Public Sector", is the general rule that regulates the management of public resources and, as the GNA is part of the governmental structure, it is also important for it to manage adequately, supported by the principles defined in Article 4 of the aforementioned rule. This implies accepting and adapting to the new planning model, undertaking innovative actions in management, adjusting to the legal framework and taking advantage of the tools available to provide the necessary information, which goes beyond statistical data, legality and efficiency, but also the: "efficiency", "economy", "enforceability" and "effectiveness", included in the same law.

Maintaining an adequate system of monitoring and control of the aforementioned principles was the motive behind the research topic, with the purpose of confirming the feasibility of applying the BSC in resource management, as a tool that collaborates in the decisive processes and allows: translating the vision and strategy to the entire organization; communicating and relating objectives and indicators; planning and defining strategic objectives and initiatives and increasing feedback from the environment and strategic formulation.

To resolve this issue related to obtaining timely information from the administration, the perspectives of the model determined for private activity by Kaplan and Norton (1992), the management indicators of the GNA's actions in the fulfillment of the assigned missions and functions, were chosen as the basis for the BSC study.

In researching the state of the art, studies related to the application of the BSC in public agencies were selected and are detailed in Table 1.

It includes the presentation of the paper and the analysis of the literature on the subject, with special emphasis on previous research that justifies the study and that will be contrasted in the discussion of the results.

Table 1
Public organizations using the WCC

Study	Application	Perspective	Expected result
Bombini and Diblasi (2009)	Court of Auditors of the Province of Mendoza (Argentina)	Financials, customers, internal processes, learning and growth	• Improve communication, information and training. • Measurement of processes and capacity of work teams.
Toapanta Vera (2010)	Public Sector Financial Administrative Service (Ecuador)	Basic function of the Management. Financials, customers, internal processes, learning and growth	• To constitute a tool for the evaluation of results, quality level and improvement of public operations. • Develop a system of management indicators.
Mohamed Hatim (2014)	ANAED Case - Non-profit enterprises (Spain)	Financials, customers, internal processes, learning and growth.	• Plan, set objectives and align strategic initiatives. • Organizational learning tool.
Colombian National Police (2016)	Public Sector - Directorate of Financial Administration (Guayaquil - Colombia)	Financials, customers, internal processes, learning and growth.	• Competency indicators. • Improve the management of the Administrative and Financial Management. • Review of internal processes. • Achieving HR competencies. • Hierarchize the budget process. • Improve customer relations.
Vogel (2017)	Iberoamerican Dashboard (Argentina)	Financials, customers, internal processes, learning and growth.	• Diagnose strategies. • Perform a SWOT analysis. • Develop management indicators. • Apply competency-based management.

Note. Prepared by the authors based on research on the CMI.

The studies explored show that the application of the BSC has a common objective: public management based on the perspectives originally defined by Kaplan and Norton for private activity, with the exception of the results expected in each organization: improving internal communication, process control or as a tool for planning objectives, strategies and evaluating results. All use indicators to monitor management.

Method

In order to diagnose the application of the BSC to the GNA, theoretical and empirical methods on the subject were used. As a theoretical method, the model proposed by Kaplan and Norton (2000) was analyzed. From the empirical point of view, we analyzed works related to the application of the tool in different organizational environments. Therefore, a descriptive, exploratory, correlational and explanatory methodology was chosen to address the aspects related to the model applied to the GNA, focusing on the following perspectives:

- Internal processes: oriented to the organization, mission, vision and key values to achieve the Force's objectives and expectations.

- Training and growth: aimed at reporting on two significant issues for the GNA, such as the training and qualification of officers and institutional growth through investments.
- Resources: to provide information related to the management of the budget and the most significant resources used in the fulfillment of the assigned mission and functions.
- From clients (citizens): used to obtain the opinion of citizen clients who receive personal and property protection services from the Institution.
- Social impact: applied to the results of the operational actions of the Force.

The reference framework for the study was the Force's Central Administrative Service (SAF 375), the physical location where the documentation, records and databases necessary to develop the present work were gathered, with the scope of the budget allocated for the fiscal year taken as an example.

According to the proposed perspectives, it was necessary to consider three different samples related to: the interview on the knowledge and application of the BSC in the GNA; the survey on the organizational climate and the management sample. For the definition of the non-probabilistic sample, the following formula was used:

$$n = \frac{Z \cdot p \cdot p \cdot N}{e2.(N-1) + Z \cdot p \cdot q}$$

Where n is the sample size,
N population size,
z is the typical score associated with the 95% confidence level,
e is the standard error,
p and q complementary proportions between 0 and 1.

The study population and sample were selected according to the perspectives investigated and adapted to the GNA. The information was collected through the following instruments:

- Interview: 33 Senior and Chief Officers, linked to management.
- Organizational climate survey: the human resources plant registered by the Force (fiscal year 2018) of 38,904 men and women in uniform was taken into account, from which a sample of 376 uniformed personnel distributed in: 70 Chief Officers; 109 Junior Officers and 197 non-commissioned officers.
- Survey of citizens (clients): a population of 1,500 people was considered, from which a sample of 250 people was drawn.
- Management analysis: the management of the 8 budgetary programs assigned to the Force by Law No. 27341.

The sample was validated through the SPSS program, version 17.0, to calculate Cronbach's coefficient. Table 2 and 3, respectively.

Table 2
Reliability statistics in the GNA staff survey

Alpha of Cronbach	Cronbach's alpha based on standardized items	N elements
.979	.979	70

Table 3
Reliability statistics in the citizen survey (customers)

Alpha of Cronbach	Cronbach's alpha based on standardized items	N Elements
.969	.963	14

Results

The change of paradigm in public management and the creation of State value promoted the new definition of "public expenditure", which transcends "effectiveness" (meeting the planned objectives), but goes deeper into the results resulting from the use of public resources, that is, it requires verifying "efficiency" through the recreation of tools used in private management in the public sphere. This objective entails the effort to optimize internal processes and an adequate use of resources, which implies using them rationally to achieve the best results for the community receiving the public service.

Observing these new administrative conditions is of utmost interest for those who have the responsibility to lead and make decisions on the use of the respective budgetary programs, based on the missions and functions of the GNA, the imposed and self-imposed objectives, defining and communicating institutional strategies, aligning human, material, technological and financial resources adequately planned.

By virtue of the above, the contribution of the BSC and the use of control indicators (financial and non-financial) are conceived as collaborating in the gathering of sufficient information to follow up on the fulfillment of objectives and goals.

Analysis of the interview with GNA managers

Prior to the study of the components of the BSC prototype applied in the GNA, it was necessary to examine the knowledge of the officials responsible for managing the budgetary programs about this tool, as well as the contribution of information to make appropriate decisions. This understanding was obtained by interviewing the thirty-three Senior and Chief Officers who have links with the budget, whose responses are shown in Table 4.

Table 4
Knowledge and contribution of the BSC in management

Questions	Senior Officers		Chief Officers	
	Yes	No	Yes	No
Knowledge about the CMI	13	0	18	2
Use of the BSC in management	12	1	17	3
Contribution of the BSC to management	10	3	11	9
Contribution of the BSC to productivity	11	2	9	11

The results of the interview show that the Senior Officers and Chiefs are aware of and are inclined to use the BSC as a tool for monitoring management. At the same time, they also state that nowadays it is not enough to have only statistical data, but it is necessary to integrate and analyze them in order to provide information related to the main variables used in decision making.

In accordance with the current administrative dynamics and the need for accurate and timely information, it is necessary to use practices that favor the best strategic alternatives, detect deviations between planning and execution in real time and contribute to the optimal use of available resources (efficiency).

Perspective of internal processes

Before considering the feasibility of applying the BSC at GNA, it was necessary to analyze the variables related to the internal BSC process. These include: the organizational climate in the Force, the functioning of the Financial Administration System and the Purchasing System, which provide significant information for management.

Organizational climate

Dessler (1993) defines organizational climate as the set of perceptions that the individual has of the organization for which he/she works, and the opinion he/she has formed of it in terms of autonomy, structure, rewards, consideration, cordiality and support. For this reason, men who are satisfied and happy with their work are inclined to give their all for the work and motivate the effort of the whole to fulfill the mission and functions assigned.

The evaluation of this perspective focuses on two issues related to the management of operational and administrative activities. The first is linked to the organizational climate. Secondly, the organization (division of labor) arising from the mission and functions assigned according to the law, the "imposed objectives" and those assigned by the holder of the organic element "self-imposed objectives.

To achieve this, an opinion survey on the organizational climate was used, stipulated in 70 questions, grouped in 14 dimensions. The survey was answered by 376 uniformed personnel, which represents 94% of those invited to participate. Table 5 and 6.

Table 5
Variables related to organizational climate

Dimensions		Dimensions	
D1	Collaboration and communication between work teams in the GNA.	D8	Job satisfaction
D2	Autonomy in decision making.	D9	Working conditions
D3	Motivation	D10	Initiative and leadership
D4	Labor productivity	D11	Labor efficiency
D5	Remuneration and internal services of the GNA	D12	Labor competence
D6	Professional performance	D13	Training and professional development
D7	Teamwork	D14	Quality of service provided by the GNA

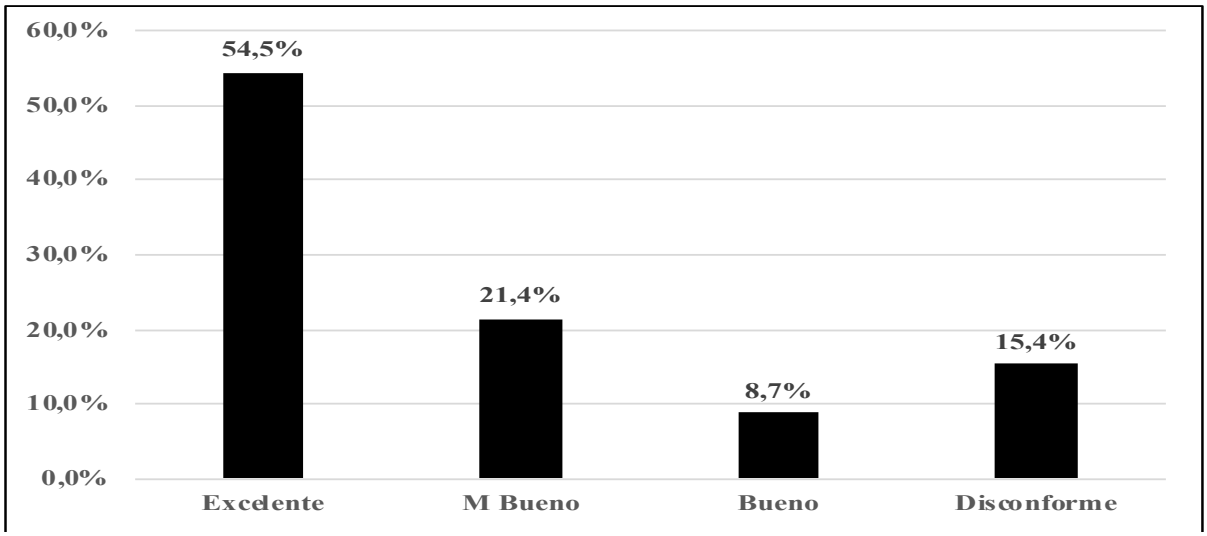
Table 6
Organizational climate assessment results

Qualifications	Variables related to work environment							Variables related to job performance						
	Dim 1	Dim 2	Dim 3	Dim 4	Dim 5	Dim 6	Dim 7	Dim 8	Dim 9	Dim 10	Dim 11	Dim 12	Dim 13	Dim 14
Excellent	175	185	201	158	263	196	196	152	185	182	222	173	263	288
M. good	108	98	95	102	65	61	65	97	93	89	77	92	65	40
Good	57	39	23	42	8	35	42	53	49	49	23	29	8	11
Dissatisfied	36	54	57	74	40	84	73	74	59	56	54	82	40	37
Totals	376	376	376	376	376	376	376	376	376	376	376	376	376	376

Note. Compilation based on the data obtained in the survey of the Force's personnel.

Table 6, shows the results of the survey related to the organizational climate adjusted in fourteen dimensions. The general opinion of the personnel was expressed in 318 positive responses (205 excellent; 81 very good; 33 good), while 58 of them disagreed with the work environment prevailing in the Force. The dimension related to "Collaboration and communication between the work or office teams", which reached a total of 344 positive points (175 Excellent; 108 M. Good; 57 Good and 36 Dissatisfied), while the dimension with the lowest evaluation corresponds to "Job satisfaction", with 292 positive points (196 Excellent; 61 M. Good; 35 Good and 84 Dissatisfied). The rest of the dimensions investigated are located within the two aforementioned values, maintaining similar ratings,

Figure 1
Organizational climate



These results represent 84.6% of the total surveyed who approve of the prevailing work environment in the institution, while 15.5% do not feel the same. This consideration leads to the inference that the human resources management policy in the GNA is adequate to the institutional reality of each decentralized element throughout the territory. Therefore, it is an important motivating factor for integration and teamwork, as well as for commitment to the objectives of the GNA ("feeling the shirt"). This situation makes it easier to manage and achieve greater success.

The 15.5% who responded in disagreement represent personnel who do not agree or do not feel comfortable in the Force, affected by any of the following factors: lack of leadership on the part of team or office managers; poor communication; they feel that the work is not

adequately compensated, lack of concern for their well-being at work or lack of motivation. By the way, the percentage of personnel who think differently is very low, therefore, they do not have enough strength to modify the work environment and generate discomfort, conflicts, low performance, loss of energy, etc.).

On the other hand, when applying the correlation analysis between the variables considered, an average coefficient of .667 points, which shows that between the fourteen dimensions there is a considerable positive correlation. Table 7 shows the correlations between each pair of variables considered.

Table 7
Pearson correlation study

Dimension	Correlation	Type
Collaboration and communication	.523	Significant positive correlation
Decision-making autonomy	.676	Significant positive correlation
Work motivation	.704	Significant positive correlation
Labor productivity	.645	Significant positive correlation
Remuneration and internal services	.723	Significant positive correlation
Professional performance	.704	Significant positive correlation
Teamwork/office	.662	Significant positive correlation
Job satisfaction	.634	Significant positive correlation
Working conditions	.709	Significant positive correlation
Initiative and leadership	.697	Significant positive correlation
Institutional efficiency	.699	Significant positive correlation
Professional competence	.632	Significant positive correlation
Training and development	.665	Significant positive correlation
Quality of customer service	.663	Significant positive correlation
Average correlation	.667	Significant positive correlation

Note. Own elaboration and information resulting from the use of the SPSS program.

The results are based on the results of the correlation study, whose figures show that the good climate prevailing within the Institution is a consequence of the leadership in the work teams -whether operational or administrative-, derived from the changes in paradigms, the updating of training programs, work incentives, the possibility of professional development, the technology and adequate means for the performance of activities and the support of the Force to the personnel through internal services (health, counseling, family).

Financial management system

Las Heras (2018), states that the financial activity of the State contemplates different and complex systems in which various components subsist: Legal (management is regulated by rules and principles of public law); Political (financial operations presuppose the a priori choice of ends and means for their realization); Economic (the means used in each financial operation are of an economic nature); Social (management has as its final destination the satisfaction of public needs); and Administrative (related to the techniques used for each operation that generate information that constitutes the fuel for the decision-making process.

Bolivar (2012), notes two important particularities related to Governmental Financial Administration in the GNA: the first is related to the principles, rules, agencies, resources and procedures involved in the operations of programming, management and control of the resources applied to achieve the objectives and goals in the most efficient way possible, whose transactions are recorded in the computer systems and SIDIF (Financial Information System), SLU (Single Settlement System). The second arises from the operation and interrelation of the

Financial Management Systems that provide the necessary information to the BSC for decision making.

Purchasing systems

The public procurement system collaborates in the management of public expenditure, by providing uniform procedures for the Public Administration, with the purpose of acquiring goods, works and services necessary to materialize the assigned mission and functions. This is the reason why it was included in the analysis as one of the significant components to be evaluated and included in the BSC applied, with a view to achieving efficiency in the administration of financial resources and transparency in the investment of the treasury.

Table 8

Classification of contractual acts

Type of contract	Amounts	Number of contracts
Public bidding	$ 45.242.325,00	2
Public bidding	$ 798.786.811,90	156
Private bidding	$ 215.156.297,28	90
Direct contracting	$ 786.771.612,46	338
Revolving fund	$ 381.686.953,36	-
Total	$ 2.227.644.000,00	586

Note. Prepared by the Company based on the distribution of hires made during the 2018 financial year.

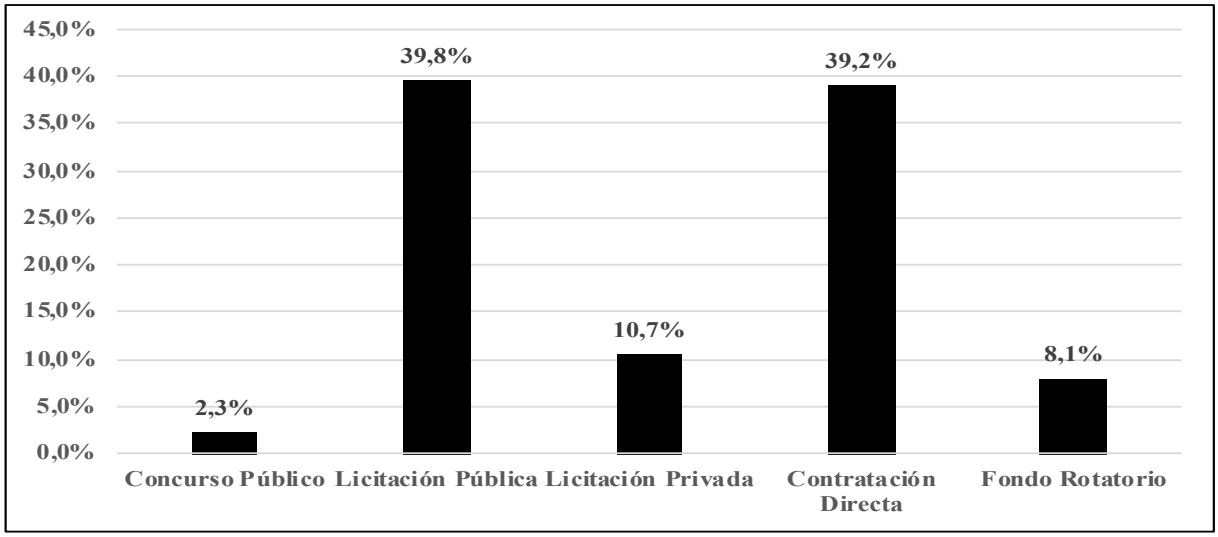
It is inferred that the GNA uses the two available procurement procedures: the normal and customary contracting system regulated by Decree No. 1023/2001 and 1030/2016, in the modalities of: Public Bidding, Public Bidding, Private Bidding, Private Bidding and Direct Contracting. The other purchasing format is through the "Revolving Fund". This procedure is provided for by Law No. 24156, Art. 80 and is used to make "minor or petty cash purchases", whose maximum amount per payment must not exceed the sum of $ 30,000, with the exception of the payment of the following utilities: electricity, telephone, internet, water supply, gas supply and taxes, which are not limited to that amount.

Table 8 shows the distribution of the purchasing procedures used to invest the budget allocated in Items 2, 3 and 4. During the fiscal year, the five procedures established by the aforementioned regulations were used, which shows that the spirit of the regulations was complied with: greater supplier participation and transparency.

It should be noted that the choice between one procedure and the other is based on two requirements established in the aforementioned regulations: the amount of the contract and the object to be contracted.

Figure 2

Distribution of GNA purchases



The results represent the distribution of the contractual acts carried out by the GNA during fiscal year 2018, according to the purchasing methods used. The figures show that 82.9% of the acquisitions of goods and services were made through the contractual system in its four modalities (public bidding 2.3%; public bidding 39.8%; private bidding 10.7% and direct contracting 39.2%) and 17.1% through the Revolving Fund system. Consequently, it is clear that the GNA follows the procedures established for state purchases, in order to: "buy well" (principle of effectiveness); at the "best price" (principle of economy); in the quantity needed to "fulfill the mission and functions" (principle of effectiveness); at the required "time and opportunity" (principles of executiveness); "optimizing financial resources" (principle of efficiency).

Perspective on education, training and growth

Since 1938, the Force has performed functions on the northern border, maintaining the identity in border areas, preserving the national territory and performing other functions related to citizen security. The provision of this service requires the availability of appropriately trained and qualified personnel.

Due to its importance, it was included within the perspective of training and growth, with this purpose, the training and qualification processes carried out by the Force were evaluated.

Staff education and training

Education and training is one of the fundamental pillars for the GNA, in which professionals with a democratic sense are forged, in accordance with the new demands of security intervention. The process is designed and included in the National Gendarmerie Educational System (SEGEN) and is developed in the different training institutes of the Force throughout the national territory.

Table 9

Evolution of GNA training and education

Programs	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Totals
Training of staff	4.600	5.200	4.500	5.000	5.500	5.000	5.000	3.000	3.000	3.000	43.800
Accelerated training of Gendarmes	1.500	530	1.400	2.000	0	2.000	6.400	3.000	2.000	950	19.780
Officer Training	160	185	220	250	250	250	250	255	265	265	2.350
Non-Commissioned Officer Training	600	860	930	160	1.400	1.000	1.850	1.900	1.950	1100	11.750
Specific training for non-commissioned officers	0	0	0	0	0	0	0	850	900	950	2.700
Totals	6.860	6.785	7.050	7.410	7.150	8.250	13.500	9.005	8.115	6.265	80.380

Note. Own elaboration based on the evaluation of the curricula and the results achieved in the last ten years.

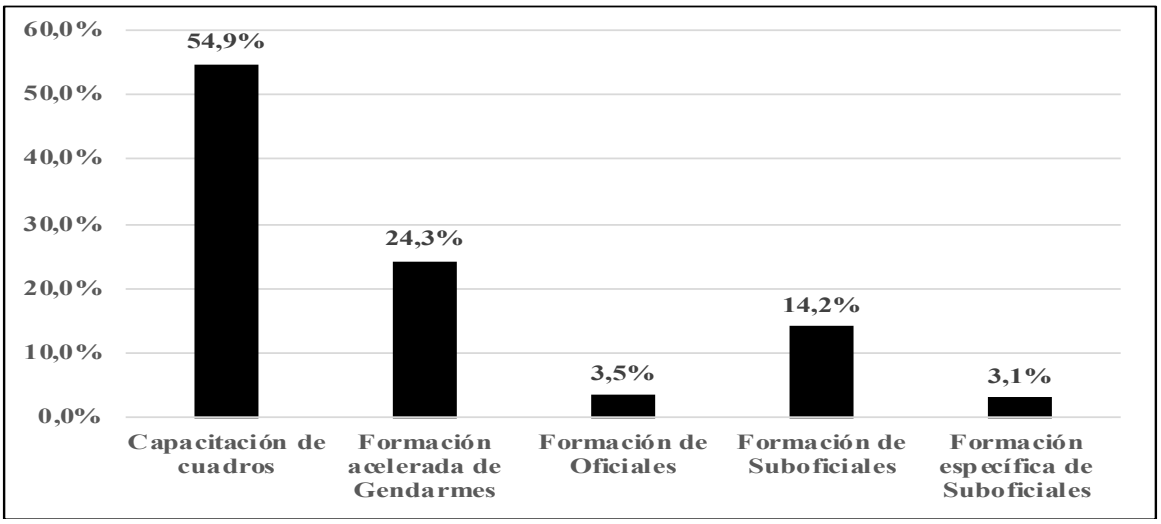
During this period, 80,380 gendarmes belonging to the ranks of officers, non-commissioned officers and gendarmes were trained in the different Training Institutes of the Force. The overall annual average is 8,038 staff members who passed through one of the training institutes in order to receive professional training. The effort was focused on three axes:

- Training of cadres: 4.380 professionals per year.
- Accelerated training of Gendarmes: 1.978 gendarmes per year.
- Non-commissioned officer training: 1.175sub-officers per year.

