JOURNAL OF PUBLIC GOVERNANCE AND POLICY:
LATIN AMERICAN REVIEW

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PUBLIC ADMINISTRATION AND GOVERNANCE

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INTRODUCTION

Without a doubt, the advances of western capitalist societies that we saw during the past decades in several areas of development were astonishing. Evidence of this is everything that has happened in terms of speed and scale in technology, communications and scientific research, just to mention some advances. However, the problems and challenges that these very same societies face in the present and the near future also have an unprecedented scale.

One concern shared by all of us who work in the field of administration and public policy is that governments, and their public administrations, have not transformed with the necessary speed and depth to face these difficult challenges. The considerations I share with you in this document all point in the same direction: how to improve the performance of governments through their public administrations in order to face the present problems and future challenges, and to offer better solutions to the increasingly large, complex and diverse demands made by citizens.

All of these considerations come from one basic premise: public administration must be understood, used and systematically improved as a key resource for governance. The central proposal for this promise to be fulfilled is that public administration becomes the best resource for governance. This would effectively translate into the handling of the economic and social aspects of the development of societies through policies developed in the realm of the public sector or through those that privilege the participation of one or more sectors of society (L. F. Aguilar, 2017).

Under both assumptions, public administration is a mechanism that is very difficult to do without, together, in an indissoluble way, with the active,

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reactive –and even negative– role of public servants. In a considerable amount of specialized literature, this role seems to be limited in public policy to the stage of implementation, which we know to be crucial –as we have confirmed through empirical studies. But once governance is linked to public administration in a virtuous manner, the participation of public servants also appears at the design –and even evaluation – stage of policies.

Public administration is key for governance in at least two different ways: first, because it favors good quality public policies; i.e., in order for public policies to be of good quality, they must be based on the agreement that they are not created in a vacuum, but taking contextual aspects into account as well as the existing historical and institutional arrangements in which public administration operates. Second, citizens receive collective benefits as the result of legitimate administrative processes over which they can demand accountability. (R. Ackerman, 2016, 1).

THE EMERGENCE OF THE NEW PUBLIC MANAGEMENT

The virtuous circle of public administration-governance has faced several obstacles derived from the accent placed on what some authors know as micro-administration, the axis of which can be linked to the emergence of the ideas contained under the conceptual umbrella of the New Public Management (NPM). This means that the performance improvement of different administrations was based on managerial practices and the central notions of the ways in which markets behave, mainly, in competition. The main concern was to comply with the derivative precepts of management and the markets, instead of focusing the institutional and social energy in verifying that the decisions and adopted policies were correctly designed and implemented for achieving objectives of profound social reach.

The thoughtless taking of entrepreneurial ideas and capabilities could be seen in public administrations in several ways: a very important one was that public servants began losing their capabilities as advisors and for influencing the decisions made by elected politicians. This counsel was given to groups of advisors and external –even foreign– consultancy firms, which wasn't a negative decision by itself. However, this displacement did have negative effects and even brought some collateral damages like having stopped the consolidation of professionalization schemes, like careers, or having favored the loss of institutional memory since, among other things, the "new" public servants didn't acknowledge the history and the ways in which their agencies operated.

But even worse than that was the fact of not having considered the political conditions in which these reforms could be carried out, which translated into a simplistic "constant": "reforming" politicians *vs.* "opposing" bureaucrats to those reforms or the other way around. This situation clearly had a negative impact and didn't favor the virtuous circle of turning public administration into governance's best material.

Finally, while "open" recruitment favored more democratic practices, to carry it out under the sole criterion of measuring a candidate's technical capabilities, without considering values such as an "ethical" commitment to service, could have resulted in a sort of purging of those values, running the risk of politicizing the performance of bureaucratic bodies even more so and opening a new door to corruption practices, since the interests of these new managers could be aligned with change proposals different from the ones being driven by the politician in turn.

WHY DID THE NPM HAVE A RELATIVE SUCCESS?

The NPM was attractive because it established a clear idea of performance in an austerity framework that included less expending and doing more from a very clear market standpoint, which was to increase the productivity of the public sectors and the performance of public servants. This sort of remedy could have offered good results if well executed. However, it soon found limits in terms of contextual differences and in the economic and institutional development level. (C. Hood, 1991).

Another problem is that there hasn't been an integration of indicators and measurements that not only refer results ("outputs"). For these measurements to work as references to "improve" institutional –and even individual– performance, they should go through the cause and effect relation that has been absent in so many evaluating initiatives of recent years and which would work to thoroughly assess the social impact of the services being delivered.