It is noted that the Force provides the appropriate resources and means to provide personnel with the theoretical and practical knowledge in accordance with the needs arising from the fulfillment of the assigned function. Therefore, it is an effective tool to reduce risk, danger of damage, errors, to comply with the law, to improve the efficiency in the performance of the employees, to favor the feeling of satisfaction with one's work, to contribute to professional growth, to promote personal progress, learning and the perception of achievement of personal goals.

Figure 3

Average evolution of education and training at the GNA



The results are a reflection of the Force's educational policy in accordance with operational and administrative needs, which allows it to meet the requirements and goals of the State "the common good", together with the institutional goal: to provide efficient and professional service to the community. The new vision of citizen security, the emergency of insecurity and the assignment of new functions promoted the incorporation and training of personnel, based on the pedagogical model that brings into play the curricular proposals with strategic contents in accordance with the new educational paradigm based on competencies. Due to the importance of this process, its inclusion in the WCC was considered.

Growth of the workforce

The growth of conflict and the need to provide favorable responses to this issue led the political authorities to increase the number of personnel in the Security Forces, under the Ministry of Security. Table 10 shows the growth in personnel from 2001 to 2018 of the four Forces that make up the aforementioned ministry. Particularly noteworthy is the increase in the GNA staff, which went from 18,282 to 38,904 in 2018, representing a growth of 112%.

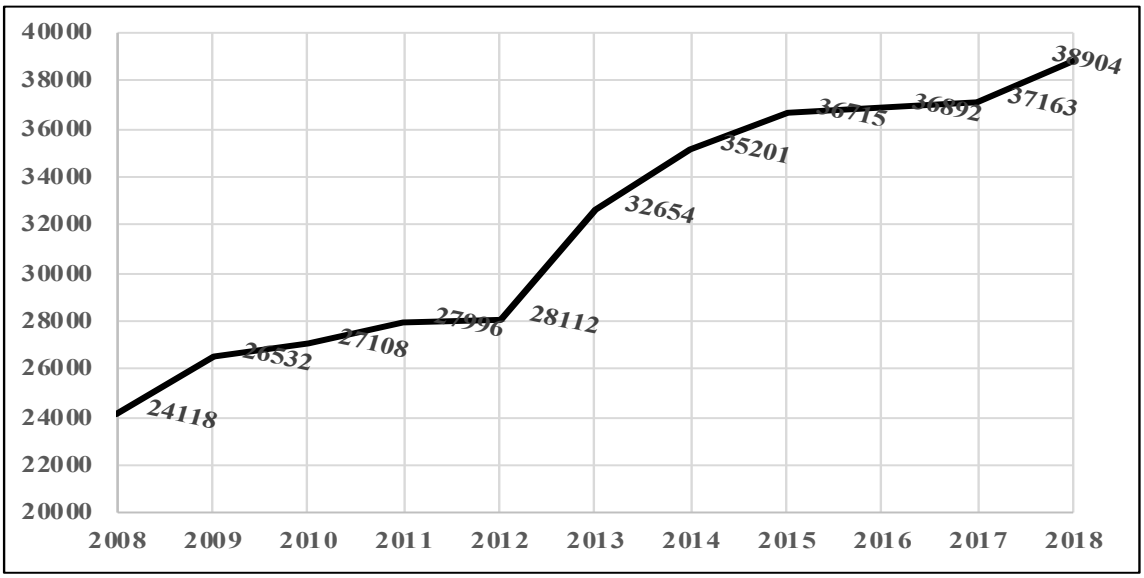
Table 10
Security Force Growth

Institutions	2001	2018	Increase % Increase
Argentine National Gendarmerie (GNA)	18.282	38.904	112 %
Argentine Federal Police (PFA)	31.706	32.664	3 %
Argentine Naval Prefecture (PNA)	14.910	24.191	62 %
Airport Security Police (PSA)	3.170	5.806	83 %
Total	68.068	101.565	49,2 %

Note. Own elaboration based on the 2001 and 2018 Budget.

Figure 4

Evolution of the GNA's staffing structure



Note. Prepared by the Company based on the records of the General Directorate of Human Resources.

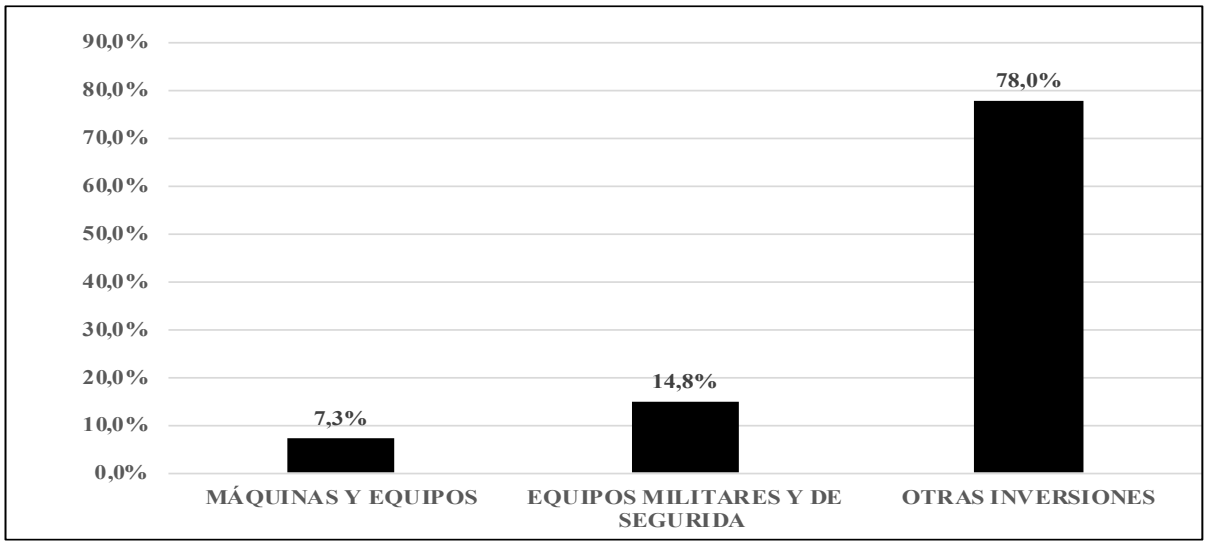
The growth in the number of GNA personnel is the result of the change in the paradigm of border security, the advance of crime and drug trafficking in urban centers, which motivated the political authorities to use the GNA to try to reverse and minimize the actions of legal violations of personnel. This situation required the allocation of resources (human, material and financial) to cover operational activities in different provinces and to comply with the national agreement "Argentina without drug trafficking".

Investments

Maintaining public order and ensuring compliance with the nation's laws involved providing the Force with the necessary equipment to perform its various functions (operational and administrative) as efficiently as possible. From the point of view of the budgetary allocation of the investments, they should be classified as Item 4 "Property, plant and equipment". In Figure 5. The figures corresponding to the distribution of investments during the period 2008 - 2018 are shown.

Figure 5

Distribution of investments



The detail of the investments of the budgetary programs assigned to the Force during the period mentioned above shows that the main investment effort was oriented to the item "other investments", which accounted for 78.0% of the total and was allocated to the acquisition of intangible assets (specific software), construction (new and refurbished) and livestock. 14.8% was allocated to "security equipment" and 7.3% to "equipment and machinery" (transportation, laboratory, communications, computer, furniture and office equipment, and others).

Resource perspective

The means and an adequate logistics are essential to achieve the obligations arising from the mission and functions. Due to the jurisdiction assigned to the Force and the diversity of its operational functions, it requires specific equipment to facilitate the execution of its activities.

The optimization in the use of these resources necessary to carry out GNA operations depends on the proper coordination of the logistics chain so that they are provided in time and opportunity, in order to achieve the expected results that have an impact on citizen (customer) satisfaction and produce a competitive advantage in the quality of service.

Table 11 lists***the*** main material resources used in operational activities.

Table 11

Material resources used in operational activities

Type of resource	Quantity
Deconcentrated units and checkpoints throughout the country	2.300
General transportation vehicles (operational and support) distributed throughout the country	5.627
Telecommunications and information technology posts (throughout the territory)	549
Equids (equines and mules) distributed throughout the national territory	765
Motorcycles and ATVs (operational and support) distributed throughout the territory	1.255
Security, rescue and antinarcotics canines	316
Aircraft	25
Rescue vehicles (Hänggluds caterpillar)	2
X-ray scanners	87

Note. Prepared by the Company based on information obtained from the General Logistics Department of GNA.

Financial resource management

The budget is considered to be the management tool that summarizes the decisions related to the level and composition of the goods to be produced. In this budget planning, the objectives, goals and expected results are detailed, as a consequence of the application of the resources allocated to each of the programs outlined in Table 12.

- Program 1: Central Administration
- Program 41: GNA Education and Training
- Program 41: GNA Health Care
- Program 43: Passive Care
- Program 44: Humanitarian and Peace Missions
- Program 48: Border Security.
- Program 49: Complementary Homeland Security Operations
- Program 50: Complex Crime Investigation Service.

Table 12

Budget distribution (in thousands of pesos)

Program No.	Original assignment	Modifications	Current credit	Committed	Accrued	% Accrued
1	3.388.354	276.457	3.664.811	3.651.483	3.651.389	99,6
41	3.691.913	365.044	4.056.957	4.004.982	4.004.971	98,7
42	1.432.134	66.4848	1.498.618	1.433.066	1.433.066	95.6
43	6.256.761	1.651.682	7.908.443	7.877.822	7.877.822	99,6
44	360.830	34.242	395.072	176.929	176.929	44,8
48	10.045.032	1.426.683	11.474.745	11.293.638	11.292.255	98.4
49	9.591.423	342.400	9.933.824	9.853.559	9.853.535	99,5
50	1.953.438	71.597	2.025.036	1.887.563	1.886,510	93,2
Totals	36.719.885	4.234.589	40.954.476	40.179.042	40.176.477	91,15

Note. Prepared by the authors based on the budget allocated to the GNA.

Table 12 summarizes the programs and original budget appropriations plus the supplementary appropriations received during the year. An excellent level of utilization of the financial resources distributed to each program was observed, with an overall average of 91.15% of the total allocated to the Force being invested. To achieve this accrual (accrual: generated once the suppliers have complied with the contract and the GNA has received the goods or services in accordance with the contract), effective procurement planning was required.

The exception was Program 44, "Humanitarian and Peace Missions", which only reached 44.8% of the total planned, due to the decrease in the demand for security from international organizations (UN and security at Embassies).

Budget growth

The decisions of the Executive Power to assign new functions to the Security Forces required an increase in the budget in order to cover the expenses resulting from the increase in the number of personnel deployed to the new responsibilities and the acquisition of equipment. Table 13*shows* the total budget evolution over the last ten years.

Table 13

Growth of the GNA budget (in thousands of pesos)

Base Budget (2001)	Updated budget (2018)	Allocated budget (2018)	Nominal Update	Increase %
$ 539.301	$ 20.695.505	$ 36.908.645	$ 16.209.898	43,9%

Note. Prepared by the authors based on the budgets allocated to the GNA.

In order to analyze the actual credit growth, the 2001 budget was updated with respect to the Consumer Price Index (CPI) issued by the World Bank:

- Consumer Price Index (CPI) 2001 3.95
- Consumer Price Index (CPI) 2018 151.58

$$Value_{2018} = Value_{2001} \times \frac{IPC_{2018}}{IPC2001} = \$\ 539.301 \times \frac{151,58}{3.95} \cong \$\ 20.695.505,21 \text{(Updated budget)}$$

- Nominal growth: $ 539.301 - $ 36.908.645 = $ 36.369.344 (+67,43%)
- Real growth: $ 36.908.645 - $ 20.698.747= $ 16.209.898 (+ 43,92%)
- Reduction of purchasing power: (- 23,51%)

As a result of the real reduction in the budget, the Force was forced to optimize the use of resources to meet its responsibilities. It involved the redistribution of budget allocations in order to meet imposed and self-imposed objectives.

Customer (citizen) perspective

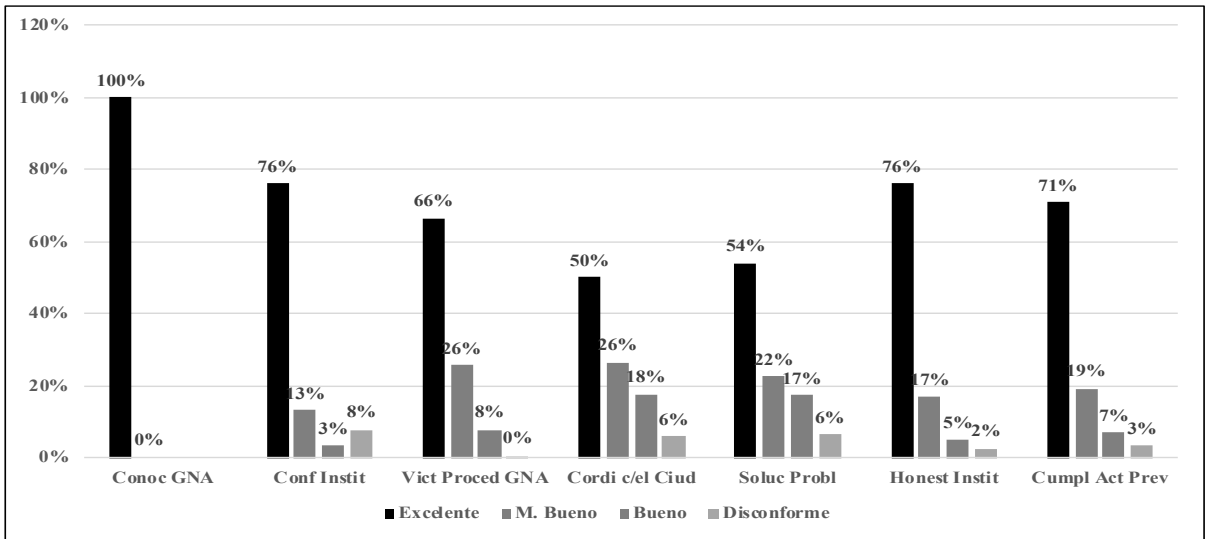
Since November 2003, the GNA has been engaged in providing citizen security services in the "conurbano bonaerense" (Buenos Aires suburbs). The evaluation of the national government's actions was entirely positive, since it was possible to reduce the frequency of certain crimes.

The activity increased year after year, with more than 6,000 gendarmes being assigned to carry out security functions for people and property in the province of Buenos Aires and other provinces with similar problems.

In this sense, the GNA is committed to permanently improve the processes and procedures developed in the service to citizens, who entrust the Force with the security and protection of their property. Figure 6, shows the results.

Figure 6

Citizens' opinions about the GNA



The results of the consultation allow us to conclude on two important issues: all the citizens surveyed said they knew the GNA. This conclusion leads to think that the opinions of the rest of the dimensions can be associated to this knowledge about the Force. The other consideration has to do with the judgments regarding the actions of the Institution, represented by 97% of the favorable opinions on the performance of the specific function and those of civic action that have a positive impact on the perception of the citizens and the prestige of the Force.

The two aforementioned functions motivated the modification of the security prototype, transforming the simple control and repression of crime, to a more preventive action, supported by human rights, which not only protects the borders of the country, but also collaborates in the task of containing young people and supporting the citizen as a guarantee of the exercise of rights and the common good.

Table 14

Correlation analysis of the citizenship survey

Dimension	Correlation	Type
Knowledge of the GNA	.801	Very strong positive correlation
Confidence in the Institution	.662	Significant positive correlation
Respect for Human Rights	.774	Very strong positive correlation
Cordiality in customer service	.789	Very strong positive correlation
Problem Solution	.816	Very strong positive correlation
Institutional Honesty	.842	Very strong positive correlation
Compliance with the Preventive Activity	.842	Very strong positive correlation

Note. Prepared by the authors based on the correlation analysis of the citizen survey.

The coefficients determined reveal a very strong positive correlation between the variables observed, the result of which places the GNA as the security force with the highest prestige among its peers, in which "clients" recognize the honesty and effort in preventive activities in the face of violations of the rights of people and their property, which generates the climate of insecurity and impact on the quality of democracy.

Also contributing to the result is the expertise of the Force in assisting and satisfying the security needs of the compatriots and the empathy of the gendarme to provide a satisfactory response, framed in the seventh item of the gendarme's decalogue, which reads: "The gendarme's empathy to provide a satisfactory response, framed in the seventh item of the

gendarme's decalogue: "I am constant Sentinel to watch over National Sovereignty, protect democracy, the enforcement of its laws and defend the rights of all people."

Social and economic impact perspective

The correct procedure at the borders and the sensation produced in society by the new functions, achieved prominence in socially vulnerable areas and generated a mythical view of the Institution in two dimensions: the first referred to the border, not as a national boundary, but as an aspect of conservative cultural resistance, based on values that the gendarmes believe they are guarding and facing. The second is linked to the empathy of the gendarme in the fight against crime that has consequences for society: drug trafficking, arms trafficking, illegal merchandise entry, white slave trade, environment, money laundering, among others. Table 15*shows* the results of the Force's operational activities with a high degree of social impact.

Table 15
Results of preventive activities

Activity	Results	Unit of measure	OBS

	Vehicle assistance and control		
Citizen assistance and control	42.969	Persons	
Arrested for crimes or alleged crimes	5.363	Persons	54% responds to drug trafficking
Retention of passenger and cargo vehicles	3.314	Vehicles	
Vehicle infraction reports	43.188	Minutes	
Preventive patrolling	996.063	Kilometers	
	Immigration Control		
Migratory control activity	23	International passages	
Number of citizens entering/leaving the country	164.380	Citizens	
Control of border crossings	99	Steps	
	Fight against crime		
Assets seized from drug traffickers	$ 14.019.100.000	Weights	U$S 537,130,268.00
Illegal merchandise seized from smuggled goods	$ 3.774.452.988	Weights	U$S 144,615,057.01
Recovered money used by criminal gangs	$ 490.090.542	Weights	U$S 18,777,415.40
Anti-drug procedures	9.917	Procedures	
Persons arrested for drug trafficking	5.363	Persons	
Cocaine seizure	6.881,19	Kilograms	27.524,728 doses
Marijuana seized	112.667	Kilograms	112.667,358 doses
Trafficking in persons procedure	1.091	Persons	
Weapons seized	2.193	Weapons	
Victims of the crime of trafficking	167	Persons	
Smuggling procedure	29.846	Procedures	
Vehicles seized	5.957	Units	
Cigarette smuggling	12.874.525	Packages	25.598.200
Cellular telephony	12.325	Cell phones	U$S 9,860,000
Asset laundering	19.651	Procedures	U$S 16,816,984

Note: Prepared by the Company based on information from the Directorate General of Operations.

Understanding the critical and positive factors on the actions of the GNA throughout the national territory is a permanent effort that is symbolized in the different operational actions developed by the Force and the results achieved with them which, beyond the custody of the borders and the security service to the people, managed to recover about U$S 727,199,274, which represents, approximately, 50% of the total budget allocated to the GNA during the 2018 fiscal year. Demonstrates the use of strategies derived from security policies that seek to reduce the negative impact of crime in any of the areas in which it operates.

CMI Prototype

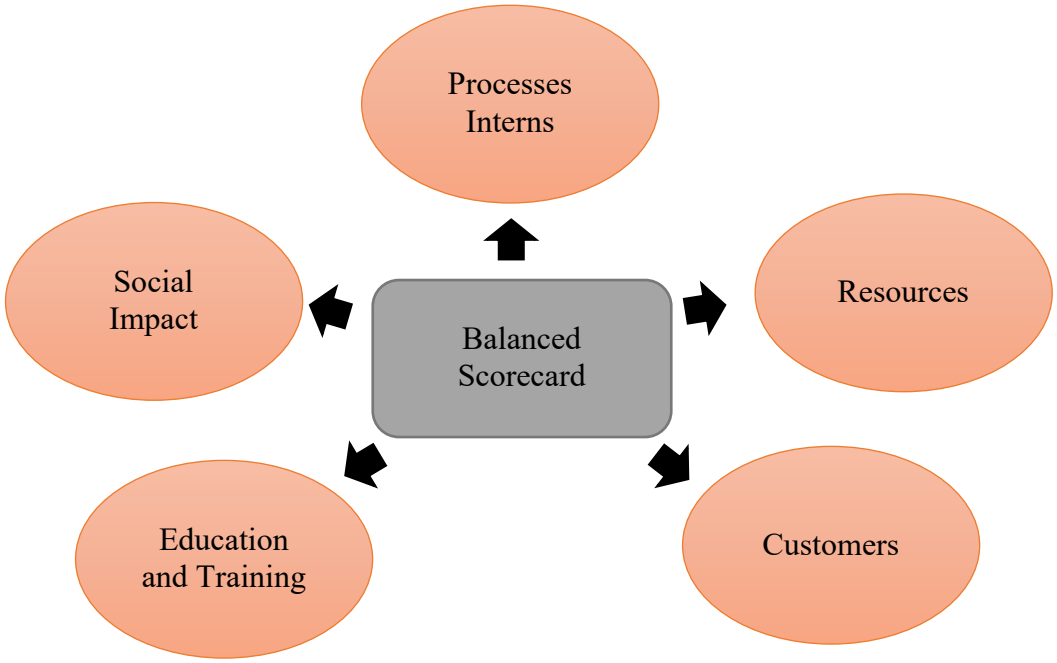
Once the diagnosis of GNA's management has been completed, the work environment has been evaluated and the opinion of clients (citizens) has been consulted, it is now time to design the BSC prototype applied to the Force.

To this end, we worked on five perspectives and indicators that group together the information needed to manage efficiently and make timely decisions in order to optimize the scarce resources available.

The BSC model applied to the GNA is configured by the following perspectives: Internal Processes (Work Climate, Financial Administration System, Purchasing System);

Resources (Material and Budgetary); Clients (Citizens); Education, Training and Development (Education and Training, Staffing, Investments);Social and Economic Impact (Results of the Operational Activity). In Figure No. 6, the CMI prototype applied to Fuerza is outlined.

Figure 7
Balanced Scorecard (BSC) Prototype



Conclusions and Discussions

Having concluded the analysis of institutional management, it is possible to adapt the BSC model proposed by Norton and Kaplan as an appropriate tool for gathering timely information to be used in decision making, since at present only statistical data that provide comprehensive information for the adoption of efficient measures are handled.

The diversity of functions performed by the Force reveals significant information related to the administration of the treasury, which can be adequately exploited with the incorporation of the BSC to management, applying key indicators for real-time verification of the results achieved. It would reduce slippage and help to make appropriate decisions in a timely manner, in the face of the enormous changes in administrative dynamics.

On the other hand, the application of the BSC to management and the use of control indicators (financial and non-financial) would make it easier to concentrate data referring to the fulfillment of objectives and goals, planned from a strategic vision, to notice the distance between planning and execution in order to make the appropriate adjustments, especially since senior and chief personnel linked to management are aware and believe that it is an effective tool for detecting deviations in real time.

It is inferred that applying the BSC to management would achieve:

- Monitor the procurement process of goods and services required to carry out its activities, based on the set of principles, rules and procedures involved in the procurement processes through the contracting system and the petty cash system (Revolving Fund), seeking to optimize the use of the resources allocated in the budget.
- Verify the education and training process that reflects the security policy and the professional development of the Force, based on the principles of "meeting the needs and purposes of the State: the common good". It responds to the pedagogical model that puts into play the curricular proposals that include strategic contents of the new educational paradigm based on competencies.
- To control in a timely manner the development of human resources and equipment for the new and complex responsibilities assigned to the Force (fight against urban crime, organized crime, drug trafficking, preventive activity, monitoring and suppression of crimes and participation and social commitment in preventive activity throughout the nationalterritory.
- To make more efficient use of budgetary resources, especially in the face of inflation, which has a substantial impact on the purchasing power of goods and services necessary for the fulfillment of the assigned mission and functions.
- To follow the fulfillment of the specific function and those of civic action to maintain the factors that promote the perception and prestige of the Force among citizens, sustained by the Decalogue of the Gendarme", which reads**: "**I am constant Sentinel to watch over National Sovereignty, protect democracy, the enforcement of its laws and defend the rights of all people."

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A PROBLEM IN PPAS OF ELECTRICITY SUPPLY CONTRACTS, INDEXATION

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Abstract. This research work shows a line of action for the solution of a calculation procedure within the power purchase contract for the supply of an Electric Distributor in Guatemala. The difficulty of working with an uncertain indexing is explained, which causes various interpretations, leading to a problem of decision by the parties, because the correct procedure to take is not explicit, since what exists in writing is ambiguous. The Economic Theory of Contracts is analyzed along with the most relevant aspects are: analyzing the international context of long-term contracts and the difficulties that arise in the form of application of indexation. Contrast them with the events presented in the Guatemalan practice and the problems that have been generated. Show a resolution method that avoids extending the differences between the parties. The Methodology used is that of content analysis, which is one of the methodologies of legal research, due to the fact that a qualitative investigation is carried out since a bibliographical investigation is carried out which reviews documentation concerning the subject. The expected results are: to obtain a basis to demonstrate that the indexing calculation procedure complies with what is written in the power purchase contracts between the power distributor and the power provider. This will provide the mechanism to follow to resolve future conflicts that may arise in the presence of a calculation interpretation.

Keywords: Energy Contract, Energy Supplier, Economic Theory of Contracts, PPA, Indexation.

UN PROBLEMA EN LOS PPA DE CONTRATOS D.E SUMINISTRO DE ENERGÍA ELÉCTRICA, LA INDEXACIÓN

Resumen. El presente trabajo de investigación muestra una línea de acción para la solución de un procedimiento de cálculo dentro del contrato de compra de energía para el suministro de una Distribuidora Eléctrica en Guatemala. Se explica la dificultad de trabajar con una indexación incierta, la cual provoca diversas interpretaciones, acarreando un problema de decisión por las partes, debido a que no está explicito el procedimiento correcto a tomar, dado que lo que existe por escrito es ambiguo. Se analiza la Teoría Económica de los Contratos junto con los aspectos más relevantes son: analizar el contexto internacional de los contratos de largo plazo y las dificultades que se presentan en la forma de aplicación de la indexación. Contrastarlos con los acontecimientos presentados en la práctica guatemalteca y la problemática que se ha generado. Mostrar un método de resolución que evite a extender las diferencias entre las partes. La Metodología utilizada es la de análisis de contenido, la cual es una de las metodologías de la investigación jurídica, debido a que se realiza una investigación cualitativa dado que se realiza una investigación bibliográfica la cual revisa documentación concerniente al tema. Los resultados esperados son: obtener un fundamento para demostrar que el procedimiento de cálculo de indexación se ajusta a lo escrito en los contratos de compra de energía entre la distribuidora de energía y el proveedor de energía. Con esto se tendrá el mecanismo a seguir para resolver futuros conflictos que se puedan dar ante la presencia de una interpretación de cálculo.

Palabras clave: *Contrato de Energía, Proveedor de Energía, Teoría Económica de los Contratos, PPA, Indexación*.

Introduction

Economic theory is a set of principles and concepts used to analyze how individuals, groups and institutions make economic decisions and how those decisions affect the overall economy. Some of the fundamental principles of economic theory include supply and demand, elasticity, economic efficiency, production costs, economic growth, the business cycle and international trade.

Economic theory is also divided into different schools of thought, such as Keynesianism, monetarism, classical liberalism. Each school has its own interpretation of how the economy works and how economic problems should be addressed.

Economic theory is also used to analyze issues such as wealth and income distribution, fiscal and monetary policy, international trade, the labor market, the public sector, environmental policy and the global economy.

The economic theory of contracts is a branch of economic theory that deals with the study of contracts and how they are used to solve problems of information asymmetry and to promote cooperation between the parties involved in an economic transaction.

Contracts are legal agreements that establish the obligations and rights of the parties involved in a transaction. Contracts are commonly used in many areas of economic life, including employment, the sale and purchase of goods and services, investment and financing.

The economic theory of contracts focuses on how contracts are designed and used to solve problems of information asymmetry, which occur when one of the parties involved in a transaction has more information than the other. For example, when a buyer purchases a good from a seller, the buyer may not have sufficient information about the quality of the good, while the seller does. Contracts can be used to convey information between parties and promote cooperation, which can help reduce the risk of fraud or non-compliance.

In addition, the economic theory of contracts is also concerned with the role of incentives and penalties in the effectiveness of contracts. For example, contracts may establish financial penalties for non-compliance with the obligations set out in the agreement, which may incentivize the parties to fulfill their obligations in a timely and complete manner.

In summary, the economic theory of contracts is an important branch of economic theory that focuses on the use of contracts as a means of solving problems of information asymmetry and promoting cooperation between the parties involved in an economic transaction.

Now, within the economic theory of contracts we have what has recently been called the economic theory of incomplete contracts, which refers to how individuals and companies can make agreements despite not having complete information about the future. Instead of having a contract that covers all possible future circumstances, incomplete contracts use incentives and penalties to encourage desired behavior. This theory has been used to understand how firms, employment contracts and other economic relationships work.

An example of an incomplete contract is the employment contract. An employer hires an employee to perform a job, but cannot predict with certainty how the employee will perform in the future. Instead of having a contract that covers all possible future circumstances, the employer can use incentives and penalties, such as a bonus for good performance or termination for poor performance, to incentivize desired employee behavior.

Another example of an incomplete contract is a lease. A tenant rents property from a landlord, but they cannot predict with certainty how the tenant will perform in the future in terms of maintenance and care of the property. Instead of having a lease that covers all possible future circumstances, the landlord can use incentives and penalties, such as a security deposit that is returned at the end of the lease if the property is in good condition, to incentivize desired tenant behavior.

The economic theory of incomplete contracts is important because it helps to understand how agreements can be made despite the uncertainty of the future. This is especially relevant in an ever-changing economy, as it enables companies and individuals to adapt and cope with change effectively.

The foregoing shows one of the problems that arise in electricity supply contracts, especially in long-term contracts, and which are faced by electricity distribution companies. These contracts are called PPA (Power Purchase Agreement), in which the Distribution Company and the Energy Supplier participate. The problem is the correct way to calculate the energy price indexation, i.e., there is a formula for its calculation, but the wording of the calculation methodology is ambiguous, creating questions about what is really meant to be understood and, given that the contract is incomplete, there are contractual gaps, which create a problem of how to correctly interpret what is written, in a situation that is not widely described in the contract. But there is also doubt about the economic and mathematical veracity of the calculation procedure presented by the CNEE (Comisión Nacional de Energía Eléctrica), who is the regulatory authority in Guatemala and therefore the authority over the Distributors, who are the ones who draw up these contracts, under the authorization of CNEE.

A solution procedure is proposed to demonstrate that the Indexation calculation is mathematically consistent over time and that it complies with the principle of annual variation.

For this purpose, an analysis is made of all the literature that can be accessed and a conclusion is reached as to whether there is any way, based on the Economic Theory that supports the proposed calculation, which provides legal certainty to the solution mechanism, at the time of indexing, without what is written in the contract, can provide more clarity. The objective is to specify the calculation procedure and to maintain mathematical and legal consistency when reading the text of the contract and to add a description that allows the calculation to be carried out without any surprises in time, since it is a simple process.

Starting from the origin, in this case the article by (Hülsmann, 1999)points out that the Austrian School of Economics is based on the principle that the value of goods and services is determined by the utility of consumers. This theory is used to explain how contracts allow parties to satisfy their preferences. Contracts enable parties to satisfy their preferences by allowing them to exchange resources and align their incentives. This is essential for market efficiency. Contracts also allow the parties to ensure that expenditures are allocated efficiently and that incentives are aligned to achieve the desired objective. This is also essential for market efficiency. Therefore, the Austrian School of Economics considers that contracts are an essential part of the market and that their use can improve the functioning of the market.

The assumptions of the theory of incomplete contracts presented by (Hart, 2016), argues that many contracts are incomplete in the sense that they do not specify all the circumstances that may occur during the term of the contract. This incompleteness can generate uncertainty and conflicts between the parties. To resolve these conflicts, it is necessary to take into account the incentives of the parties and how they incentivize the parties to act efficiently in the contract. Therefore, the theory of incomplete contracts emphasizes the importance of considering both the specific terms of the contract and the implicit expectations of the parties.

The aim is to eliminate the uncertainty of the indexation process based on current economic theories and to make it the basis for future energy contracts.

An example of what the theory indicates, is the case of a sanitary service concession contract to evaluate the quality of the service provided, as indicated in (Pacheco R., 2019:55), the following criteria can be applied: Identify the implicit expectations of the parties: It is important to understand what each party expects from the contract. For example, the concessionaire can expect the service to be of high quality, while the contractor can expect a reasonable cost.

Evaluate the incentives of the parties: It is necessary to consider how the incentives of the parties influence the quality of the service. For example, the concessionaire may be more motivated to improve service quality if it receives higher compensation for doing so.

Now, how the service of the medical personnel is evaluated, the care provided, this is something that is not possible to set with specific standards, which means that it is considered indeterminable, therefore, uncertainty and causes that it cannot be predetermined, resulting in an incomplete contract.

The relationship between the economic and legal aspects of contracts has been discussed. Contract law regulates the content and formation of contracts, as well as their effects and consequences. This regulation is important to protect the rights of the parties and to ensure that contracts are performed in a fair and equitable manner. Contracts are an economic tool used to coordinate the actions of the parties to achieve a desired result. The economic theory of contracts focuses on how contracts influence the behavior of the parties and the ultimate economic outcome. Therefore, a contract can be optimal if there is a balance between the incentives of the contracting parties.

Contract theory basically deals with the resolution of conflicts of interest between the parties involved, since some of the issues addressed by the theory include the interpretation of contracts, dispute resolution, efficiency and fairness in the application of contracts.

Here I highlight the issue of good faith, which is a manifestation of behavior in positive terms. Good faith leads to an effective behavior in the contractual relationship, developing an economically optimal contract.

Of course, there is also the possibility of requesting the revision of the contract under certain circumstances, since there may be contractual gaps within the framework of the theory of incomplete contracts, but it must be taken into account that changes in the economy, such as the one experienced internationally since 2022 with the invasion of Ukraine added to the fact that we were coming out of the Covid Pandemic, generate another type of problem, which is addressed in the Theory of Unforeseeability. This theory refers to the idea that an unforeseen and significant change in economic or legal circumstances may cause a contract to become unbalanced and unfair to one of the parties. In such cases, the affected party may request a revision or modification of the contract to restore the original balance. The theory of unforeseeability is often applied in long-term contracts.

As pointed out by (Urrejola, 2003:117), the theory of unforeseeability assumes that one of the benefits stipulated in the contract, as a consequence of an extraordinary and unforeseeable event, becomes excessively onerous. Applying this to the energy price formula becomes onerous if there is no correct calculation method over time and that varies "predictably" over the long term of the contract. In (CIJUL, 2007:2) it is stated that the theory of unforeseeability has been developed with the purpose of finding a remedy for contracts in which, being of continuous, periodic execution, one of the parties is subjected to an excessive or abnormal onerousness by virtue of the fact that the general conditions taken into account when contracting, are modified at the time of their execution. This will result in a revision or modification to the contract.

That is to say, an unforeseen event results in an imbalance, an economic imbalance within the contract for the contracting parties, since one of them takes advantage over the other by not being able to act in accordance with the missing or incomplete clauses or, in this case,

an unforeseen interpretation results in a more onerous amount for the price of the energy than the contractually agreed upon. As a consequence, the contract ceases to be efficient if a social part is involved, as is the case in Guatemala, since energy supply contracts are based on the Social Tariff Law, which provides an economic contribution to a certain portion of the customers of the country's distributors.

The lack of information in a contract, or what is known as contractual gaps, is of great importance in the life of the contract. Here the detail lies in the fact that we are dealing with an incomplete contract, which also introduces a problem of unforeseeability. For example, energy supply contracts are incomplete because there is no clause explaining indexation, the contract merely presents the formula and some definitions, but there is also a lack of foresight in not explaining the exact calculation methodology that is capable of adjusting to changes due to inflation over time.

For example, in the case of Guatemala, having to work under the non-efficient condition would directly affect the price of the social tariff, which is paid by all of the Distributor's customers, which, in turn, leads to working in a suboptimal manner. Therefore, it is easy to understand, under the scheme of working with incomplete contracts, the importance of having a precise procedure, thus avoiding cost overruns in the price of energy and increasing the direct costs to the population that pays for an energy tariff, since the costs must necessarily be passed on.

For example, in several Latin American countries, the concept was applied that during the state contracting process, the possible risks that could arise during the execution of the contract should be identified and, in turn, resolution mechanisms should be provided for, which can be interpreted as economic equilibrium.

Any long-term contract is incomplete, because of its long duration and has a relationship of exchange of collaboration and cooperation on the common interest.

As indicated above, the parties incorporate a clause if the cost of drafting it is lower than the expected benefits. If there is no optimal response to the contingency, then there is renegotiation, and if this point is reached, someone has an advantage over the other and will seek to maximize his or her profitable position.

Method

A qualitative analysis is carried out by collecting data from the literature on the topic in question. It is for this reason that the exploratory methodology of law is used.

The main procedure for data collection will be the review of published texts and documents, if possible from recent years.

This is then linked to the analysis of long-term contracts on the subject of energy price indexation. For the present topic, there is sufficient bibliography, although little is published. There will also be access to academic lectures on the research topic. Each of the bibliographic references was reviewed in depth in order to evaluate whether what was presented in them would allow for a common thread of the research topic and contribute something new to the subject.

For this purpose, a content analysis of the information obtained was carried out, selecting the necessary sources to build the structure of the solution mechanism within the contract, in order to correctly work out the indexation calculation methodology. By reviewing the minutes of contracts from other countries regarding indexation, the common aspects will be studied, and through rigorous examination, reference tables will be obtained, which can be used as a mechanism to visualize the differences that exist today.

Results

Price indexation in electricity supply contracts refers to the use of a price index, such as the consumer price index (CPI), which is the one commonly used to measure inflation; as a way of adjusting the price of electricity over time, so the generator does not lose value in the future for the price set within the contract. Instead of having a fixed price for the entire duration of the contract, the price is periodically adjusted according to the price index.

There are several types of indexes to be used, the most appropriate for the electricity sector would be the "Wholesale Price Index" type. This index measures the wholesale prices of a range of goods and services and can be used to adjust the price of electric power for changes in the cost of production.

The Producer Price Index (PPI) is an index of wholesale market prices. The PPI measures the prices that producers receive for the sale of their products and is used to see average price changes and is used in economics to measure the level of inflation. It is calculated from the prices of a basket of goods and services sold at wholesale in the market and is used as a measure of the change in wholesale prices over time.

The PPI is often used as a way to adjust the price of electricity in supply contracts over time. If wholesale prices increase, the price of electricity will also increase. If wholesale prices decrease, the price of electricity will also decrease. This can help protect the power generating company from losses due to a sudden decrease in wholesale prices and consumers from sudden increases in the price of electricity.

This indexation is often used in long-term power supply contracts because power prices often vary due to external factors, such as the cost of fuel used to generate electricity and inflation. By using a price index as a way to adjust the price of electricity, power companies and consumers can be protected from sudden changes in prices.

There are several ways of indexing, reviewing the formulation literature from other countries we have the following:

- Contracts in the Latin American region were analyzed; in general, the indexation procedure is very similar, so the contracts of three Latin American countries were taken for study: Colombia, El Salvador and Guatemala.
- These indexation procedures have in common the fact of fixing the year of the beginning of supply as the base year, but this incurs in an error of unpredictability if the 12-month period necessary to make the calculation is not specified and there is a crisis in the economy that triggers inflationary values and, therefore, the indexation value, then when speaking of annuity as certain energy supply contracts do, the inaccuracy of not calculating the annuity correctly falls into the trap of not correctly calculating the annuity.
- Another error in the wording is to define the PPI as an annual value, when it is used for contracts in which the value of a given month is to be used.
- In fact, most contracts take the starting month and analyze it with respect to another month "x", but always in the initial year, which breaks with what is expected of an annuity, namely a 12-month period. This can be worked out since the publication is done on a monthly basis and at the end of the year an annual average value is published.
- Each country varies the type of Indexer to be used, it can be the CPI, Consumer Price Index, or it can be the country's own PPI. In our analysis we will use the PPI of the United States.

As an example of the PPI description, the general and basic energy price formula is shown, which incorporates indexation into the formula for calculating the energy price:

$$PEO_j = PEO_k \times \frac{PPI_i}{PPI_0} \quad (1)$$

Where:
PPI is the Producer Price Index -IPP- for Industrial goods without
Fuels of the United States of America, published by the "U.S. Department of Labor, Bureau of Labor Statistics".
PEOj is the price of energy in year j.
PEOk is the price of energy at which the contract starts.

Currently in some of the contracts the indexation or rather indexation process is described as "indexation factor". After reading the economic theory of incomplete contracts and the theory of unforeseeability, it is observed that the problem of calculating the indexation is caused by the wording of the contract, since it indicates Annual indexation and declaring annual already generates a mathematical imprecision since then the text of the contract continues indicating the following: "This component will be adjusted every x date of the month xx, with the last published annual value of the index, for the year prior to the year of calculation". This generates a double problem. The first problem, depending on the country being analyzed, is that a value belonging to a month must be calculated with respect to an annual value, or an annual value, but with respect to another annual value that is fixed, which is usually the indexation value of the year of the beginning of supply, thus breaking the concept of interannuality.

Based on the theory of unpredictability, when experiencing sustained inflation over time, what is indicated in the contracts distorts the real calculation of the indexation and the calculation of the energy price is not accurate, Equation 1. Certain contracts go further and state the following: "...to establish the PPIi/PPIo factor will have a maximum year-on-year variation of X percent (X%) and a minimum of X percent (X%).

Then we define the PPIi component the Producer Price Index PPI whose value corresponds to month "x", and PPIo is the PPI value for day (x) of month xx of the year of the start of supply. This breaks the concept of annuity, as indicated above, since only the period of x months is analyzed. The second problem under the economic theory of incomplete contracts is that there is a contractual loophole, since there is no methodology that explains the correct calculation formula, without anyone getting confused and calculating erroneously.

As a measure to solve these problems, the following methodology is proposed in order to have mathematical precision and to overcome the possible contractual obstacles that may arise from working with incomplete contracts and that the lack of foresight does not affect the spirit of the drafter and the business between the parties.

In order to work consistently over time, it must first be established that the time will be a period of 12 months, so that an annual calculation is obtained, and then it is possible to speak with propriety about interannual calculations; next, it must be demonstrated that the form of calculation is mathematically correct, given that, due to contractual loopholes, the calculation methodology was not placed.

Methodology for indexing operations

The procedure to correctly calculate the quotient of Annual Producer Price Indexes PPI, will be based on the following mathematical expression:

$$\frac{\boldsymbol{PPI_n}}{\boldsymbol{PPI_0}} = \frac{\boldsymbol{PPI_i}}{\boldsymbol{PPI_0}} \tag{2}$$

Where n is the year of calculation, PPIn takes the value of each PPIi of the years prior to the year of calculation; PPIi takes the last annual value of the previous year of calculation, PPIo is the value of the PPI of the year of start of supply.

The procedure will be as follows: "The PPIi/PPIo quotient will be formed by the contribution of each annual quotient, by multiplying each one of them, until reaching the last year of calculation. In other words, a kind of productoria is used,

Producer:

$$\prod_{i=1}^{Año\ n} PPIi(n)/PPIo(n-1,2\ldots) \tag{3}$$

A Produceria is a series of successive multiplications that vary according to a specific condition. In this case it is the year "n" which varies according to the term of the contract.

Each year, an analysis will be made to ensure that the interannuality is between the upper and lower limits. With this, a reasonable accumulation effect is maintained over time, until the indexer in a given year takes a lower value, and decumulates in a certain economic sense, but always limited by the minimum percentage.

To exemplify the development of the mathematical demonstration of the proposal, the upper limit is set at 2.248% and the lower limit at 0%, these are the percentages that will limit the value of the indexation obtained by calculating the indexation quotients, as shown in Figure 1.

Figure 1

Formula for finding the value of the indexer for the year of analysis

$$\frac{PPIn}{PPIo} = \left(\frac{PPIn}{PPIn\text{-}1}\right)_{\lim 0\%}^{\lim 2.248\%} * \left(\frac{PPIn\text{-}1}{PPIn\text{-}2}\right)_{\lim 0\%}^{\lim 2.248\%} * \ldots \left(\frac{PPI1}{PPIo}\right)_{\lim 0\%}^{\lim 2.248\%}$$

The quotient of PPI will use the property of "Neutral Element of Multiplication of Fractions".

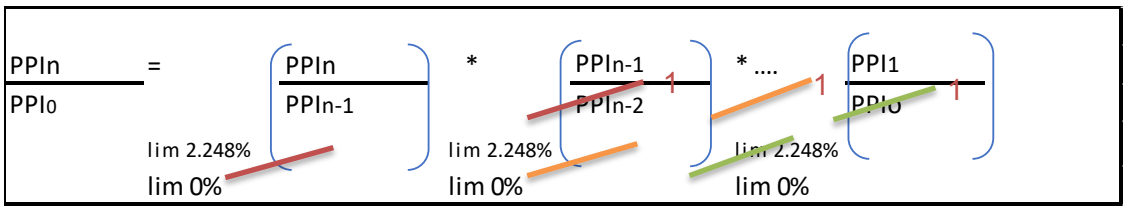
Properties of Multiplication of Fractions

Neutral element. - In the multiplication and division of rational numbers, there is a neutral element which is the number one, whose product or quotient with another rational number will result in the same number.