In spite of all the aforementioned, it is important to assert that the NPM's ideas and proposals didn't come from a conceptual and professional vacuum. These ideas were taken from management practices, like managing through goals or total quality, and offered a window of intellectual oxygen for one of the central ideas of the eighties and nineties: to make the government operate better with lesser costs. However, the "stubborn" reality shows that, although there have been improvements, there is still so much to be achieved in terms of better governments for societies to count on and public administrations whose explicit commitment continues to be the provision of benefits with the largest possible social reach.

WHY IS PUBLIC ADMINISTRATION KEY FOR GOVERNANCE?

Without a doubt, the conditions in which public administrations currently operate are notably different from what was taking place in past decades, among other reasons, because of what several authors have identified as the dissolution of the State's power.

This has shown repercussions in at least three aspects that characterize current societies: first, the transnationalization of problems, decisions and policies; second, the appearance of national and supranational "autonomous" agencies, which results in a considerable increase of units foreign to traditional administrative structures; and, third, the rise of a growing and renewed need for coordination, but also collaboration. Hence, the growing importance of organized civil society, but also the growing complains of institutions such as Congresses regarding what they identify as an uncontrolled interference of these organizations in the design –and even the implementation– of laws and/or public policies. The enormous virtue of governance is that it favors the necessary balance for these "interferences" to be consistent and to create more solutions than problems. Because of all the aforementioned, it is evident that, in the last decades, public administration, as a field of studies and as a governability mechanism, lost ground before the rising and relative success of the NPM.

Public administration must become a dynamic resource, which means that its institutional solidity mustn't be confused with rigidity and the impossibility to introduce new resources and processes useful to adapt to these fast-changing times. That is why internal aspects should be considered, without losing perspective of what is happening in external environments. Problems such as security, environmental instability, environmental sustainability, natural and energetic resources, among others, require very solid institutional designs, but also with international exchanges that allow to add efforts and to find solutions for problems that went from being national to become problems of a different magnitude that transcended borders.

WHAT DOES GOVERNANCE OFFER?

Without a doubt, governance is an ambiguous term that, in many instances, has been used to give content to several situations far from its true essence. The accent for trying to understand it shouldn't be placed on the managerial and technical capabilities of public administrations, but on their intervention for generating decision-making processes with the largest possible degree of consensus.

Therefore, proposals of homogeneous nature that didn't acknowledge different specificities or unequal administrative developments favored the fact that the NPM's contributions couldn't be accepted in several countries. One of the greatest challenges for governance was to try a virtuous balance between those NPM instruments that were adequate for public administrations and improving those that, guided by a solid political and economic support, could be aligned with the explicit purpose of improving all of which is done from the government.

Thus, governance would mean the conduction –not the operation– by the State/government and the public administration of the economic and social development. This conduction would materialize through policies in which –at different levels and through different proposals– other social actors would get involved in their making as well as in their implementation, placing the nature of what's public at its center, therefore, distancing itself from the dominating criterion of efficiency and moving its center towards fairness, integrity and accountability. This theoretical/practical quandary: management/NPM or Public Administration/Governance for facing future challenges in the task of governing represents important differences in diagnoses and proposals.

AS A CONCLUSION

To think in terms of governance is not to deny the importance of economic, technical and scientific knowledge, but to look for the right balance between administration and participation beyond the ballot boxes for producing policies. Also, when looking for solutions in specific areas of economic and social activities, it is important to consider –as it was stated before– not only the internal contexts, but the also the external ones in complete awareness that these two are correlated.

Instead of considering governance as a new paradigm, one should view it as a method for public action to surpass the adverse results that have taken governments and their public administrations to a very difficult dilemma for generating effective solutions with wide social impact.

The idea of governance *per se* perhaps is not as clear as its theoretical defense defines it, but it is decisive for clearing the ways to improve institutional developments, as long as interventions at a micro level can be contextualized and adjusted in terms of previous experiences and innovative proposals as well. At the same time, large-scale changes must be suggested to push for improvements –which doesn't mean structural ruptures that destroy rather than build a base for further development. (M. Grindle, 2016, 4-7).

Thus, Governance implies the production or co-production of policies by the State, or other non-state actors, in all the different levels in which governments are organized since there is a present and growing need for collaboration in solving problems that, as it was mentioned before, even surpass national borders to become transnational problems combined with urgent local problems. This represents a challenge of a higher magnitude and depth.