The principle of application is the elimination of elements of each fraction by means of the neutral property of the number 1, as illustrated in Figure 2. Therefore, we will present a way of expressing the PPI quotient as an equivalent expression, which is mathematically correct.

Figure 2

Exercise to find the value of the indexer for the year of analysis



The value to be calculated for the year of analysis was again obtained.

$$\frac{\boldsymbol{PPI_i}}{\boldsymbol{PPI_0}} = \frac{\boldsymbol{PPI_n}}{\boldsymbol{PPI_0}} \tag{2}$$

As can be seen we obtain Equation (2) again, i.e. we obtained a mathematical equality. It could even be considered that this equation is an Identity, but this will depend on the number of decimals with which we work, so it is not possible to make such a statement.

The proposed formula takes the value of the annual Producer Price Index PPI, as we have shown that it is a mathematical identity, which gives certainty and proves that the calculation procedure is accurate and consistent with the contractual clauses.

With this calculation methodology, the new proposed formula does not alter the indexation, it is only an application based on the correct concept of interannuality.

This formula takes the contribution for each year. That is, the quotient of each year is multiplied; from the quotient of year n (current year of calculation), year n-1 reaching year 1, ..., until reaching the starting year of the calculation, in order to obtain the quotient of the year being calculated, which is the result of the product of the annual quotients.

The values taken by PPI are those indicated by the contract at each moment of calculation. The important thing is to determine the value of the PPIi/PPIo ratio for each calculation period, respecting the established conditions, i.e., the year-on-year variation cannot exceed a maximum of (2.248%) or be less than (0%).

It is clarified that the value 1.02248 is a percentage of interannual variation, which is equivalent to saying that it is an upper limit, which is indicated in the proposed formula. The percentage value can be as high as 0, which is equivalent to saying that it is a lower limit. In other words, 2.248% is mathematically equivalent to the value of 1.02248.

That is, Equation (2) will work under the following mathematical notation:

$$\int_{\lim\inf\ 0\%}^{\lim\sup\ 2.248\%} \frac{\boldsymbol{PPI_i}}{\boldsymbol{PPI_0}} \tag{4}$$

It is pertinent to clarify that this notation does not mean that an integration calculation will be made to the indexing quotient, it only takes advantage of the fact that when writing

mathematical integrals it is possible to write down the limits in which the value of the quotient obtained in year n will be accepted. This is a summarized way of writing down the limits, another way already developed can be seen in Figures 1 and 2.

Example of calculations for year 5 of Indexing Calculation

For illustrative purposes, the calculation operation for the fifth year of

indexing.

A plant of an energy supplier that started supply in the year 2015 is taken as a basis.

The proposed modification is to take the annual value of the year of start of supply as a measure to correct the problem of incomplete contract, i.e., not to take a month "x" or a base year and leave it fixed in the calculations, but to analyze the individual contribution of year n, and that, by multiplying quotient by quotient, a value can be determined for the period of analysis.

The energy price for the start of supply will be Peok = 10.5 $/MWh. Table 1 shows the annual PPI values, as published by the U.S. Department of Labor, Bureau of Labor Statistics.

Table 1

Range of years of calculation

YEAR	Annual Value PPI
2015	194.2
2016	193.5
2017	199.5
2018	206.5
2019	207.2

To calculate the fifth indexation in the year 2020, we work with the Produceria (3)

Figure 3

Mathematical verification to find the value of the indexer for the year of analysis

$$PPIi = \frac{PPI_{2019}}{PPI_0} * \frac{PPI_{2018}}{PPI_{2018}} * \frac{PPI_{2017}}{PPI_{2017}} * \frac{PPI_{2016}}{PPI_{2016}} * \frac{PPI_{2015}}{PPI_{2015}} \frac{}{PPI_{0\ 2015}}$$

By doing this, the interannuality of each year is determined, from 2015 to 2019, so the contractually established is calculated and the products give the contribution of the period.

PPIi calculation for Year 5

PPI_o = 194.2 $PPIi_{2019=}$ 207.2 $PPI_{i2018=}$ 206.5 $PPI_{i2017=}$ 199.5

$PPI_{i2016=}$ 193.5 $PPI_{i2015=}$ 194.2

At this point Equation (2), which is an identity, is taken and Productivity (3) is developed.

$$PPIn/PPIo = \frac{207.2}{206.5} * \frac{206.5}{199.5} * \frac{199.5}{193.5} * \frac{193.5}{194.2} * \frac{194.2}{194.2}$$

PPIn/PPIo = 1.00339 * 1.03509 * 1.03101 * 0.99639 * 1

PPIn/PPIo = dentro del rango * > límite superior * > límite superior * < lower limit * 1

PPIn/PPIo = 1.00339 * 1.02248 * 1.02248 * 1 * 1 = 1.04901 **Applying limits (4)**

Then, the result is substituted into Equation (1)

Peoj = 10.5 * 1.04901 = 11.0146 **Rounding to 2 decimal places**

Peoj = 11.01 $/MWh

Methodological verification

$$PPIi/PPIo = \frac{207.2}{194.2} = 1.066941$$

Now the result of multiplying the contribution of 1.00339 * 1.03509 * 1.03101 * 0.99639 * 1 = 1.066940; which is practically the same value obtained from the check quotient.

At this point, when analyzing both the lower and upper limit we observe that none of the previously expressed values (2016-2018) fit the interannual limit value, so at this point the values are replaced by the limits, only the 2015 and 2019 values fit the range; which yields the following multiplication 1.00339 * 1.02248 * 1.02248 * 1 * 1 * 1. Therefore, the value of the indexer will be 1.04901 for this year and therefore an increase of approximately 51 cents per MWh, with respect to the original energy price of $10.50/MWh.

It is worth mentioning that this method allows, if necessary, to work with a negative minimum limit, i.e. there would be years in which the price of energy would fall, depending on the behavior of the world economy, but with emphasis on that of the United States, given that the indexation value depends on the macroeconomic results of that country.

Discussion and conclusions

It is recommended that this line of research be continued and adapted to the contractual conditions of each country in the region.

The main conclusions on the subject are described below:

Contract theory basically deals with the resolution of conflicts of interest. Therefore, a contract can be optimal if it seeks a balance between the incentives of the contracting parties. In a long-term contract, the fact that the contract is incomplete must be taken into account when

drafting the provisions of the different clauses, especially the economic clauses, so that they can behave efficiently, as in the case of the indexation of the price of energy

From the economic point of view, the principle of free negotiability of risks between the contracting parties is the most efficient. Also within contracts, the effects of the Theory of Unforeseeability may arise, which, if no thought is given to the possible effects it may cause, may result in onerous economic distortions for one of the contracting parties.

The methodology presented solves the two problems initially presented, incompleteness and contractual unpredictability, since the new methodology, once demonstrated, it is no longer necessary to include the entire development of the same in each contract, but to focus on the wording and above all to place the 12-month time frame for the calculation of the indexation factor and the same symbology with which it is normally drafted can be used. The new procedure solves the problem of economic unpredictability in the face of crises by ensuring a clear way to continue calculating the indexation without reaching extreme values. This will allow the energy prices of the energy supply purchase contracts to remain relatively stable and, above all, the price paid by the end customer, especially those customers who are within the consumption range established by the Social Tariff Law of each Distributor, will be kept away from sudden increases.

The important thing is that the values of a month "x" can be used, as long as care is taken to ensure that the value of the quotient is a value of a 12-month period, so that we really speak in terms of annuity, as is the spirit of the wording, especially in cases where we speak in terms of annuity or interannuality. This will avoid a certain degree of uncertainty.

The Distributors work with power purchase contracts, therefore, they have control over the method of indexing the price of energy, which being consistent with the terms described in the contract document and having the endorsement of the regulatory body, being the case for Guatemala the CNEE, the Distributors are empowered to apply the calculation in the manner proposed, by way of additional explanation, to resolve any concerns that may be raised by the energy supplier.

It is recommended to use this method in order to be able to incorporate it in future power supply purchase contracts, both nationally and internationally.

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PRINCIPLE OF GUARDIANSHIP PREFERRED LEGAL PROTECTION BEFORE IMPAIRMENT OF LABOR LAW

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Abstract. The impairment of the right to work has been a social problem in Guatemala, which has affected workers since past centuries, they were subjected to torture and slavery, in the present century slavery is no longer very notorious, thanks to the protection of human rights; Even so, there is abuse by the employer towards the worker, he does not pay a fair salary, not paying compensation is another factor to sue the employer before the Labor Court, once the administrative process has been exhausted, he enters into a labor dispute with the employer before a jurisdictional Court, which hears and resolves, based on current law, with preferential legal protection, this arouses the interest of deeply analyzing human rights, principles of law, that due process is not violated; current labor regulations provide elements for the common good of the parties, taking the Principle of guardianship that assists all workers based on the C.P.R.G, 4, 44, 46, 101-117, local and international laws, if not justice applies the legal sphere is affected in the present study comparative law was analyzed as a legal instrument that compares characteristics of different legal systems that are applied to fairly solve labor problems, norms that favor Guatemala: convention on the rights of the child, San José Pact, Vienna Convention, ILO, UDHR similar to civil rights in international legal matters to promote decent work, for the common good, harmony and peace in society.

Keywords: Protection, impairment, labor law.

PRINCIPIO DE TUTELARIDAD PROTECCIÓN JURÍDICA PREFERENTE ANTE EL MENOSCABO AL DERECHO DEL TRABAJO

Resumen. El menoscabo al derecho de trabajo ha sido un problema social en Guatemala, que ha afectado a trabajadores desde siglos pasados, fueron objeto de torturas y esclavitud, en el presente siglo la esclavitud ya no es muy notoria, gracias a la protección de derechos humanos; aun así existe abuso de patrono hacía el trabajador, no paga un salario justo, no pagar la indemnización es otro factor para demandar al patrono ante Juzgado de Trabajo, agotada la vía administrativa entra en conflicto laboral con el patrono ante un Juzgado jurisdiccional, que conoce y resuelve, basado en ley vigente, con la protección jurídica preferente, ello despierta el interés de analizar profundamente los derechos humanos, principios del derecho, que no se viole el debido proceso; las normas vigentes en materia laboral aportan elementos para el bien común de las partes, tomando el Principio de tutelaridad que asiste a todos los trabajadores basado en la C.P.R.G, 4, 44, 46, 101-117, leyes locales e internacionales, si no se aplica la justicia se ve afectada la esfera jurídica en el presente estudio se analizó al derecho comparado como instrumento legal que compara características de diferentes sistemas jurídicos que se aplican para solucionar de forma justa los problemas laborales, normas que favorecen a Guatemala: convención

sobre derechos del niño, Pacto San José, convención de viena, la OIT, DUDH con similitud a derechos civiles en materia jurídica internacional para propiciar un trabajo digno, para el bien común, la armonía y la paz de la sociedad.

Palabras clave: Tutelar, menoscabo, derecho del trabajo.

Introduction

Guatemala is a multi-lingual, multi-ethnic, multi-cultural, sovereign and democratic country with its three branches of government: Executive Body, Legislative Body and Judicial Body, its legal basis is the Political Constitution of the Republic of Guatemala, which establishes the rights and norms of good behavior of all citizens for the harmony, peace and security of Guatemalan society; for a better understanding of what has been the undermining of the right to work, exploitation and discrimination of the worker in different areas of the Guatemalan country, it can be presented thanks to the study and analysis made, from an analytical, inductive and deductive way, in which it was observed in various documents that in one way or another, lead to know, it is very clear that for man after his work as natural law, divine law, general law and norm, it corresponds to him to rest and be treated as a human being in his physical and psychological integrity, it was not so in the development of the history of work, since after being a nomadic man, he congregated in small communities and with the discovery of new work tools, the laws, the State and the Social Stratification arose, this brought with it the renting or leasing of services of men who were captured in wars and then sold as slaves to their masters to be exploited and cruelly tortured with the inhumanity and brutality of how the masters acted with the slaves, when analyzing this type of cruel treatment that has been occurring for centuries since the ancient, middle and modern ages, the different periods, the first and second world war, the industrial revolution....., the internal armed conflict in Guatemala, has been called undermining the right to work, so the legislature has created and reformed, laws and decrees that ensure the rights of workers and that they are not undermined in their work activities, as established in Article 4 of the CPR.G and recitals of the Labor Code, what has affected for centuries is the ignorance of these rights in rural areas and western Guatemala was notorious the type of slavery and inhumane treatment for workers and housewives who were fired unjustifiably after also being subjected to cruel treatment, which is why as it happened in the ancient, middle ages, modern ....this is why many employees have had their rights violated, due to the fear of suing their masters, the lack of knowledge of their rights in national and international law, the workers do not know what to do and which institutions to turn to in order to sue their employer in a timely manner in case of unjustified dismissal, also in many cases the due process is violated, it is important to mention that there is a diversity of laws and treaties accepted and ratified by Guatemala in force in labor law matters, among those that have been analyzed and applied in this investigation are the Political Constitution of the Republic of Guatemala, art. 4, 12, 44, 51, 46, 101 to 117, 175-177, 180; Labor Code from all its recitals and chapters, for example: working hours, overtime, vacations, labor benefits, indemnities that the law establishes among others, which are often not fulfilled by the employer in the labor relationship; Art. 76, Art.80.4, paragraph a, Regulation of the Civil Service Law; Convention on the Rights of the Child, San José Pact, Universal Declaration of Human Rights (UDHR), Vienna Convention, ILO, the sources of labor law and the principles of labor law, ..; among the institutions in Guatemala that watch over the rights of the workers, reference is made to the Ministry of Labor, which is the institution in charge of verifying, through the General Labor Inspection, all employers that have been denounced for abuses,

inhuman treatment, labor harassment, analyzing and measuring the amount of compensation in case of unjustified dismissal, but this must be claimed by the worker before the expiration of thirty days so that his right to indemnification does not expire after the time established by law, likewise the employee may claim his benefits not received, so that if in any way the employer refuses to pay the indemnification and labor benefits, the worker may appear with a legal representative before a labor court that has jurisdiction to hear the case according to the jurisdiction of the labor conflict raised, therefore, the Judiciary creates Labor and Social Security Courts that cover jurisdictionally in Guatemala, as well as in the metropolitan area there is a Labor Justice Center, which has Labor Mediation Centers with professionals who ensure compliance with mutual rights and that none of the parties are affected in their rights, so they come to mediate between the parties who wish to reach an agreement to no longer continue with the process of the conflict, this contributes in a more agile way to peace and harmony between the parties, in order to have a better understanding in the present investigation current cases were analyzed as for example the case of the demand of ordinary work of reinstatement for unjustified dismissal in which the director of an official school of the primary level for non-pedagogical attitudes and abuse of his functions to seduce girls of the primary level, having caused physical and psychological damage in the students, was sued by the parents of the minors, and as a result of the lawsuit, the principal was fired and dismissed from his position, but the MINEDUC institution did not certify the act immediately as established in Article 80.4 of the Regulations of the Civil Service Law, but did not do so until one month had passed, this is where due process was violated according to Article 12 of the Political Constitution of Guatemala, in this case it was a little confusing in the analysis, in this case it was a little confusing in the analysis, because when talking about the tutelary nature of the laws in the analysis, not only the tutelary nature of the worker was considered, but also the tutelary nature of the national and international laws that protect the children who are involved in the educational environment where the director worked and who cannot be unprotected from the principle of tutelary nature, so it is a case of deep analysis, in which legal logic and psychology must be applied, for which a possible solution is the reinstatement of the teacher for having violated the due process not by the labor court, but by the state entity such as the Ministry of Education that made the mistake since it did not issue a certified act immediately as established in article 80 numeral 4, paragraph a) of the regulation of the Civil Service Law, the act was subscribed on October 5, it was certified until November 5, that is to say 31 days later, taking into account that the month of October has 31 days and it was delivered to HR of MINEDUC until November 10, mainly due to the magnitude of the case it should have been certified immediately, in this way when analyzing the case, it is possible to reinstate but in an administrative area not in the position of director, in order not to violate the safety of minors and protect the guardianship of children and at the same time comply with the guardianship of the worker, Art. 1 to 5, CPRG; Art. 1 to 4 of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women; Art. 1 to 3 of the Declaration on the Elimination of Violence against Women; Art. 1 to 13 of the Law against Femicide and other forms of violence against women; Art. 1 to 7 of the Law to prevent, punish and eradicate domestic violence; art. 1 to 10 of the management regulation for the competent courts and tribunals in crimes of femicide and other forms of violence against women; art. 1 to 6, 43, 44, 150 to 152, and 488 of the Criminal Procedural Code, 414 of the Criminal Code, 141 to 142 BIS and 143 of the Law of the Judiciary. As ordered by the Eleventh Social Security Court: art. 76 paragraphs 1, 8, 10 and 12 of the Civil Service Law.

In the analysis of the second case Incident of declaration of post mortem beneficiaries of former state workers. In which after the death of the beneficiary who was a worker of the Public Ministry, but had as direct beneficiary the one who had been his wife but a month before his death she got divorced, however he had 4 minor children with different partners, children

who were dependent of the deceased and when the ex-wife took part of the post mortem benefit the minor children were left helpless, so the honorable judge in first instance, having the documentation that was required to all the parties involved, according to the evidence presented, the honorable judge in the first instance resolved to resolve with place the object raised in favor of the minors in a fair and proportionate manner in an equal percentage for each child of which the mothers in exercise of the guardianship can collect from the defendant institution, this declaration was based on article 85 of the labor code, article 3 of the declaration of the rights of the child and the convention on human rights; since it is established that the ex-wife of the deceased could no longer be named as beneficiary because she did not comply with the provisions of article 85 of the Labor Code, which establishes that the beneficiaries are the dependent relatives of the direct beneficiary, it is notorious that by legal logic, the CPRG, in the analysis developed, it was observed that the secretary of the court in the second instance presented certification of the closing of the process notifying that the ex-wife was the beneficiary when there was still an appeal pending to be resolved, it is here where the violation of the due process is observed, which was later resolved in favor of the minors in 25% for each one as established by law, preferential protection for minors.

As established in Article 3 of the Convention on the Rights of the Child: "*in all actions concerning children taken by public or private institutions or courts , the best interests of the child shall be paramount",* "In the present case the previous article is very clear and concise, to give place to the incident and the honorable judge reasoned from the beginning legally based on his experience and knowledge of the laws in force, therefore, he did not act in bad faith, but rather based on legal labor and guardianship criteria, for which the petitions and certifications must be analyzed, comparing them with the laws in force, mainly the guardianship of children, which gives preferential protection to them, since they are the object of the lawsuit; therefore, the minors cannot be left unprotected of their right to food, because although the deceased worker left in a form as beneficiary the one who at that time was his wife, later there was a divorce with the beneficiary, being this proven in a certified certificate of divorce; however, she procreated 2 children with 2 different persons, which are dependent of the deceased, so in law, his 4 children are the only beneficiaries in proportional parts, so this claim, in spite of having raised and exhausted all the resources in law, was not granted to the ex-wife, because the law is fair and equitable,

The philosopher Plato stated that the word justice is *"to do each one his own"* which means that each person must do and give what is his or her due based on his or her labor rights. If equity is analyzed according to the AER, it is a quality which is practiced by giving to each one what he/she deserves. that is to say, neither benefiting nor harming it by second or third parties, so that the judge in giving a resolution of a case acts with impartiality, giving in his decision to each party to the labor conflict what corresponds to him by law.

This report is divided into research methods such as: the design that was developed with the practice in the Labor Court of Social Security and Economic Coercive, where valuable and important information was obtained for the study of the cases authorized by said court the practicewas developed with the observation of the current situation that affects the Guatemalan society in relation to labor conflicts between employer and worker, the analysis of books, laws and international treaties in force, accepted and ratified by Guatemala, in which the obligations and labor rights of all workers are found, a labor conflict begins with a lawsuit before a jurisdictional court for the violation of labor rights. The participants for the research were a group of experienced labor experts who provided concrete and current information for the feasibility of this project. The appropriate instrument used for the collection of data and preparation of this report is to have the authorization of the institution of the Labor Court, where the practice was carried out in which we had the opportunity to carefully analyze some cases of

labor conflict and this led to the study of other sources such as primary sources and secondary sources, so that regardless of the case, the principle of tutelage is applied, all activities have been focused on AD HOC. The Labor and Social Security Courts, the Labor Justice Center, the Ministry of Labor and Social Security and the General Labor Inspectorate are institutions in charge of attending to any complaint or denunciation presented by a worker whose rights have been violated and to ensure justice and that the principle of tutelary protection applied to labor law is favored. Likewise, in the data analysis, having the field or documentary information, according to the context where the research was carried out, the data were subjected to a deep analysis, where the selected information was discerned, interpreted, discriminated, discussed and simplified to detail which is suitable and gives the guideline of being suitable for being a useful part in the document prepared, that based on the objectives is relevant in the sense that by being simple and understandable, clear and precise conclusions are obtained to propose fair solutions with the principle of protection applied in the right to work, international treaties and human rights allow to present viable and fair solutions to labor conflicts, therefore it is appropriate to have well defined the laws that provide legal protection in labor matters. Similarly, to obtain all the information, Microsoft Word, Microsoft Excel and Microsoft Power Point programs are used to make the presentations of the entire research and documentary elaboration process. The results of this research are the knowledge of the background of labor law with the current state and although in the past it was a cruel form of slavery; at the present time, it is pertinent that humanity knows, analyzes and interprets their rights that protect them and thus persuade them to prevent history from repeating itself, this is another of the results that workers have knowledge of their labor rights and go to the appropriate institutions to know the problems of labor conflict, another important point in the results is the effectiveness of the theoretical content such as the legal basis in labor law that is presented, to avoid violating the labor rights of workers, the objective of publishing this analysis is to obtain as a result that many people know their rights and obligations based on law and that an unjustified dismissal can be sued before 30 days to claim compensation. In the present study the discussion was carried out on the national legal basis in force and comparative law because there are cases in which international law must be taken as a suitable point in the resolution as is the tutelary principle and this must be compared from the point of view with the legal logic in a concatenated way the principles of labor law it is for this reason that the conclusion is reached that it is not possible to separate the conventions accepted and ratified by Guatemala when giving a resolution in a labor conflict trial since the tutelary principle is a right that gives preferential legal protection to the workers and none of them should or can be undermined. According to the antecedents of labor law, workers were undermined, but laws have been created in favor of workers to protect their rights, as well as different institutions have been created to provide assistance by guiding them on what their rights are and how they can be claimed on the principle of protection, thus promoting harmony and peace for society; the continuity of this report is achieved thanks to the feasibility of the information obtained not only from research but also from field information.

Method

In order to achieve the objective of this study we started from the analytical, inductive-deductive method, since from the beginning to be able to analyze the cases we had to go step by step, that is to say, in theory we broke down the labor conflict dividing each part of it, analyzing the request of each one, based on which law they make the request, comparing the other laws in force and the international treaties accepted and ratified by Guatemala that are a fundamental part to reach fair conclusions, of course, it is worth mentioning here that in order to reach a conclusion of the problem, logic and psychology were used, for example, when a

person divorces his or her partner and does not leave any benefit for him or her in the marital separation, but rather states that he or she does not claim anything because he or she is independent, therefore, in the decision of the case, mainly based on constitutional and human rights law, children who are dependents of a deceased person who has a post mortem benefit cannot be unprotected, because their rights are undermined and violated, and the guardianship of minors, which is the duty of the State to provide legal protection for children, is not complied with. Regarding due process, Article 12 of the Political Constitution of the Republic of Guatemala, in the two cases analyzed, if in one case the secretary of the court certified that there was no longer any notification or appeal pending when there was a pending appeal and no final resolution had been issued, in the other case, when the director's actions resulted in a justified dismissal and the administrative record that was signed for the offense committed, was not certified immediately to inform human resources so that after receiving the certification of the minutes, the charges were formulated and a hearing was held for three days in which the director could present his justifications for the actions and to defend himself could provide all the appropriate evidence for his defense, as established by the Civil Service Law in its regulation Art. 80 numeral 4. 80 numeral 4, but by not complying as established by law, by not certifying the minutes and informing immediately and in the other case it was certified that there was no appeal or resolution pending, therefore, in both cases it is concluded that due process was violated. For a better analysis, the actions and elements used to develop the research analysis are detailed below.

Design

The present investigation was carried out in a Labor Court of Social Security and Economic Coercive, the labor courts have the function of receiving complaints of labor conflict to hear in the first instance and resolve in a fair and equitable manner, the claims attached to Human Rights and the principle of protection that gives preferential legal protection to all workers that their rights are not violated; The actions carried out have been developed, from the beginning, through the observation of the current situation that affects the Guatemalan society in relation to labor conflicts between employer and worker, since in this way it was possible to carry out the study of cases, documents, laws, URL addresses, books, videos..., for the drafting of the report, some of the stages of the Guatemalan Federation of Radio Schools (FGER) were taken as a reference (Méndez, 2019, p. 13); mainly the observation stage, allowed to select the problem, "The undermining of the right to work" so it was necessary to investigate a little history of labor law, how it has evolved, analyze the different laws and decrees in relation to the right to work, as the methodological structure used basically includes documentary analysis, since from the beginning we took into account books, laws and international treaties accepted and ratified by Guatemala, which offer a lot of information in relation to labor obligations and rights, which every employee has and no employer can undermine the dignity or rights of its employees.

To initiate a labor dispute by the affected worker, he/she must file a claim before the competent court, provide the necessary evidence and the evidence required by the court to open the case, appear at all hearings to which he/she is summoned, if not resolved in the first instance, he/she must appeal in the second instance the petition based on his/her rights, even if it is not resolved favorably, he/she can take the case to the Constitutional Court or the Inter-American Court of Human Rights for it to analyze, study and resolve, the remedies are: labor conflict lawsuit, appeal, appeal for protection, special appeal.

Participants

The population that was a fundamental part in providing their knowledge to carry out this research are the professionals who are part of the judicial career in the Labor and Social

Security and Economic Coercive Court, since in one way or another they contributed much of their experience, so that the research and analysis of cases of labor conflict were viable for the development of this research and that it is presented for the population and users who wish to acquire knowledge in legal labor matters.

Instrument

In the development of the investigation to elaborate the report of the analysis of cases of labor conflict was carried out with the collection of data for which the appropriate and opportune techniques were used, for example, in this opportunity primary sources were applied, through which books, laws, internet research were analyzed; as well as the secondary sources in which the information obtained from library sources of SEGEPLAN, library of the Constitutional Court, legal dictionary, newspaper clippings, monographs, analysis of reports and studies of cases of labor conflict.. The best instrument of the present investigation is to have the authorization of the institution where the practice was carried out, in which we had the opportunity to carefully analyze some cases of labor conflict and this led to the study of other sources for a better and wide understanding of how to apply the principle of tutelary protection regardless of the case, whenever resolutions are presented based on legal logic, psychology, and experience in order not to affect the legal system, experience in order not to affect the principles and labor rights, treaties and conventions accepted and ratified by Guatemala, the declaration of human rights, since all activities have been focused on AD HOC, for the effectiveness and efficiency of the work done, so it is important to mention institutions that may at some point support those who are affected in their labor rights these institutions are: the Labor, Social Security and Economic Coercive Courts, the Labor Justice Center, the Constitutional Court, the Ministry of Labor and Social Security and the General Labor Inspectorate, which is in charge of supervising any denunciation or complaint on the part of an employee affected in his labor rights, with this it is clear that for the efficiency of the present investigation only the information will be taken as a reference to have clear ideas of the reality that affects society and deeply get to propose fair solutions based on current law, which provides timely rights according to the case and that is conducive to the principle of protection applied in the right to work.

Data analysis

During the process of data analysis, different activities are developed in which mainly in the research, from the moment that the field or documentary information is available, according to the environment in which it is carried out, such data are subjected to a deep analysis, where they are discerned, interpreted, discriminated and then there is a discussion in which the selected information is simplified to detail which is the most suitable, the information selected is simplified to detail which is the most appropriate, timely and gives the guideline to be suitable for being a useful part in the document prepared so that based on the objectives it is relevant in the sense that by being simple and understandable, clear and precise conclusions are obtained to propose fair solutions and can even be reached through the analysis of cases to prescribe whether it is possible to enter new proposals for the eradication of the impairment of the right to work and make fair decisions with the principle of protection applied in the right to work, international treaties and human rights, which are a fundamental part of any justice process so that justice is prompt and fulfilled without discrepancies, without violating the due process in any of the phases in the development of the same, since there are different resources to be filed by the affected worker, it is always necessary to have evidence to support what the plaintiff who initiated the process of the labor conflict, because in many occasions the worker pretends to be granted the rights claimed when he does not present evidence of what happened,

there are no documents to validate the appeal filed, not even witnesses, all of which fades the probability of winning his claim, because judges also, according to their experience, logic and psychology, analyze prudently before making a decision and give the resolution of the case with justice, equity, equality, speed, efficiency, effectiveness and respect for human rights.

To achieve the understanding of the case study of the labor conflict and with the analysis what you want to convey is a viable solution for such conflict, therefore it is appropriate to have well defined the laws that provide legal protection in labor matters, which are these, present key articles in relation to the conflict and present techniques to show where the error arose or if there was not, to reach a reliable probability of what happened and is happening at the moment and what can be done for the common good and harmony of society to present viable and balanced solutions with labor justice to the problem, in the same way to obtain all the information, computer programs are used for the development of the analysis, among these programs we can mention the most used Microsoft Word that allows through its task bar to write the document, add the different options in the documentary elaboration, Microsoft Excel allows to elaborate the chronogram of activities, diagrams, graphs and statistics, in the advance of the final document and Microsoft Power Point to make the presentations, of the whole process of investigation and documentary elaboration.

Results

The results obtained in the present investigation are mainly the knowledge of the antecedents of labor up to the present state of the problem, because although in past times the undermining of the right to work was a cruel form of slavery; at present, it is pertinent that humanity knows, analyzes and interprets its rights that assist and protect it, so that they can claim them in the opportune time in law; in this way, with the present investigation, we can persuade them to avoid that history repeats itself and that each person whose labor rights are violated can go to the appropriate institutions to know the problems of labor conflict so that they can provide them with advice according to the type of labor conflict, another important point in the results is the effectiveness of the theoretical content such as the legal basis in labor law that is presented, in order to avoid violating the labor rights of workers, because in many organizations they do not see beyond a legal problem but take advantage of all those who, due to lack of knowledge, let the time expire and when they think of claiming their rights they can no longer do it because for each judicial process there are specific times, therefore, this analysis does not only intend to study cases of labor conflicts, but rather, with the detailed information, it awakens the interest of the people in knowing and investigating their rights, thus achieving the most important objective, which is to enforce the principle of protection of human rights in order to achieve social harmony, which has been lost due to inequality in labor rights, we will not go too far if we take as a clear example the labor crisis caused by the pandemic of COVID-19 in Guatemala, many employees were dismissed unjustifiably stating the employer that it was because of staff cuts but many were not paid their severance pay or labor benefits of which they did not denounce because they did not know how much time the law establishes to claim their compensation for an unjustified dismissal, the clear result of publishing this study is that many people will know that the time in law for claiming severance pay for an unjustified dismissal is 30 days after the dismissal, nowadays there is teleworking for people to perform activities from home without having to be in a physical space of the organization, so what is intended is mainly that the guardianship is the principle of any organization and do not forget that it is a right that gives preferential legal protection and this is also conducive to children who have inalienable rights both nationally and internationally.

The possible innovations or results that can be produced with the case study in the development of this document is that groups of students of the University of San Carlos de Guatemala, students of the labor law course or legal and social sciences, may study and know the schemes of the labor tutelage according to studies done so that these awaken the interest to make studies to make proposals for improvements to labor laws for the benefit of the worker or that didactic manuals of labor law in Guatemala are elaborated to inform future students and the general public, it is through this research that the most important result is achieved, which is justice correctly applied for both parties of the labor conflict and with it, justice, equality, peace, harmony, for the Guatemalan society in its different cultures.

Discussion and conclusions

Within the present study the discussion between the national legal basis in force and the comparative law that to understand with the legal logic in a concatenated way the principles of labor law is why when applying justice the tutelary principle must be taken into account, it is a right that gives preferential legal protection to the workers and none of them should or can be undermined, the responsible institutions in Guatemala are those that are represented by legal professionals.

The background of labor law and how it has evolved in favor of workers was presented.

There are a variety of institutions that watch over and help workers to ensure that their labor rights are respected and complied with.

Current national labor legislation, as well as treaties and agreements accepted and signed by Guatemala provide preferential legal protection for workers.

The knowledge and interest of the workers about their labor rights and that after knowing them, it is pertinent to request them in a timely manner and in a legal and suitable way so that they can be enforced, achieving stability and social justice.

It generates a culture of dignified work, for the harmony and peace of society with the practice and application of the principle of protection for workers.

The limitations that may arise in the present study is that this document for some reason may not be physically and digitally reproduced at the national level, therefore, it may not be available in all libraries for study by other researchers or people who like to learn about topics of personal interest. The lines of continuity of this document is the viability of the information through the follow-up of the background research, reinforcing them with other sources that provide better concepts and the principles of labor law, specifically the protection of the laws to provide preferential legal protection of labor law, that reforms to the current laws arise to prevent them from being distorted or misinterpreted, focusing on the common good and peace in society, with justice, equity and equality.

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THE NEED FOR PUBLIC POLICIES TO COMBAT GENDER-BASED VIOLENCE IN BRAZIL

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Abstract. The scenario of female oppression has taken up space around the world, stripping women of their most fundamental rights. This context begins to change more effectively, only from the 20th century onwards, when women began to climb social spaces and claim their rights more assertively. In Brazil, this process developed slowly and gradually. In the political scenario, it was only on February 24, 1932, through the enactment of the Federal Constitution of 1934, that the Electoral Code began to guarantee female suffrage, one of the main achievements of Brazilian women in this century. In 1988, a group of women opened space for female entry and active participation in the national political scenario, being considered a landmark of civil rights in Brazil and guaranteeing the effectiveness of public policies in the defense of their interests. In this context, this qualitative literature review article carried out a documentary investigation through the deductive method, seeking to understand the importance of female participation registered in the 1988 Constitution, responsible for chaining an important process of women's empowerment, triggering the right to gender equality, so necessary in view of the context of violence in the country. This occupation in the political scenario came to guarantee important legal reforms, such as the Maria da Penha Law, a landmark of violence against women.

Keywords: Feminist movement, Constitution of 1988, public policy, gender, Brazil.

A NECESSIDADE DE POLÍTICAS PÚBLICAS EM PROL DO COMBATE À VIOLÊNCIA DE GÊNERO NO BRASIL

Resumo. O cenário de opressão feminina ocupou espaço em todo o mundo, alijando as mulheres de seus direitos mais fundamentais. Esse contexto começa a mudar mais efetivamente, somente a partir do século XX, momento em que a mulher passou a galgar espaços sociais e a reivindicar mais assertivamente seus direitos. No Brasil, esse processo se desenvolveu de modo lento e gradativo. No cenário político, foi somente em 24 de fevereiro de 1932, mediante a promulgação da Constituição Federal de 1934, que o Código Eleitoral passou a assegurar o voto feminino, uma das principais conquistas da mulher brasileira deste século. Em 1988, um grupo de mulheres abriu espaço para o ingresso e a participação feminina atuante no cenário político nacional, sendo considerada um marco dos direitos civis no Brasil e garantindo a efetivação de políticas públicas na defesa de seus interesses. Nesse contexto, esse artigo de revisão de literatura qualitativa realizou uma investigação documental através do método dedutivo, buscando compreender a importância da participação feminina registrada na Constituição de 1988, responsável por encadear um importante processo de empoderamento da mulher, deflagrando no direito à igualdade de gênero, tão necessário diante do contexto de violência existente no país. Essa ocupação no cenário político, veio a garantir reformas legais importantes, a exemplo da Lei Maria da Penha, um marco da violência contra a mulher.

Palabras clave: Movimento feminista, Constituição de 1988, políticas públicas, gênero, Brasil.

NECESIDAD DE POLÍTICAS PÚBLICAS PARA COMBATIR LA VIOLENCIA DE GÉNERO EN BRASIL

Resumen. El escenario de la opresión femenina ha tomado espacio en todo el mundo, despojando a las mujeres de sus derechos más fundamentales. Este contexto comienza a cambiar de manera más efectiva, recién a partir del siglo XX, cuando las mujeres comienzan a escalar los espacios sociales y reclamar sus derechos de manera más asertiva. En Brasil, este proceso se desarrolló lenta y gradualmente. En el escenario político, fue recién el 24 de febrero de 1932, a través de la promulgación de la Constitución Federal de 1934, que el Código Electoral pasó a garantizar el sufragio femenino, una de las principales conquistas de la mujer brasileña en este siglo. En 1988, un grupo de mujeres abrió espacio para el ingreso y la participación activa de las mujeres en el escenario político nacional, siendo considerada un hito de los derechos civiles en Brasil y garantizando la eficacia de las políticas públicas en la defensa de sus intereses. En este contexto, este artículo cualitativo de revisión bibliográfica realizó una investigación documental a través del método deductivo, buscando comprender la importancia de la participación femenina registrada en la Constitución de 1988, responsable de encadenar un importante proceso de empoderamiento de las mujeres, desencadenando el derecho a la igualdad de género. tan necesaria en vista del contexto de violencia en el país. Esa ocupación en el escenario político vino a garantizar importantes reformas legales, como la Ley Maria da Penha, un hito de la violencia contra la mujer

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Introduction

The traditional bourgeois family emerged in the 18th century, in the context of growing European industrialization, responsible for starting a socioeconomic reorganization on the continent. In this context, women took on the role of being directly responsible for the children's education, whether in the interests of the state, the church, or the family, while men were reserved for matters relating to politics and economics.

From this perspective, the stereotype of female fragility associated with the need for effective male protection emerges, including in the field of law, keeping women tied to a role of extreme paternalistic submission.

It can be said that the family is the pillar of civilized society. Based on this assumption, for millennia, this base revolved around the patriarchal figure, giving men a prominent place in the family and social structure. Women, in turn, are sidelined and have their role relegated to a position of inferiority. Such fragility has been expressed for centuries in the most diverse social spheres, such as the arts, science, sports, and even in the (suppression of the) guarantee of their most fundamental rights (Silva, 2010).

In this context, the predominance of rural life meant that only in the nineteenth century modern social themes gained greater prominence, including women's attributions and the family structure of the then Brazilian society, which began to incorporate, belatedly, values and habits from the contexts then experienced by the European bourgeoisie, as stated by Coelho and Batista (2009).

But not when it comes to the national political scenarios. These movements will only emerge from the 20th century on. For Oliveira (2013), the process of women's performance in politics indicates different forms of exclusion, of which three main moments of greater relevance stand out, regarding the effective female participation in Brazilian politics.

In this sense, the author points out as the first of these, the suffragist movement, in the 1930s, enshrining the woman's right to vote; the second moment deflates in 1970, with the feminist movement, where the woman gains voice and requires a more active political and social role; the third and last, stands out in 1988, through female participation in the 1988 Constitution, where it is formally recognized, the equality of rights between men and women in Brazil (Oliveira, 2013).

Carvalho (2013) points out that the main banner raised by women during the second phase of the feminist movement occurred during the 1980s, and was based primarily on the reestablishment of national democracythis was precisely the phase in which the women's movement fully stands out in its performance. And this action was extremely necessary.

This phase was crucial for real changes, as will be seen. Until then, women did not have significant representatives in Congress. The laws for women were created by men and this generated a lot of oppression and omission by the public power.

An example of this is domestic violence in Brazil, which has become an alarming historical and social phenomenon. In 2006, with the enactment of Law 11.340, we see Brazilian society taking a great leap forward in guaranteeing the rights of its women.

The Maria da Penha law brings a more coherent and fairer proposal to combat violence against women, suggesting improvements in the protection and punishment of crimes, with a special focus on those committed in the domestic environment. This is the importance of women being in politics and demanding public policies capable of meeting their real demands.

In view of the above, this qualitative literature review article carried out a documentary investigation through the deductive method, seeking to answer the following research question: what is the importance of the insertion of women in politics in favor of public policies aimed at combating gender violence?

To do so, the following objectives were determined: to trace a brief history of Brazilian women; to analyze the insertion of women in politics in Brazil; to verify the main achievements of women since 1988; to determine the importance of gender equality as a political milestone; and, finally, to understand the need for public policies against violence against women.

Notably, gender violence is configured as a historical-social phenomenon, especially in the Brazilian context, whose need to be understood is of extreme urgency, since only then, such violence can be combated.

Therefore, this essay aims to analyze the evolutionary process of women in national politics, tracing a brief history of the trajectory of Brazilian women, from the colonial period until the 1988 Constitution. This moment constituted a milestone for women's rights in Brazil, as it deflated the long-dreamed-of right to equality (between genders), to seek to understand the importance of women promoting public policies aimed at defending their rights, knocking down old concepts and creating new structures.

A brief history of Brazilian women

In the 15th century Portugal began its colonization and settlement process in Brazil, where there were still no white women.

Portugal, for its part, lives in the days of the great navigations. However, this process of maritime expansion ended up being responsible, not only for the Portuguese territorial expansion, but also for creating in the nation, a considerable contingent of orphaned women

and widows, "devoid of protection, 'fragile and susceptible' to sin in their 'feminine nature,'" as stated by Thiago (2014, p. 1).

According to the author's notes, these women lacked training. For this reason, the so-called "Recolimentos" were created in Portugal, institutions maintained by charity, and that followed the pattern of the monasteries and convents of the time. The women gathered there, were educated to serve God, men, the kingdom and the colony [1] (Thiago, 2014).

And, according to Thiago (2014), during the first decades of Brazil's colonization, with the surplus lack of women in the colony, the State and the Church took responsibility, sending some of their female collectors to Brazil. These women would come to form families with the settlers here, in exchange for land, titles, and other benefits.

In this context, we clearly observe that,

> It is in the logic of the economy of symbolic exchanges - and, more precisely, in the social construction of kinship relations and marriage, in which women are determined their social status as objects of exchange, defined according to male interests, and thus destined to contribute to the reproduction of the symbolic capital of men -, that lies the explanation of the primacy granted to masculinity in cultural taxonomies (Bourdieu, 2003, p. 56)

In this context, during the 15th and 16th centuries, Brazil lived under the traditional model of Portuguese society, of medieval structures, adopted by its colonizers. Over time and with the tightening of other sociocultural relationships and interactions, these structurings were slowly reformulated, but without being completely detached (Magalhaes, 2018).

Thus, that,

> (...) since the century. XVI that the Jesuit Colleges pursued two main goals: 1-To teach reading and writing to small Indians isolated from their families; 2-To form the cadres for the Society of Jesus itself in Brazil. The girls sent to convents in Portugal escaped illiteracy. The elite did not hesitate to send their daughters to the convent. They were the daughters of plantation owners, captains, field marshals and noblemen. It was a practice of the nobility to place in the convent (Oliveira, 2017, p. 2).

Magalhaes (2018) states that women sought to avoid any kind of posture that would tarnish the family's honor, being always under male care and surveillance. Her virtue was considered and measured by her fear of God and her subservient behavior to her husband.

In this sense, (2005), "The married woman's whole life revolved around her husband, children, and the care of domestic and religious matters. There was no life independent of the condition of man, if not in subordination to it" (Magellan, 2018, p. 75)

This social structure lasted for long centuries. According to Oliveira (2017, p. 2): "Female roles were well defined: 'they have a home to rule, a husband to make happy, and children to raise in virtue.' Girls were to be limited to reading, writing and counting (home economics), as well as embroidery and sewing (20th century). XVIII)."

In the mid-19th century, some women's publications appeared, bringing to light, the importance of female expression in society. Coelho and Baptista (2009) state that a pioneer in this theme was the newspaper "O Jornal das Senhoras", which in its first edition, published in the first month of 1852, brought questions about the lack of recognition of husbands by those

[1] The aim was to transform the woman into a model of a devout and virtuous woman, educated within the precepts of the Catholic religion; however, her true attributions consisted in treating her children and husband well.

who were their wives, requiring them greater spiritual and emotional attention as wives and mothers.

However, for Miranda (2010), the historical milestone of female emancipation in Brazil begins with the educator Leolinda de Figueiredo Daltro, at a time in history when women did not yet have the right to vote. In 1910, the educator founded the Women's Board Pro-Hermes da Fonseca, with the intention of cooperating with the electoral campaign for the presidency of the Republic. After her candidate's victory, Leolinda de Figueiredo Daltro campaigned for the participation of women in Brazil's political life.

But it was only from the beginning of the 20th century that the role of women in society began to change. This occurs with their insertion in the world of work, a process that began in the 1930s and that has provided the opportunity for more generalized, active, and permanent changes. This movement is observed through more critical placements about the socio-cultural patterns, then established, by Patriarchal society (Oliveira, 2017).

Contrary to other countries, the movement for women's suffrage in Brazil came from a man: the constituent César Zama, who defended universal suffrage during the first republican constitution, which occurred in 1890, so that women could participate more effectively in national political life (Miranda, 2010).

So, through Decree no. 21.076, of February 24, 1932, signed by the then President Getúlio Vargas, instituted the Brazilian Electoral Code, which defined in its article 2 that an elector was a citizen over 21 years of age, enlisted according to the law, without distinction of sex. It is noteworthy, however, that although the electoral registration was carried out throughout the national territory, at that time there was no compulsory vote for women (Miranda, 2010).

According to Barsted and Pitanguy (2011, p. 28): "Women's right to vote constituted one of the main struggles for women's human rights in the first decades of the 20th century." In the Brazilian national context, the authors note that, for a long time in history, women were not admitted as political subjects, besides the fact that they were not active in expressive political activities either.

According to Sow (2009), it was only after the new Electoral Code in the period following the 1930 revolution, through the regulation of the registration and the national electoral process, under Decree No. 21.076 / 32, that women had, in fact, their right to suffrage guaranteed.

The insertion of women in politics in Brazil

A secondary role was reserved for women, which was not a choice, but an imposed place, in which gaining a larger space in public life could mean death, internment or social isolation (Silva, 2010)

Things took a while to change.

It can be said that one of the great milestones in Brazilian history occurred in 1930, the moment when Brazilian women would vote and be voted for the first time. At this time, an Assembly was created with the objective to promote the text of the 1934 Constitution.

Thus, the then physician Carlota Pereira de Queiroz, who was a member of the Health and Education Commission, was part of the work developed in the National Constituent Assembly, and launched herself as a candidate for the Single Slate of São Paulo (Sow, 2009).

For the first time in history, a woman was elected to be part of such a relevant political action. The election of Carlota Pereira de Queiroz, on May 3, 1933, occurred a little more than a year after President Getúlio Vargas had instituted the Brazilian Electoral Code, through Decree No. 21,076, of February 24, 1932, which implemented, in its article 2, that every citizen over 21 years of age, without distinction of sex, was considered an elector (Souza, 2008).

Thus, the federal deputy, Carlota Pereira de Queiroz, based her mandate on the defense of women's and children's rights. According to Souza (2008), her presence in the 1934 Constituent Assembly, despite the glaring disproportion between men and women in the then National Congress, was a milestone in the political representation of Brazilian women.

Analyzing this context, we observe that between the 1940s and the 1980s, the feminist movement in Brazil managed to organize itself and conquer important spaces. An example of this is the expansion of married women's rights, consolidated through the implementation of Law no. 4,121, of 1962, which would modify what was expressed in the then Civil Code (Souza, 2008).

By way of clarification, the Married Women's Statute was a new milestone in the liberation of women in Brazil. Notably, the Statute's greatest merit was to abolish female incapacity, repealing several discriminatory norms (Barsted and Pitanguy, 2011).

In this context, it is important to point out, for the sake of clarification, that:

> The educational reform of 1879 guaranteed women access to higher education, but there were few women with enough education to attend the courses. A few women finished law school at the end of the 19th century and practiced law. There was resistance to their joining class bodies, but they were overcome after some years of internal negotiations. Throughout the 20th century there was an increase in the number of female lawyers. Several Brazilian suffragists had law degrees (like Bertha Lutz) or practiced law (like Orminda Bastos and Nathércia da Silveira). Marital consent was only abolished in 1962 with the Married Women's Statute, which was a legislative change sponsored by lawyers Orminda Bastos and Romy Medeiros da Fonseca (Vianna, 2016, p. 55).

Perhaps it is not so easy to explain to the woman of the 21st century, that until 1962, the Brazilian woman needed her husband's express permission to work. Only through the principle of the free exercise of profession by married women, which made it possible for women to freely enter the labor market, was it possible for women to become economically productive and independent of a man.

These legal increments, denoted the importance of women beyond family relations, promoting a consequent increase in female economic power, generating a drastic social change and entailing decisive changes in family relationships, especially between spouses, states Miranda (2010).

It is noteworthy here that the effervescence of the women's movement, from the second half of the 1970s on, was marked by the diversity of feminist agendas and men's violence against women gained space in the media, especially after the high rates of murders committed to women by their husbands and partners were found to be increasing (Brazil, 2010).

In this sense, the deaths of Ângela Diniz in Rio de Janeiro, Maria Regina Rocha and Eloísa Balesteros in Minas Gerais, and Eliane de Gramont in São Paulo had national repercussions. Thus, in October 1980, the first group to combat violence against women was created in São Paulo, called "SOS Mulher" (Brazil, 2010).

For Souza (2008), the 1980s were a democratic transition process, in terms of the political and normative level in Brazil. It was a moment of formal redemption of civil and political liberties, which had been suppressed with the Military Coup since 1964, and which were consolidated through the 1988 Federal Constitution.

> As society slowly changed, women's groups emerged from the middle class with the purpose of fighting for rights. The historiography on this phase of the Brazilian feminist movement is extensive, and it is reasonably well established that the emergence of organized women's political groups did not correspond to the massive entry of these women into the labor market. Dissatisfied with the legal and political inferiority of women in Brazilian society, many of them were motivated to participate in the political sphere (Marques and Melo, 2008, p. 468).

For this reason, the significant number of women elected to the National Congress during the 1986 elections was considered unprecedented in the history of Brazilian politics. Souza states that this fact occurred, essentially, as a result of the intensification of the role of these women in the labor market, in addition to the social changes in the country, which eventually culminated in the 1988 Constitution (Souza, 2008).

One can see, through this context, that Brazil had been maturing in terms of the search for re-democratization and for a guarantee of citizenship rights. This printed idea and sentiment manifested itself at the same time that a greater participation of women in politics was evident, states Souza (2008).

It is worth mentioning that the 1988 Brazilian Constitution, besides being an important milestone in Brazil's democratic transition, brought countless advances regarding the recognition of women's social and individual rights, resulting from a long journey and a deep work of articulation among feminist movements, proposing the creation of a fairer and more equitable document, also known as the lipstick lobby.

The elections for the Constituent Congress, which took place on November 15, 1986, was a materialization of what had long been longed for, in the face of a scenario that was ready to take the most important step in history, also in the context of the political representation of Brazilian women (Souza, 2008).

From this perspective, it is important to consider that:

> Differently from what had happened in the past, in the National Constituent Assembly of 1987 it was no longer a fight of a single warrior - the women's caucus, nicknamed the "Lipstick Lobby" had 26 congressmen who acted incessantly in defense of women's rights, such as maternity leave of 120 days, the right of men and women to own land, equal rights and salaries between men and women, and the guarantee of mechanisms to curb domestic violence, among others. The result of the work of these parliamentarians can be seen in the 1988 Constitution, which ensured several mechanisms to defend women's rights so that they could exercise with dignity the full exercise of citizenship (Sow, 2009, p. 15).

According to Carvalho (2012, p. 2), the Lipstick Lobby "had as its goal: participation with the constituent process so that the 1988 Federal Constitution would ratify citizenship for Brazilian women. This movement was, therefore, the representation of the conquest of the dreamed of legal equality of rights and responsibilities, aiming at the expansion of civil, social, and economic rights of women, the conquest of the principle of non-discrimination by sex and race-ethnicity and in the workplace, among others.

In this way, Carneiro (2003) infers that Brazil is one of the countries with the greatest expressiveness when it comes to the fight for the guarantee of women's fundamental rights, a fact that can be observed in the movement committed in the 1988 Constitution against the patrilineal power, effectively contributing to the State's democratization process.

At this time, the feminist movements opened institutional fronts in the nascent democratic government, through intense political action, which resulted in the recognition of full gender citizenship in Brazil.

According to Carneiro (2003), the Councils for the Feminine Condition, which were defined as bodies directed at creating public policies to promote and combat discrimination against women, as well as to properly agency gender equality measures. However, the author points out that the paradigm shift, associated with the implementation of public and private policies, only happened through a consistent fight against sexual and domestic violence.

From the feminist movement's perspective, we can say that it was extremely relevant in the defense of women's human rights in the constitutional scope, which later culminated in the elaboration of the Letter of the Brazilian Women to the Constituents. This document, says Piovesan (2004), opened a broad discussion and national debate regarding gender inequality, formulated by women in the constitutional text of 1988.

Major achievements of 1988

Throughout this approach, it can be seen that, as far as the public sphere is concerned, the context of Brazilian women was permeated by a period of great stagnation, which gave way to great struggles and resistance.

Thus, it can be observed that, in the last thirty years, the central focus of international movements for the protection of women's human rights was based on the axes of discrimination, violence, and the sexual and reproductive rights against women.

However, attention is drawn to the right to difference, which alludes to the right to the recognition of one's own identity, which refers to the revision and re-signification of concepts about the gender perspective (Piovesan, 2001).

Thus, according to Bourdieu (2003), about the paternalistic domination of the time:

> It is undoubtedly in the encounter with the "objective expectations" that are inscribed, especially implicitly, in the positions offered to women by the still strongly gendered structure of the division of labor, that the so-called "feminine" dispositions, inculcated by the family and the entire social order, can be realized, or even expanded, and see themselves, in the same act, rewarded, thus contributing to reinforce the fundamental sexual dichotomy, both in positions, which seem to demand submission and the need for security, and in their occupants, identified with positions in which, enchanted or alienated, they simultaneously find themselves and lose themselves (Bourdieu, 2003, p. 72).

For Carvalho (2013), the main banner raised by women in the development of the second phase of the Brazilian feminist movement in the 1980s was the reestablishment of national democracy and the creation of new public policies aimed at women.

We emphasize here, the way women brought their issues to the fore, working their discourses to create new fields of "struggle and power. This assertion illuminates the picture of

dissatisfaction that came to make up much of the 1980s, prior to the CNDM2 Campaign - "Women and Constituent" (Amancio, 2013, p.73)

For Amâncio (2013), the process of modification of these social relations, lies essentially in the insertion of women in the labor market. We agree with the author when he defines that female emancipation was an important contribution to the projection of women in the public space and in the political formation present in women's movements.

It is possible to notice that the new relations created between the spaces (neighborhood, church, factory, etc.), started to offer the base that was missing for the organization of more encompassing movements, such as the women's performance in the constituent process, which had an enormous repercussion in all national public spheres.

Carvalho (2013), infers that still in the early years of 1983, the political oppositions present in the feminist movement, and of women linked to leftist parties, joined together in favor of the Women's Movement for the "Diretas Já", and so followed in similar situations.

In 1985, the National Council for Women's Rights (CNDM) started the "Women and the Constituent" campaign, responsible for mobilizing several debates throughout the country, which resulted in the Brazilian Women's Charter to the Constituents. This document was delivered in 1986 to the National Congress by more than a thousand female representatives. In this way, the CNDM proved to be extremely relevant in the dialogue between the existing social movements in the country, states Carvalho (2013).

From mid to late 1980, specifically between 1985 and 1989, the Council worked in the Campaign for a Constituent Assembly together with the feminist movements, which demanded the insertion of more rights for women in the new Constitution.

According to Amâncio (2013, p. 73), the CNDM "fostered the struggle for women's rights during the process of political redemocratization, acting as a mediator between women's movements and constituent parliamentarians."

In light of what we have seen throughout this brief analysis, we note that the new Constitution started to integrate more significant rights, directed specifically to women, of which many of their claims were incorporated into the original constitutional text.

Together with the promulgation of the 1988 Federal Constitution, the legal and political framework for the institutionalization of human rights in the country was established, as well as the effective process of democratic transition.

This legislative landmark brought countless benefits to the reality of Brazilian women.

The importance of this political framework

According to the UN - United Nations Organization, violence against women can be defined as any act of gender violence that results in harm or suffering to women, whether physical, sexual or psychological (Miranda et. al, 2010).

According to Miranda et. al (2010), when this type of violence is committed by a woman's intimate partner, be it her husband, boyfriend or partner, it is called "conjugal violence against women" and "marital violence against women. Thus, the intimate partner, with whom she should feel welcome and safe, ends up becoming the perpetrator of physical violence against the woman.

Thus, it can be observed that, in the last thirty years, the central focus of international movements for the protection of women's human rights was based on the axes of discrimination, violence, and the sexual and reproductive rights against women.

However, the right to difference alludes to the right to the recognition of one's own identity, which leads to the revision and re-signification of concepts about the gender perspective (Coelho and Batista, 2009).

> From the data made available by the Superior Electoral Court (TSE) on the 2012 municipal elections, one can see that, for the first time, there was compliance with the quota obligation, and that women represented 32.6% of the candidacies to the municipal legislature, considering the overall average of candidacies. However, these same data show that when it comes to winning elections, women remain underrepresented, constituting only 13.3% of the total number of councilors elected in Brazil. Furthermore, when we analyze the candidacies for the office of Mayor, we have that in the 2012 Elections, women represented only 13.4% of the candidacies (Oliveira, 2013, p.29).

Thus, one agrees with Garcia (2016) when he talks about male domination and infers that, the dispositions imposed by the family and society on women, contribute to reinforce all this sexual dichotomy that has been established on the gender, either in positions, which require submission and the need for security, as in their occupants, who are shown subjugated with positions in which, they lose themselves, states the author.

Analyzing the historical context of women, one notices that, although women had been authorized to attend higher education in Brazil since 1879, this right was little used, considering the heavy criticism suffered by those who chose this path.

From this perspective, Miranda (2010) believes that in the definition of the social roles established between genders, women were restricted to the domestic scene, as well as to those professions that evoked qualities that referred to fragility, submission, and abnegation.

According to Oliveira (2013), the he trajectory of women's effective participation in the Brazilian political scene has gone through several phases in search of being consecrated as political, social, and economic subjects. The process of women's participation in politics highlights the different forms of exclusion, portraying a socially constructed reality that is constantly changing.

It was only in the 1970s, with the feminist movement, in which women began to take on a more active political and social role; finally, female participation in the 1988 Constitution, a moment in which the formal achievement of equal rights between men and women in Brazil was recognized. (Oliveira, 2013).

However, it is possible to note that the violence inflicted against women over time conflates a problem of vast magnitudes, especially with regard to domestic violence. Thus, data from population studies conducted in several countries show that since the mid-1980s the prevalence of violence against women has come from their intimate partners, whether husbands or boyfriends, followed by their family members (Hanada et al. Al, 2010).

It is possible to state that the apex of violence committed against women is death. Thus, the rate of women's deaths recorded as a result of gender-based conflicts - feminicides or femicides - are commonly committed by men, especially *former* or current partners, and stem from situations derived from abuse in the domestic environment, sexual violence, threats or intimidation, among others.

Thus, we can say, that it is a correct assertion that intimate partners are primarily responsible for the murder of women.

According to Garcia (2006), about 40% of all homicides against women in the world are committed by intimate partners. In contrast, this number falls to 6% when the proportion of men murdered by their partners is analyzed.

This means that the proportion of women murdered by their partner "is 6.6 times higher than the proportion of men murdered by their partner," Garcia (2016, p. 1) states.

In this context, between 2001 and 2011 in Brazil, an estimated 50,000 feminicides occurred. This number is equivalent to approximately 5,000 deaths per year if the total Brazilian population is analyzed. A good portion of such deaths are believed to have stemmed from cases of domestic and family violence against women, as one-third of these cases stemmed from the woman's place of domicile (Garcia et. al, 2016).

Even in the face of this context, in Brazil, the first initiative to attend to sexual violence was only in 1998, and included the appropriate procedures for abortion, as provided by law. According to Hanada et al (2010), this milestone represents an important step towards better addressing gender-based violence. But it was in 2006, with the promulgation of Law 11.34006, that the company demonstrated its real commitment to a more equitable and just society.

The debilitating effects that patriarchy has subjected its women to are unquestionable. All kinds of abuse, rape, submission, and violence can be affirmed on many levels and in many different forms. This situation becomes even worse when this type of aggression takes place in the individual's home. The figure of the husband, characterized as a protector transfigures into that of the aggressor when his will is not satisfied. For years this kind of attitude was legitimized by the state.

Public policies against gender violence

The best way to understand a given reality is to get to know it better. In view of this assertion, in the words of Maria da Penha:

> The pain and humiliation that I have suffered for almost twenty years, having to tolerate the bad faith and turpitude of many, having to knock from door to door begging for justice is the same pain that has castrated my right to accompany, more closely, the development of my daughters, who are now adults and present here (...). I am happy to receive this compensation, but my greatest joy remains the existence of the law 11.340/06 called Maria da Penha Law, which allows me to share with each woman who suffers violence in this country. It is she who ensures that women's dignity demands respect and who transforms violence against women into a crime against human rights. Excerpt from Maria da Penha's speech at the symbolic and material reparation event in 2008 (Fernandes, 2010, p. 201).

Thus, one can understand why the Maria da Penha Law can be considered one of the greatest achievements of contemporary Brazilian women. The Law was created especially against family and domestic violence, since this type of aggression deeply hurts women's most fundamental rights. At this juncture, the said Law has the effect of compelling society and the state to protect its women from such violence and aggression that has been perpetrated throughout history (Carvalho, 2012).

Violence against women in Brazil evidenced an endemic problem, while the need for the State to intervene more ostensively was urgent. This happened through laws and public policies capable of confronting a type of violence based on power relations and male domination, the legacy of patriarchy. (Mesquita, 2010)

The most common form of violence are those threats made by partners, boyfriends, husbands, and the like, in a veiled way, in intimacy, where feelings of love get mixed up with crimes of passion. Studies reveal the threat is the beginning of other forms of violence, which is not limited to the mere use of physical force, but in its most diverse manifestations. In other words, violence is linked to the imposition of power, the submission of the other to your will through the use of force or through the imposition of fear. (Mesquita, 2010).

According to Mesquita (2010, p. 4), it is observed through data collected in studies on this topic, that the threat sets up about 45% of 1033 reports of violence against women, and that such amount makes up 962 cases of bodily injury (40%), 20 cases of slander (1%), 54 complaints of outrage (2%), 114 reports of defamation (5%). These data show that this violence occurs mostly in the domestic environment, "which has a cruel and perverse character, since the home has historically been seen as a welcoming, safe place. Which reveals the other face of the home as a space of conflict and violence."

In this way, one notices a kind of "social permission" for certain abusive patterns, in which such violence takes place within the domestic space, and is committed by family members not even being considered as a legitimate violation of rights, but as private and peripheral problems (Mesquita, 2010, p. 5).

According to UN data: "domestic violence is the leading cause of injury to women between the ages of 15 and 44 in the world, manifesting itself not only in socially disadvantaged classes and developing countries, but across different classes and cultures." (Piovessan and Pimentel, 2011).

In Brazil, due to its historical and socio-cultural context, many traces of the patriarchal culture are still present. However, it can be noted that,

> By repudiating state tolerance and discriminatory treatment regarding violence against women, the Maria da Penha Law constitutes a historic achievement in the affirmation of women's human rights. Its full implementation - with the adoption of public policies aimed at the prevention, punishment, and eradication of violence against women, in all its manifestations - emerges as an imperative of justice and respect for the rights of the victims of this serious violation that threatens the destiny and steals the lives of so many Brazilian women. (Piovessan and Pimentel, 2011, p. 116).

With the enactment of the Maria da Penha law, the omission and silence of the Brazilian State, which violated its most basic legal obligations, is broken. Tolerance of violence against women has perpetuated impunity over time, representing a profound act of institutional violence. In this way it is possible to affirm that it is up to the State to act diligently in order to "prevent, investigate, prosecute, punish and repair violence against women, ensuring women adequate and effective resources" (Piovessan and Pimentel, 2011).

The Maria da Penha Law has continuously represented an important advance, especially in the protection of women's rights and in curbing the many situations of domestic violence, by effectively penalizing the aggressor, something that did not happen before, under Law no. 9.099/1995.

From this law on, many cases of violence against women were considered crimes with less offensive potential, in which no protective measures were offered to the victim of such abuses, and the penalty imposed on the aggressor focused on the payment of basic food baskets only (Medeiros and Santos, 2017).

Medeiros (2017, p. 10) states that, even so, some challenges have been emerging, among which stands out a greater need for more conclusive official data about the rates of violence against women, as well as the processing of data that enable the understanding of the dimension of the reality experienced by women in their daily lives when they seek the legal apparatus to protect themselves in their places of residence, since "the application of emergency protection measures, the accountability of aggressors and the effective guarantee of the rights of these women and their children.

Therefore, it is through the Maria da Penha Law that measures to protect the physical integrity of women and guarantee their rights are established, such as the creation of a series of specialized services, such as: police stations, public defender's offices, shelter homes, health services, medico-legal expertise centers specialized in serving women in situations of domestic and family violence, and comprehensive and multidisciplinary care centers (Medeiros and Santos, 2017).

In this way, it can be understood that:

> Research in this area appears as fundamental to think about strategies to confront this type of violence, and promote analysis of the rates of violence against women in the country, as well as to evaluate and monitor the effective results related to the applicability of the law in the various instances (police stations, judiciary, public defender's office, Public Ministry and institutions of care in the various areas of social policy) (Medeiros and Santos, 2017, p. 11).

Finally, another challenge is in the very implementation and operation of the network to deal with violence against women, which is composed, as they have already seen, of specialized police stations for women, courts for domestic and family violence, but also of Reference Centers, Shelters and health services, as well as spaces for social control, among others (Medeiros and Santos, 2017).

It is important to note that with the edition of Law 11.340/2006, also known as "Maria da Penha Law", which was recently amended by Law 13.641/2018, the non-compliance with emergency protective measures is now considered a crime.

With this change, the offender who disregards the measure imposed on him is committing "the crime typified in article 24-A of the Maria da Penha Law and is subject to a penalty of 3 months to 2 years of detention. The urgent protective measures are foreseen in articles 22 to 24 of the Maria da Penha Law. These are measures that the magistrate can determine to ensure the physical integrity of the victim of domestic violence" (Brazil, 2018).

Based on these assumptions, we can infer that with the enactment of the Maria da Penha Law, a new format of lawmaking has been inaugurated in Brazil, in which the Maria da Penha Law has also become a historical milestone, having been the fruit of the unfolding of the democratic process, and should be embraced "as an exemplary successful case of political articulation between civil society, represented by the Brazilian women's and feminist movements, and the Executive and Legislative Branches" (Medeiros and Santos 2017).

It is understood that the treatment given to feminicide in the current Brazilian criminal legislation infers a better world in terms of the improvement of the norms responsible for protecting the violations of women's fundamental rights.

Conclusion

As discussed in this study, in Brazil, the stereotype of fragility together with the supposed need for constant male protection, including in the political-legal sphere, has kept women in a role of extreme submission and social passivity.

It was observed throughout this analysis that it was through a process of struggles and resistance that, very slowly, women were conquering their space in the midst of an authoritarian male planet.

In this sense, the paths traced in the course of the political and civil gender conquests in the world resulted from the historical and sociocultural processes that have been expanding with the evolution of time. In the Brazilian context, whose obsolete values forced women to ask their husbands for permission to even work, a fact that lasted until 1962, women were deprived of their rights, especially that of equality, for a long time. Only in the middle of the 20th century did some women's publications appear bringing into vogue the importance of women's role in society in Brazil.

But it was only after the 1988 Constitution that a group of women was really able to make room for the entry and active participation of women in the national political context. It is at this moment in history that their interests became part of the country's legislative Constituent Assembly, making possible the recognition of equality between genders and enabling a series of legal achievements for women in the political context of Brazil, as proven here through the approach of several authors.

The effects that patriarchy has subjected its women, in Brazil, are unquestionable. This abusive situation gets worse when this type of aggression is established at home, when the figure of the husband, characterized as a protector, turns into an aggressor, whenever his will is not satisfied. For years this kind of attitude was consented to or legitimized by the state.

The case of a woman named Maria da Penha, who was left paraplegic by such an example, is about to change the course of history by demanding the punishment of her attacker internationally after being denied her right to justice for years. The Maria da Penha law is, therefore, the fruit of a successful articulation of the Brazilian women's movement. Through legal, political, and communication stratagems it was possible to establish the necessary and urgent legal reforms and transformations of public policies; effective and efficient in favor of the dismantling of violence against women.

Thus, the women of 1988 marked female empowerment, in the Brazilian political scene. From the democratic transition process initiated with the drafting of the 1988 Constitution, women began to integrate a much more effective role in the national public sphere in subsequent years, as exemplified by the aforementioned Maria da Penha Law, edited in 2006 and updated in 2018, and even with the election of Dilma Rousseff in 2011, becoming the first woman elected to the Presidency of the Republic in Brazil, only 23 years after the promulgation of the aforementioned Constitution.

Currently, the current Brazilian electoral legislation guarantees women effective participation in elections. For this to occur, it obliges political parties to present a minimum of 30% female candidates on their slates, as determined by Miranda (2010). This milestone registers a great evolution of women's political empowerment in Brazil, evidencing the advances already made.

However, improvements are still needed in Brazil, one of the countries with the highest rates of domestic violence against women in the world. One can see that, even with a population of more than 190 million people, among which the female population outnumbers the male, Brazil still lacks equity, and is characterized as a violently unequal country, as defined by Barsted and Pitanguy (2011).

We are in the process of evolving and I feel optimistic about the future. I understand the current challenges, especially the high rates of violence against women that are in the news every day. However, we know that we cannot change centuries of oppression in such a short time. Thus, slowly, each day, we move closer to what would be an ideal and equitable society.

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AGILE KNOWLEDGE SYSTEMS IN PUBLIC POLICY THROUGH THE INTEGRATION OF THE STATE AND CIVIL SOCIETY THROUGH CITIZEN PARTICIPATION

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Abstract. The following text aims to present a reflective analysis of the conceptualization and implementation of public policy as a mechanism for citizen participation. The theoretical and practical reflection that will be addressed is situated within the context of a bibliographic review, which incorporates several novel conceptual and methodological aspects related to systematic methodologies that have emerged in recent years. In this theoretical and practical review, the concept of interrelation of actors (public, private, and civil society) as fundamental entities of the social system is taken as a starting point, addressing Colombia's experience in identifying and understanding the social elements that constitute the design of the public policy route. As a result, tools for executing the agile mindset applied to the construction of public policies were generated. Currently, systematic methodologies have been developed that allow for a more agile approach in the construction of public policies, which can result in greater efficiency and effectiveness in their implementation. In this context, the agile mindset has emerged as a valuable tool in the construction of public policies. This methodology is based on an agile and flexible mentality that focuses on delivering value to the end customer or user. The agile mindset methodology focuses on collaboration, iteration, and a focus on the end-user, allowing public policy teams to quickly adapt to changes and environmental needs.

Keywords: Agile mindset, public policy, knowledge, methodologies.

SISTEMAS DE CONOCIMIENTO ÁGIL EN LA POLÍTICA PÚBLICA DESDE LA INTEGRACIÓN DEL ESTADO Y LA SOCIEDAD CIVIL A PARTIR DE LA PARTICIPACIÓN CIUDADANA

Resumen. El siguiente texto, tiene como propósito presentar un análisis reflexivo sobre la conceptualización e implementación de la política pública como un mecanismo de participación ciudadana, la reflexión teórica práctica que se abordará, se ubica en el contexto de la revisión bibliográfica, la cual incorpora varios aspectos conceptuales y metodológicos novedosos relacionados con metodologías sistemáticas que han emergido en los últimos años. En esta revisión teórico/práctica se parte del concepto de interrelación de actores (públicos, privados y sociedad civil) como entes primordiales del sistema social, abordando la experiencia que ha tenido Colombia en la identificación y comprensión de los elementos sociales, que constituyen el diseño de la ruta de la política pública. Como resultado

se generaron las herramientas de ejecución del agile mindset aplicado a la construcción de políticas públicas. En la actualidad, se han desarrollado metodologías sistemáticas que permiten un enfoque más ágil en la construcción de políticas públicas, lo que puede resultar en una mayor eficiencia y eficacia en la implementación de estas políticas. En este contexto, el agile mindset ha emergido como una herramienta valiosa en la construcción de políticas públicas. Esta metodología se basa en una mentalidad ágil y flexible que se enfoca en la entrega de valor al cliente o usuario final. La metodología agile mindset se centra en la colaboración, la iteración y el enfoque en el usuario final, lo que permite a los equipos de política pública adaptarse rápidamente a los cambios y necesidades del entorno.

Palabras clave: Agile mindset, políticas públicas, conocimiento, metodologías.

Introduction

At first, we will present how the construction of a methodology for the design of the public policy route is considered, according to (André-Noël, R. 2006 cited in Gómez, M. 2008), as the analysis of public policies from a social research applied to the analysis of the concrete activity of governance, as well as a discipline that allows acquiring knowledge about the state-civil society relationship. The second part describes the development and social learning curve of social structures: macrosocial (society) and microsocial (individual) from the reflection of social transformation, global changes and the attention towards adding value in public policies to address structural problems in a country. For Entrena (2000):

> […] Social structures are seen as socially constructed realities, subject to reflexivity and historicity, whose production and reproduction are increasingly embedded in the processes of globalization. As a consequence of this situation, a remarkable intensification of the reflexivity of such structures is required and, consequently, the purpose of carrying out such task from a holistic perspective, it is proposed for the study of relationships of dialectic nature the reflection of the local micro-social structures where people's daily life develops, and, on the other, the logic, which present the social dynamics of transformation in which the macro-social structures unfold on a global scale. (p. 15).

These meanings allow us to present in a third moment how the agile SCRUM methodology is conceived as a proposal to improve the effectiveness of the implementation and evaluation of public policy. In the reflection that we present, we consider that SCRUM, starting from its design, can be an opportunity to refine and strengthen the design of the public policy route. We start from the postulates of (Roth, A; 2006 p. 28), whose objective is to construct and propose ways of thinking and tools for the understanding of public action and the State.

Method

Roth in his text presents as a hypothesis that "the constitution of public policy analysis as a science of the state in action is a process of construction of a post-state society that highlights the need for a new form of government more adapted to the context" presenting as a thesis that the state and its institutions encounter serious obstacles in their claim to govern the destinies of society and face a crisis of governance (Roth, A; 2006 p. 28).

It is a hypothesis that arises thanks to continuous reflection on bureaucratic processes, which has been latent, configured as a relevant element in public policies, implementing SCRUM as an agile framework for the design of the public policy route, is a proposal from the social sciences, which proposes the mitigation of the gap that currently exists between the construction of public policies, citizen participation and implementation in the territories.

The impact of globalization and its close relationship with the issue of the paradigmatic crisis presents the challenge of mitigating the problematization that exists in the relations between state and civil society, and in this context analyzing the role played by public policies, the challenge becomes even greater if the problem is not contextualized in regional spaces, but generalized. (Podesta, 2001).

In order to identify how agile knowledge systems would be implemented in public policy based on the integration of the state and civil society through citizen participation, a descriptive and exploratory research design was established with relevant actors in the design, implementation and evaluation of public policies at the state and civil society levels.

The proposed methodological challenge leads us to an adjustment in the structuring of the government agenda, understanding how these have changed in the last fourteen years due to the dynamics of national and international cooperation, which have led to new forms of governance between the state, international countries and civil society. An example of this is the presidential period (2006-2010) in Colombia, where there was a divorce and bitter confrontation with different strategic actors (human rights defenders, legislators, magistrates of the courts of justice, presidents of neighboring countries, journalists, international organizations, among others), due to facts derived from the management of the guerrillas, paramilitaries and drug trafficking (actors of the autonomization of social actions). Institutionalism in Colombia has never been consistent and is now diluting, a situation that endangers and uncertainties not only the country's political and institutional process but also its relations with other countries and regions. (Aguilar. 2006, cited in International Association for Governance, Citizenship and Enterprise, 2014).

In the words of Castillo - Cubillo (2017) "the transformation of the Colombian state will be visualized as imminent, under the current panorama of governance, in the new global order, presenting as analysis does not possess the monopoly of knowledge, experience and resources necessary to solve as a country, the problems and obtain opportunities for social welfare". Based on the above analysis, Colombia could think about devising and reinventing new ways of governing in coordination with strategic actors who are experts in methodologies or public *management*

The concept of governance is attributed to the new methods of governance that are being assumed, in this order of ideas, the current globalization process is adding a complexity of elements with pronounced repercussions in the new paths that public action must take, mainly in the challenges it has to face the new problems. Prats (2007) states that:

[...] The justification for the actions of governance in this era lies in the fact that governments are not the only actors facing major social issues; Latin America faces challenges from civil society organizations and companies. In these conditions of complexity, diversity, interdependence and dynamism brought about by globalization, the realization of general interests can no longer be the monopoly of the public authorities. Their action is only effective and legitimate when they ensure that the decision and its implementation are the result of an interaction between the public authorities, the business sector and civil society organizations (p.50).

When currently attempting to analyze one of the social structures (health, economic, education, etc.), it is necessary to describe and explain the processes of their production and reproduction under a systemic and complex perspective originated by globalization; that is, to explain the social structures from a conception as a socially constructed reality that is subject to historicity and social reflexivity, with the purpose of serving as a frame of reference for the initiative to build a public policy. As Bonnano (1994) puts it, "propose a systemic model for the study of social structures based on the following three analytical dimensions: the socioeconomic, the political-institutional and the symbolic-legitimizing" p17.

The relevance of public policy knowledge management would be considered a scenario of analysis of the Colombian social context, which highlights the need to rethink the state based on regional integration proposals generated by citizen participation.

Results

The World Economic Forum "Agile Governance Reimagining Policy-making in the Fourth Industrial Revolution" (2018). It presents a vision of integration, which introduces us to the Fourth Industrial Revolution, suggesting that governance must become a systematic model of double entry, where the central axis is participation, understood from the implementation of processes of innovation, agility and sustainability. Given this, this paper suggests strategies to address the needs presented above. Within this, innovation rapidly changes behaviors and creates new rules of interrelation between the state and society, by virtue of compliance with national and international policies. Despite gaps in legal regulations that translate into political governance problems, technology pioneers develop private rules, certification schemes, standards, social norms or policies that end up being integrated into social dynamics and establish governance models that shape the way societies live, work and interact.

One of the characteristics of innovation became visible in the software sector in 1990, when the concept of agility was coined. Agility implies an action or method of agile, fluid, flexible and adaptability to a context. In 2001, 17 software developers wrote the Agile Manifesto, intended for implementation at the policy-making level by the World Economic Forum's Global Agenda Council on the Future of Software Development and Society. The principles of the report value results over rules, respond to change following a plan, encourage broader participation over control, and encourage self-organization over centralized governance.

[...] the concept of agile governance aims to change the way governance thinks about and co-creates policies, which are generated, deliberated, enacted and implemented in the face of global dynamics of change and transformation. Aligning these terms allows governance models to be, and some would say should be, more agile to keep pace with social dynamics in response to global changes, driven significantly by the rapid development and deployment of emerging technologies. For this reason, policymakers must start with strategic and proactive thinking in order to address these challenges. The difference between traditional plan-based policy formulation methods and the approach presented by agile governance relates to the change in the value placed on time sensitivity in implementation, loss-avoidance evaluation from rework mitigation and measurement. (p24).

Roth, A (2009). states that "a public policy is made up of 4 stages: problem identification; policy formulation; policy implementation; and policy evaluation. To carry out these stages, agile Scrum frameworks are suggested that allow for a more inclusive and "human-centered" design by involving more stakeholders in the process allowing for rapid iteration in

the problematization of a country's needs." (p13). Howlett, Capano & Ramesh (2018) indicate that agile governance ensures the robustness and long-term sustainability of public policy, by creating constant monitoring mechanisms to "update", improving the efficient predictability of policy implementation from emerging technologies, as well as discriminating responsibilities, as part of risk mitigation, between the public sector, private sector and civil society, thus maintaining relevant checks and balances.

(Callander & Martin (2017) & World Economic Forum (2018)). They suggest that increased agility in policy formulation also seeks to ameliorate "policy decay," meaning that policies inevitably lose their relevance over time. Legislators often benefit politically from policy decay to maintain the status quo; when pressure to change policies increases, they can leverage their influence to seek the concessions they desire on a personal basis or on behalf of the political party they represent.

However, there are circumstances that overcome political incentives, and responsibilities are shared by aligning interests between companies and civil society, with the aim of intervening before the use of a technology for strategic purposes, managing to keep developing progressive policies that can become the global standard.

((Arjun, B. (2018) & Mirzaei, A; Mabin J. (2015)) propose that:

[...] to address the above mentioned, according to the systematic framework Scrum has demonstrated its ability to address complexity, prioritization issues, integrate human-centered viewpoints, working closely with implementers, testing with users and iterating until the problem is solved generate the knowledge and strategies for early prototyping of sustainable public policies. Given that governments are often criticized for being slow reactors to innovation and societal needs, adapting this approach as one that seeks to navigate the pace of change through adaptive, human-centered, inclusive and sustainable policies is an important conceptual shift towards long-term value-based policy design through agile methods. (p43)

Accordingly, (Lasswell & Lerner (1951) cited in Howlett & Mukherjee (2014)) describe that modern political science is based on the idea that accumulating and using knowledge of the causes, effects, and impacts of a relatively known set of policies developed over many years of state-building experience can effectively bring them together to achieve governmental ends of hindsight. More recently, however, it has been recognized that even in cases of well-thought-out and well-intentioned or well-designed policies, failures commonly occur overtime as their environment changes and evolves, undermining the assumptions and expectations that went into their formulation.

This is due to the fact that the formulation was based on historical data, on problems from previous years and without prospective exercises. The use of ideation methodologies and applied statistics strategies enable the identification of risks and trends, creating alerts for failures, high uncertainty, and prediction of long-term problems (Howlett, Ramesh, & Xun, 2015; Jacobs & Kent Weaver, 2015; Nair & Howlett, 2017).

This entire journey allows Howlett, Capano & Ramesh (2018) to present that:

[...] How best to mitigate the uncertainty and risks associated with public policy making is an issue that has preoccupied policy studies for some time. Studies on policy uncertainty and failure have emphasized the need to create policies that can be improvised in the face of an uncertain future, which means that it is necessary to design and adopt policies with agility and flexibility in their components and processes. Such policies require redundant resources and capabilities and this need is in strong opposition to design ideas that equate better design with efficiency, which implies the allocation of the least amount of resources possible and often also emphasizes routinization and replication of standards, operating procedures and program

elements to ensure consistency in the delivery of legislation and public policies designed for sustainability in the face of change.

Discussion and conclusions

Public policies from the social sciences, identify that there are policies intended to be short-term solutions, studies of uncertainty and policy failure have emphasized the need in many cases to design policies based on agility, improvisation and flexibility to manage to adapt and deal with surprising and uncertain futures in the medium and long term (Capano & Woo, 2017; Kwakkel, Walker, & Vincent, 2010; Walker, Lempert, & Kwakkel, 2013; Walker, Marchau, & Swanson, 2010).

In sum, this brief reflects on public policy implementation models and their social indicators (Moynihan (2009) cited in Capano & Woo, 2017) presents that:

[...] studies of policy uncertainty, crisis management, policy learning and political capacity have emphasized the need to design a minimum of robustness into most policies. This means designing policies capable of maintaining the same performance in the face of any type of internal/external disturbance in order to cope with surprise and avoid policy failure caused by unexpected or unknown events that alter the initial design specifications and assumptions

As noted by OECD (2011), achieving robustness in practice ultimately involves accurately answering a host of questions around issues such as:

1. how can human and financial resources be reallocated in a timely manner to emerging policy issues?
2. what new frameworks are needed to improve strategic agility in public governance?
3. how can governments identify and act on the issues that need attention?
4. how can they move resources quickly to address these challenges, as well as situations that were not foreseen?

The Organisation for Economic Co-operation and Development (OECD) is an international organization, working in partnership with governments, policy makers and citizens, that works to set international standards and advise on public policy at the global level. The OECD member states are: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States of America, United States of America

The OECD has highlighted the importance of transparency in public governance through the provision of reliable information, which must be available to the population. The OECD has advocated two major sections: a) Promoting transparency and integrity in political finance and b) Promoting integrity and transparency in decision making.

Inclusive public policies and decision-making based on integrity, participation and transparency legitimize policies and make them more effective, strengthening citizens' trust in their governments (OECD, 2017). However, powerful individuals and interest groups may use their wealth, power or advantages to tip the balance in their favor at the expense of the public interest. When public policy decisions are consistently or repeatedly directed away from the public interest to target the interests of a specific interest group or individual, then public policy is captured. The consequences of public policy capture are devastating: it fuels inequality and

undermines economic growth. According to a study by the Inter-American Development Bank (IDB), if those favored by private interest-oriented policies tend to be an elite with political and economic influence to tilt political decisions in their favor, capture is related to inequality. On the contrary, public policies that involve and coordinate a greater number of actors are correlated with per capita GDP growth and improved human development indicators (Scartascini et al., 2011).

Undoubtedly, the consequences and impact of policy capture are even worse if the few power groups that capture policy are part of and connected to organized crime. It has been identified that a high level of infiltration of criminal groups in the public sector implies that policy making and implementation is biased, and that political campaign financing is compromised. Buscaglia, E; Gonzalez Ruiz, S; W, Ratliff. (2005). This affects political competition and has a negative impact on democratic systems.

Despite the existence of strong regulations on paper, their weak monitoring and enforcement may leave the door open for interest groups or individuals to seek informal ways to exert their influence. In this area, electoral entities and sanctions are key to implementing political finance frameworks. There are three basic factors to ensure effective implementation:

1. Independence.
2. Capabilities - in terms of resources, as well as personnel and their technical expertise.
3. Social control.

Oversight bodies must have the right powers, policies, people and procedures in place to carry out their tasks and, more importantly, they must be committed to fulfilling them. In addition, civil society and individuals must have the capacity to act as watchdogs and assist in the control and scrutiny of political actors. In this sense, transparency is also essential to enable effective enforcement of political finance regulations. Prats, (2022).

Transparency is a necessary condition for public life, making information available to the public and giving interested parties the possibility of contributing to decision-making processes not only allows citizens to monitor the integrity of public officials, but also strengthens democratic processes and, over time, increases trust in public institutions.

By virtue of the above, it is necessary to provide tools and mechanisms for citizen participation that allow for public debate in the decision-making process. Creating participation and transparency frameworks need to be designed in a way that promotes accountability, as reflected in the OECD Council Recommendation on Public Integrity (OECD, 2017), which provides guidelines for promoting transparency and stakeholder participation at all stages of the policy process and policy cycle, and thus fostering accountability and the public interest. Emphasizing that civil society participation also includes organized civil society, commercial and non-commercial actors, as well as various categories.

In view of the above, OECD (2019) developed a survey of international organizations involved in the participation of a wide range of practices (from intergovernmental organizations, international non-governmental organizations, international business organizations, government representatives of member countries, international regulatory agencies, parliamentarians and political parties, individual experts, private sector entities, non-member country government representatives, academic institutions, national level entities and bodies, philanthropic foundations, consumers, to academic unions and labor or trade unions, among others), from information dissemination and soliciting consultation, to participatory collaboration, co-production, co-decision and partnership. To this end, a variety of procedures and modalities were developed to ensure their participation.

- Opportunity to be consulted on proposed instruments.
- Invitations to participate in the development of instruments.
- Invitations to participate in the dissemination and implementation of instruments.
- Invitations to participate in monitoring the use and evaluation of instruments.
- Official status that allows for regular input from stakeholder groups.
- Invitations to participate in meetings of regulatory agencies.
- Expert processes that facilitate technical input from stakeholders.
- Specific processes that allow the participation of wider audiences, in particular providing the opportunity for the general public to comment on the proposed instruments.

Participation is not only a public duty, but a right. As stated in the Ibero-American Charter for Citizen Participation in Public Management (2009)

[...] "citizen participation *in public management implies a process of social construction of public policies. It is a right, a responsibility and a complement to the traditional mechanisms of political representation".* In addition to being a pillar in the democratic development of the States. (p22)

In this sense, citizen participation is the key to transform the state space into a public space and contribute to create conditions to consolidate democratic governance. Because citizen participation, unlike other forms of participation (political, community, etc.), refers specifically to city dwellers intervening in public activities representing particular (not individual) interests. But for this participation to be effective, commitments and institutional conditions must be generated and, above all, there must be the conviction that public deliberation and social interaction, acceptance and respect for ideological pluralism, are positive and essential values and practices for living in democracy; values and practices that can and should be exercised primarily in the daily sphere and in the local space, which is where the greatest proximity between authorities and citizens is found (Ziccardi, 1998, 1999).

Although citizen participation has its manifestations in different spheres, its express inclusion in legislation should be a mechanism aimed at guaranteeing citizen participation. The key mechanism for this is public consultation. Burgos, E. R. (2022).

As Comfort, L. K. (2012) points out to us. Administrative agility and flexibility are necessary in such circumstances and robustness can and should be planned and implemented through the adoption of specific types of procedural tools in policy mixes.

As stated by the OECD (2011):

[...] In a recent study on public policy agility, thinking about policy robustness implies answering the question: "What should the government do to be more strategically responsive to emerging policy issues? Better align government policies and activities with shared objectives and the public interest; Facilitate the timely reallocation of human and financial resources to emerging policy needs?" Then in Achieving Public Sector Agility at Times of Fiscal Consolidation, OECD (2015) comments that, policymakers in the public sector have to use a combination of policy tools to achieve targets and agility in practice. Some of these tools are rooted in public sector management culture and practices, such as budgeting and human resource management. (p35)

According to Roth (2009), the last stage of a public policy is evaluation and, concluding the above, the evaluation of the impact of policies goes hand in hand with the efficiency of

governance and the need for agility and robustness of governance models, in which, the formulation of public policies is presented as the route to minimize this gap. in this way, public policy is oriented to the changing circumstances of society and global dynamics, an issue that recently began to be addressed (Capano & Woo, 2017; Nair & Howlett, 2017). Therefore, this contribution contributes to a new approach, positions and tools that facilitate the creation of an agile ecosystem for knowledge management based on citizen participation in public policies.

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IMPORTANCE OF COMPLIANCE IN MEXICO. IMPLEMENTATION OF COMPLIANCE IN MEXICAN COMPANIES

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Abstract. Regulatory compliance, also known as compliance, has become an important issue of concern for companies around the world. In Mexico, legal compliance has become increasingly important due to the growing complexity of the regulatory framework and the more severe penalties imposed by the authorities in the event of non-compliance. Regulatory compliance systems or compliance are established in Mexican law as mitigating and/or excluding legal liability in any of the ramifications that through law establish bases of sanctions to achieve compliance to which legal entities must agree without providing minimum standards of application without unifying criteria, regulations and procedures. The purpose of this article is to locate the normative actions available to the Mexican Rule of Law, its legal framework and the implications for companies operating in the country.

Keywords: Normative compliance, companies, compliance, law.

IMPORTANCIA DEL CUMPLIMIENTO NORMATIVO EN MÉXICO. IMPLEMENTACIÓN DEL COMPLIANCE EN LAS EMPRESAS MEXICANAS

Resumen. El cumplimiento normativo, también conocido como compliance, se ha convertido en tema importante y de preocupación para las empresas en todo el mundo. En México, el cumplimiento jurídico ha adquirido cada vez más importancia debido a la creciente complejidad del marco regulatorio y a las sanciones más severas impuestas por las autoridades en caso de incumplimiento. Los sistemas de cumplimiento normativo o compliance se establecen en la legislación mexicana como atenuantes y/o excluyentes de la responsabilidad jurídica en cualquiera de las ramificaciones que a través del derecho establecen bases de sanciones para lograr un cumplimiento al que deben acceder las personas jurídicas sin proporcionar estándares mínimos de aplicación sin unificar criterios, normativos y procedimientos. Este artículo se propone ubicar las acciones normativas con las que dispone el Estado de Derecho mexicano, su marco legal y las implicaciones para las empresas que operan en el país.

Palabras clave: Cumplimiento normativo, compliance, marco legal, empresas.

Introduction

The topic of Compliance in Mexico turns out to be of great novelty for companies and businesses, since in current times it can be affirmed that regulatory compliance, as it is also known as compliance, has arrived to show the importance and need of companies to regulate themselves under good practices in their daily activities, and for this purpose several regulations have been created by the Mexican State in order to protect each of the actions performed by business organizations. In the Mexican State there is freedom of action for companies that are incorporated under a legal framework, allowing these actions to be in compliance with the requirements of the Mexican State and therefore the proper development of the company.

The purpose of this article is to analyze the importance of regulatory compliance in Mexico, its legal framework and the implications for companies operating in the country. Therefore, through the present text, a review and analysis of the legislation and regulations applicable to compliance will be developed, all this in order to point out minimum criteria of this new business legal notion based on the legal and ethical responsibility of the organizations. Finally, some contributions will be made by way of recommendations on the subject in question, with the aim of providing a new and proactive vision for companies that want to manage the compliance issue effectively.

The function of the State is to establish the legal bases to procure order in society, ensure compliance with the law, guarantees and rights of all members of society, as well as to ensure that obligations and responsibilities are fulfilled, punish and penalize when laws are violated. This function of the State, although it has been widely discussed since the classics such as Thomas Hobbes, in his works De Cive and Leviathan; as well as in John Locke's Treatises on Civil Government and in Jean Jacques Rousseau's Social Contract; these coincide in the State's guarantee to provide legal-political security to the population. In view of the foregoing, the rule of law creates the pertinent laws with a punitive nature to sanction actions that go against the parameters established by the legal standard.

Currently, in Mexico, a complex panorama for the implementation of compliance is predicted, since through the corruption indexes that are measured through international groups such as Transparency International, Mexico occupies the highest levels on the incidence of all practices that are globally defined as corruption, in the study called "Corruption Perception Index (2021)" Mexico is ranked 124 out of 180, this is a manifestation of the need for an ethical implementation of the correct compliance of the obligations of the business sector and good governmental practices to effectively implement such regulatory compliance.

In view of the above, this text is intended to show a general overview of tools that support the ethical compliance of companies with respect to the obligations implemented by the Mexican State, with the intention of providing a possible basis on which to visualize the basic minimums of this compliance, in order to change habits of the culture of corruption within organizations. In addition to the above, there is a perceived need to make decisions and take actions to solidify the issue of compliance in a serious manner for the benefit of the organization and the society in which it operates.

Method

For this text we have chosen the exploratory method, which is a type of research used to study a problem that requires to be observed in a general way and with this the exploratory method has been chosen for this text, which is a type of research used to study a problem that

needs to be observed in a general way and thus visualize the tools that are available to understand the phenomenon of compliance for its implementation in Mexico. The exploratory method has the characteristic of being flexible, compared to other types of methods, and is functional when you want to understand a problem in a preliminary way, answering scientific research questions that start with what, why and how.

It is important to point out that exploratory research is in charge ofmaintaining study guidelines to promote the development of a study that intends to deepen the understanding of new iusphilosophical topics for a correct use and implementation **(**Zafra, 2006), as is the case proposed in this article, in which it is necessary to understand the topic of compliance so that it can be adequately attuned to the system of norms that Mexico has.

An exploratory research maintains multiple characteristics that give it a great advantage to achieve a total understanding of a legal phenomenon, therefore, this method will allow us to define concepts and prioritize the points of view of various scholars on the proposed topic, in addition the method focuses on finding deep knowledge on the subject while maintaining a meaning on it in a concrete and innovative way, it has no obligatory segments which allows a perceptive and focused research on the proposed topic.

Discussion and conclusions

Compliance is an anglicism aimed at the business sector, this anglicism means "compliance" and focuses on showing that companies comply with their own rules and are not penalized for non-compliance with the laws in force applicable to the line of business established by the entrepreneur. Compliance regulations oblige corporations to visualize the tireless fight against corruption as an internal function, and in this way the fact that they comply with their actions in the sense of the regulatory duty to be, it would be possible to deal with widespread corruption, since compliance establishes strategies for companies to adopt with a view to preventing it.

In the same vein, the International Organization for Standardization (ISO) has issued a set of international technical standards on the subject, starting with ISO 19600, which establishes guidelines for the implementation of compliance systems, and ISO 31000, which sets out technical guidelines for risk management in general. It has also adopted technical criteria for corporate social responsibility management (ISO 26000), sustainable procurement (ISO 20400) and bribery risk management and business ethics (ISO 37001), among others.

Therefore, it should be noted that companies in general subscribe and are certified under ISO with the intention of improving in the fulfillment of each of the aspects that make up the company, that is to say that they have the guideline of self-regulation for continuous improvement and thus contribute efficiently to its social purpose framed in its philosophy of business creation.

Thus, it is the preventive review and proper application of the regulatory standards of the Mexican legal system that will provide the solidity in regulatory compliance that arises as a new topic for the proper development of corporate ethical compliance, for example, compliance with the regulatory framework in labor matters will provide stable working conditions for the employee; from individual to collective contracts if there is union representation; contract law in some sectors of the economy, and regulatory standards to prevent sexual or labor harassment within them; also the obligations of companies to the IMSS have a regulatory framework that must be complied with and addressed.

Therefore, when a company is created through a corporate charter, it establishes its corporate purpose, which provides it with a framework of action and thus establishes its scope of action with respect to the rules that must interact in its regulation; however, in the specific case of Mexico, any company must understand and know the legal system in its entirety in order to adequately comply with the regulations.

From the previous paragraph, a first criticism can be originated for the concept of compliance, since it was born under the tutelage of the criminal system, since in a traditional way compliance and sanction are thought of in a unified way, therefore, the concept was born through the application of criminal law by the intention of enforcing the legal canons through this branch of law.

Compliance includes more than criminal matters, as it is applicable to all regulatory and ethical aspects in which a company may be related, both external and internal issues, integrating with it the related to financial, environmental, tax, labor, corporate and health law, which is why lawyers must know the legal science in an integral way, because business issues with a single act could be related to the aforementioned matters.

Due to the current comprehensiveness of the law that compliance requires, it can be deduced that the latter goes beyond a single regulatory understanding for its compliance, and can be controversial due to the fine relationship between the different legal edges that have been previously mentioned, since on many occasions omissions and ignorance of the requirements implied by the law are the elements that constitute the non-compliance that compliance in Mexico seeks to avoid.

This new concept serves to know what are the possible risks, since compliance invites to carry out preventive reviews that can be originated in the companies and with it to establish good practices that work for the company in which it is acting, therefore the importance of understanding the functionality of a company with the various actors that make it work, to achieve solidify the functionality of the same.

The origin of modern compliance is forged at the beginning of the 20th century in the USA with the creation of the first public regulatory agencies (Bucigalpo, 2021), since with the creation of these public security agencies in the United States, the idea of compliance in the USA is particularized.

With these creations, the regulatory and public supervision environment was created, and therefore regulated, which gave rise to a regulatory framework of business compliance so that the activities of this sector would have a backing and a compliance guide, as a new implementation model in the USA. USA.

Therefore, through sof law, the term compliance arises, since it was linked to the framework of these standards and, particularly to good practice recommendations, taking as a pillar the principle called complain or explain, which means comply or explain; and it is about achieving an in-depth vision of recommendations for voluntary compliance that are standards established by governmental and non-governmental agencies or organizations in order that, in the private sector, companies incorporate the established recommendations or, if they do not, explain the reason or reasons that lead them not to follow such recommendations.

This included the incorporation of "good governance, accountability and corporate social responsibility (CSR) recommendations". In the 1970s and 1980s, business compliance rules evolved in a different scenario: the notorious political corruption, bribery and political party financing scandals that affected major companies and which reached their peak with the Watergate case. As a result of that scandal, the Foreign Corrupt Practices Act (1977) was passed in the USA, which incorporated requirements and prohibitions for companies and the private

sector regarding bribery, books and records, as well as, for the first time, the concept of compliance, requiring transparency of annual accounts and prevention of corruption of officials.

In the 1990s, new business risks linked to financial scandals became evident - the Enron, Tyco International, WorldCom, Siemens cases - which in turn gave rise to the Sarbanes-Oxley-Act (2002), establishing new accounting obligations and reforming corporate public accounting and investor protection requirements.

Bribery in transnational corporate economic transactions and financial scandals have provided a first scenario for business compliance: corruption and bribery of officials, political financing, accounting manipulations and lack of transparency. Aware of this scenario, international and supranational organizations are beginning to draw up conventions for the prevention of corruption. Based on the issues to be protected, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD 1997)2 , the Criminal Law Convention against Corruption (Council of Europe Convention No. 173) (1999), the United Nations Convention against Corruption (2004). In the same vein, the UK Bribery Act (2010) was created, which introduces, in turn, the criminal liability of companies and their managers for bribery of foreign officials and requirements of supervisory and control bodies.

All these rules require the rule of law states to come closer to compliance in order to establish rules for the prevention and monitoring of corruption risks in business activity, which led to significant changes in legal standards through the legislative power in the field of legal disciplines such as commercial, administrative and criminal law of business activity. It can be seen how the evolution of the term compliance is transformed in relation to the activity of companies and the Anglo-Saxon legal culture with the primary objective of establishing internal control and supervision mechanisms, initially linked to the prevention of corruption, bribery of public officials and illegal financing of political parties. At the same time, in the mid-1990s, the aforementioned cases of companies linked to accounting scandals and the financial crisis highlighted the lack of control over the decision-making processes by the company's management bodies. The organization of the management bodies was regulated in an extraordinarily broad manner, leaving a framework of self-organization of corporate management with full decision-making power and no control and supervision of its actions. This opens up another requirement that should not only be limited to private companies, and a concept that helps is that of transparency, we are referring to corporate governance, known in the Anglo-Saxon world as "corporate governance".

On the other hand, this provides a relevant task in the revision of corporate law and the implementation of good practice standards through the creation of rules generally known as codes of good practice or codes of good corporate governance for listed companies. This is where we can learn about the main recommendations for organization, monitoring and control of the company's activity, which, ultimately, is also part of a compliance program.

From the foregoing, it can be pointed out that the first reports that warned of this problem in Spain and by which the necessary good governance measures were studied in the framework of listed companies were the Report of the Special Commission for the study of a code of ethics for the boards of directors of companies (Olivencia Commission, 1998) and the Report of the Special Commission for the transparency and security of financial markets and listed companies (Aldama Commission, 2003). In 2006, the National Securities Market Commission (CNMV) incorporated the Unified Code of Good Governance of Listed Companies (the so-called Conthe Code, 2006) and, currently, the current Code of Good Governance of Listed Companies (2013, 2015, 2020).

Based on the foregoing, the Code of Good Governance contains recommendations that are enforceable on corporations, which are defined as such in the Mexican environment, as well

as the requirement to present an Annual Good Governance Report. In the same vein. Finally, in the Spanish legal system it is introduced or, better said, expressly mentioned, as we have pointed out, as of the reform of its Penal Code by including, through legislative thought, as a cause of exemption from criminal liability of legal persons.

In Mexico, the penal code refers to compliance programs as models of organization and management of surveillance and control measures suitable for preventing crimes. Compliance programs are expressly introduced in a very specific and delimited area referring to crime prevention measures in the area of companies and other legal entities. Previously, there were already sectorial regulations - in the financial, banking and securities market sectors - that established express organizational rules for the supervision of business activity risks in relation to a specific business activity. infra. At present, it can be said that the institution of the figure of compliance has been a consequence of at least two causes: firstly, the absence or scarce existence of rules regulating the internal organization of private corporations and, secondly, also the insufficient governmental resources for an adequate model of public supervision of the risks of centralized business activity. As a result, the "supervisory models" have been "privatized", in the sense of transferring to individuals and companies a "duty of self-regulation" of the supervision and control of regulatory compliance and prevention of non-compliance, taking regulatory compliance beyond the scope of the public supervisory function itself.

All of the above allows us to see that, in the first place, the notion of compliance arises in the context of private law companies designing and imposing, through their own capacities and regulatory frameworks, control and supervision requirements of the risks derived from their activity, i.e. companies have maintained a freedom to shape their own self-regulation with the objective of always complying with the visions and good practices of the rule of law. Secondly, it arises as a consequence of the need to demand higher and higher standards of internal organization from commercial companies, especially from the management bodies, as well as decision making in order to detect corruption risks and achieve greater transparency in the management of the administration. Thirdly, compliance requirements are reinforced as a consequence of financial frauds and the economic and financial crisis - Enron, Parmalat, Tyco International, WorldCom, Siemens, Lehman Brothers, Subprime, etc. - and it becomes, in the first instance, a set of soft law rules of good corporate governance - Codes of Good Corporate Governance - to quickly become "mandatory legal rules" for the governance of companies, duties of compliance.- and it has gone from being, in the first instance, a set of soft law rules of good corporate governance - Codes of Good Corporate Governance - to quickly become "legally binding rules" for the governance of companies, legal duties of supervision and internal risk controls within the framework of business activity that currently cover duties and risks ranging from commercial law, tax law, labor law, administrative law and even criminal law.

On March 5, 2014, the National Code of Criminal Procedures was published, which incorporated in its Article 421 the so-called compliance for companies, in relation to the possibility of attributing criminal liability directly to business organizations. Although the initial focus of the study was limited to the criminal area, compliance goes beyond: it is a comprehensive issue that requires compliance with regulatory and ethical standards both outside and inside companies.

Today's companies must comply with regulatory compliance in a number of areas covering financial, health, labor, criminal, environmental... in short, corporate compliance is a huge niche opportunity for those lawyers who want a change of mentality and performance, where doing the right thing is the rule, not the exception.

In the criminal miscellaneous published in the DOF in June 2016, the rules of procedure for legal entities and the federal crimes for which the criminal liability of the legal entity is applicable were specified. In this regard, there are two models of allocation to companies:

- Direct imputation or vicarious liability model. The company is responsible for the conduct of the individuals who make up the company
- Organizational fault charge model. Lack of controls within the organization.

Compliance in Mexican legislation

The purpose of thissubtopic is to give a very general overview of the normative establishment of the concept of corporate due compliance and its location in the Mexican legal system, with the intention of only superficially visualizingthe location of the main topic of this article and to visualize the legal strength of said concept in the Mexican legal system.

In the case of the criminal system, which was reformed as of 2008 in Mexico, a vision was incorporated regarding the criminal liability of legal entities that are constituted under the country's regulations, that is, with the objective of maintaining a strict vision in accordance with the legal parameters established by such regulations, always in accordance with the provisions of the Constitution.

For the above, the criminal system in Mexico established a spectrum of investigation not only on an individual basis, that is to say, of individual subjects, but also expanded the scope of investigation to legal entities, in the sense that legal entities can be charged if they are directly responsible, in this sense we can say that legal entities, under this new condition, are responsible for the acts they develop and therefore affect any legal sphere of the persons who are alleged as victims in a criminal proceeding.

According to the above, it is important to emphasize that the sense in which criminal law visualizes criminal liability under the spectrum of the concept of compliance goes beyond the individualization of the penalty, when this liability is committed by a group of people and this implies determining what was the action of each one, this action forced criminal law to punctuate the corporate action for those who commit the act, this situation disappears with this new vision and becomes concrete in establishing a responsibility under the concrete action of the company, and determining a criminal responsibility for the moral person, which makes us see that a moral person can violate legal spheres of the persons for not following its determined social purpose.

A new dimension has been established in the new criminal visions in the Mexican legal system, this concept is defined as "self-responsibility" and allows an accusation to the collective entity in an autonomous and direct manner, without requiring an individualized charge, when it is determined that the legal entity circumvented and violated the legal provisions of the criminal law.

In addition to the above, the new ways of imputation are based on a defect of business organization, that is, on the lack of a due control of criminal risks within the collective entity, which could generate the conditions to consider that the operation of the legal entity shows a deficit of fidelity to the law with special reference to the criminal field. Therefore, it is possible that the legal entity could be punctually subject to the imposition of one of the legal consequences contemplated in the Mexican legal system, ranging from a fine, given by a judicial intervention, to the closing or dissolution of the collective entity, without prejudice to the criminal liability that may be incurred individually by certain members of the company.

Corporate crime prevention

The Mexican State maintains the legal conditions to build an accumulation of proposals to create a model of prevention of acts that may be configured as illegal acts in the light of Mexican legal regulations, since with the innovative visions of business law, the possibility that legal entities may commit crimes can be glimpsed, and with this it is necessary to establish a catalog of good practices that allow avoiding the acts mentioned herein that may result in a crime, observing federal conditions.

The above provides us with the need to be competitive for the global corporate world, through preventive actions that manage to maintain the daily business acts as elements of duty to be, that is, in a correct sense with strict adherence to the rules and requirements that it establishes for the development of these acts.

Now, not only Mexican legislation contemplates the legal phenomenon that we have discussed in this text, since it is a new topic that is gradually gaining relevance and is observed from a vision of international legal spectrums, promoting the due exercise for compliance with good business practices for the regulatory purposes of the rule of law.

Based on the above, companies have designed solid corporate governance with maximum quality standards with the aim of covering with social responsibility, because the lack of good corporate governance generally causes a disorder that limits or reduces the generation of value to a company (Cascón, 2019), the above is justified by the fact that with the lack of corporate governance, executives could perform actions contrary to the due ones, for example accepting bribes, deceiving the shares by a bad accounting record, i.e. reporting a false accounting, this because there is no due control over such management, giving the possibility of the same.

In general terms, and according to Governance (1992) we can say that a corporate governance is one with a primary responsibility and it is an element of the company that tries to be able to direct and control the companies through guidelines that allow choosing directors and auditors in order to have an adequate governance structure.

Following Governance's proposals, the attributes that good corporate governance should have are defined:

1. A clear description of the rights of shareholders and other stakeholders.
2. Clearly identified and measurable responsibilities of management and the board of directors.
3. Transparency and accuracy in reporting and disclosure.
4. Fair and equitable treatment in transactions.

Therefore, and according to Cascón (2019) points out the following: "While over time corporate governance has developed and improved, there is always a need for continuous improvement. An example of such improvements is the current confluence of three disciplines: Corporate Governance, Risk and Compliance (GRC)".

In view of all the above, we can contribute and define that corporate governance is the system by which companies are directed and controlled, responding responsibly to shareholders, through the board of directors, which is the main responsible for its management with the objective of complying adequately with the guidelines set by good practices to be in accordance with the ethics of compliance.

As mentioned above, since this topic has been recently adapted to the Mexican business environment, the ideas it provides are innovative. For this reason, it is feasible to affirm that a

minimum number of companies have objectives, manuals or points to follow to ensure solid compliance in business management, thus generating a great risk for the company because any member of the organization could commit an act in violation of good compliance practices. According to López et al. (2022), the following are basic components for the application of compliance in criminal matters:

1. Organizational review: It consists of an audit revealing responsibilities in the company, division of labor and reporting chain, providing a report with risk catalogs in which the risks that the company may particularly incur in relation to its activities are located.
2. Risk diagnosis: Based on the organizational review, each risk is explained in relation to its generation and the factors involved.
3. Elimination of risks: Once the company's particular risks and the factors that generate them have been identified, they are eradicated or reduced.
4. Protocolization: The process to avoid, eradicate or reduce risks must be described in systematic operating procedures manuals.
5. Training: The manuals of procedures for the eradication, reduction and management of risks must be informed to the personnel through courses and workshops.
6. Evaluation: The practice of adequate procedures for the operation of the company's activities, as well as those for forecasting and management, must be constantly evaluated, quantifying their efficiency.
7. Supervision: The correct operation of the company, as well as compliance with risk prevention and management programs, must be constantly monitored.
8. Receipt of complaints: Compliance programs should have a procedure for reporting or whistleblowing on infringing or negligent activities.
9. Sanction and awards: Compliance and non-compliance with risk management and forecasting programs should be recognized or penalized.
10. Update: Compliance programs should be reviewed periodically in order to determine and implement changes and improvements according to the dynamics of the company's activity and the innovations that have arisen.
11. Compliance Officer: For proper compliance with risk prevention and management programs, one or more persons must be appointed to be in charge of their implementation, review, supervision and improvement (Ontiveros, p. 23).

Theories of corporate governance.

Through the vision of Cascón (2011, p. 48) he points out that the theories found around the topic of corporate governance seek to explain, understand and help resolve a series of dilemmas, controversies and conflicts that arise in the implementation of corporate governance.

The principal-agent theory. In this theory, the principal agent is established as the problem, which is defined as the challenge of motivating the agent or acting in defense of the principal's interests, not one's own. In the case of corporate governance, it is a question of how to ensure that the company's managers and directors act in the best interests of the shareholders or owners, placing those interests above others that may arise from the ethical conflict between duty and desire.

Larckner and Tallan (2011) suggest that corporate governance is a system of checks and balances that enable organizational control and an optimization of agency cost. On the other

hand, Shleifer and Vishny (1997) emphasize that one of the reasons why corporate governance exists is the principal-agent problem, raising fundamental questions such as:

why should the owners trust the company's managers?

wouldn't the temptation be too great to make decisions that suit them and not the owners?

how to manage the asymmetry of information between managers and shareholders, without prejudice to the latter?

The theory of information asymmetry. George Akerlof (1970) published research on the used car market in the United States, in which he analyzes the behavior of a used car salesman who knows that the car for sale has a defect, but conceals it from the buyer. This difference in knowledge was called information asymmetry, and since then economists use this expression when one party has more information than the other and does not disclose it, trying to benefit from this additional knowledge.

In view of the above and by way of conclusion, the following recommendation can be made in order for compliance in Mexico to be more solid:

1) Strengthen Ethics within the companies, in order to point it out as a habit of each of the collaborators of the same within the business organizations, this element aims to ensure that the behavior is ethical inside and outside the workplace, avoiding incurring directly in crimes, or indirectly, i.e., by complicity or omission.

2) We are at a crucial point for companies, so that Compliance in Mexico must be understood from the perspective of a culture of reporting, transparency, integrity and good faith, as this would ensure that the reporting channels and Ethics line are enabled, which will provide higher levels of confidence, especially if such channel is operated by a third party that guarantees impartiality, anonymity and confidentiality.

3) Compliance has been born under a trend or perspective based on criminal issues, so it has been a constant need to legally prosecute according to the criminal code when a crime is committed under the business behaviors, however, the structure of criminal law is not the only one that could be used with the effect of solving business complications, but we could rely on other branches of law that allow solving the problems that original these complications in compliance, it is necessary to take specific actions and according to the law to not perpetuate the impunity of the criminal act, and mitigate all forms of violence and crime.

Conclusion

Based on the above, Compliance, as a novel perspective of corporate systematization, finds a niche of opportunities in the legal prevention of possible crimes, whether committed culpably or maliciously. Within this text, several theories were categorized, which doctrinally become relevant in business practices, and which provide a normative and structural outline in the actions of the actors involved in such practices. It is the duty of academics, government and businessmen to provide tools for a transparent and adequate management of business participation.

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