Firstly, this means to know which capabilities and abilities are required of public servants to face this challenge. This would have to be centered on problem solutions rather than if they do or do not belong to a Weberian model or to the NPM. Secondly, to know –with a great degree of accuracy– what margin of innovation can be developed without falling into excesses that favor discretion or illegality. This innovation would then represent the generation, acceptance and implementation of new ideas that could have a positive impact in processes, products and services. Thus, a cycle of coming and going is presented: "renewed" administrative capabilities that facilitate the new governance, while innovation in governance helps the generation of better administrative capabilities. Thirdly, to generate mechanisms for assessing results, centering this axis on the causal relation of need/problem *vs.* result/impact. This must be done considering what can be achieved to avoid disappointments within bureaucracies as well as among citizens, acknowledging in a realistic fashion what the political/administrative systems are or aren't capable of doing. (*The Governance Report,* 2014,18).

Lastly, governance must be understood as the government's "rescue" mechanism. It offers a broad potential for better solutions to growing and serious social problems by finding a better balance between the offer of mechanisms that favor efficiency as the result of better capabilities for analysis, service, regulations and coordination/collaboration, as well as the incorporation of different values/attributes such as equality and integrity. Thus, public servants and non-governmental actors would have a larger margin for generating broad consensus that would allow participation and the necessary "political" legitimacy of those public actions, always looking for the greater benefit for society.

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COLLABORATION/RESISTANCE: GOVERNANCE MODELS AGAINST FORCED DISAPPEARANCE

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ABSTRACT: In this work, we examine the array of interaction schemes opened by groups of victims' families and government authorities, as well as the participation of other social actors, both local and international, in order to identify different governance models, build in different ways, from resistance to collaborative work; from the governance of victims to those imposed by the State.

KEYWORDS: Governance, forced disappearances, victims, access to justice.

INTRODUCTION

The forced disappearance of tens of thousand people in Mexico, in the context of the country's war against organized crime which, in 2007, became worse and expanded to encompass the whole territory, has motivated the appearance of dozens of groups of victims 'families that report the authorities' indifference before the problem; demand that their loved ones are found; and fight for the truth to be known. These groups have developed their own repertoire of actions to introduce the problem of forced disappearances into the public agenda, including innovative and extralegal forms for interacting with authorities: a type of governance from the bottom.

The State's responses to this problem have changed through time and different entities in the country, going from denying the problem to working together with family organizations for examining case files and developing protocols, tending to these groups' initiative. However, the vigorous entrance

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of the General Law in matters of Forced Disappearances, Disappearances Committed by Individuals and the National System of People Search in January 2018 has set in motion a series of devices aimed at regulating the participation of family organizations in the investigations and search of their loved ones: a type of governance from the top.

In this work, we examine the array of interaction schemes opened by groups of victims' families and government authorities, as well as the participation of other social actors, both local and international, in order to identify different models of governance, build in different ways, from resistance to collaborative work; from the governance of victims to those imposed by the State, as well as the effect that these dynamics have had in the generation of public policies related to this problem –particularly in the kind of governance drafted in the General Law in matters of Forced Disappearances, Disappearances Committed by Individuals and the National System of People Search approved by the Mexican parliament in October, 2017.

In this paper, we present a general revision of the interaction between government authorities and groups identified between 2001 and 2017. We will then turn our attention to the case of Nuevo León. And, finally, we will analyze the design of participation mechanisms for several actors within said General Law. The information herein is based on press sources, official documents –both from groups and the government– as well as videos shared and spread by these same groups.

This work is part of a research project, "Accountability in the fight against organized crime: The cases of forced disappearance" (*La rendición de cuentas en el combate a la delincuencia organizada. Los casos de desaparición forzada*). This was developed during a post-doctoral stay between 2012 and 2013 at the Historical and Social Research Institute (*Instituto de Investigaciones Históricas y Sociales*) of the Universidad Veracruzana, and on which we have been working ever since then. The novelty of the present text resides in the analysis of the relation between the State and the groups of victims' families, and of the recently approved General Law as well, from a governance perspective.

ON GOVERNANCE AND PARTICIPATION

The increasingly abundant works on governance define it as a managerial process of society, in which the government, the productive sector and organized society, or the civil and social sector, participate in a coordinated manner, each one of them with more weight and capabilities for influence than the other, depending on the historical development of their social and

government relations within a specific community (Aguilar, 2010; Ospina, 2006; Subirats, 2010; Zurbriggen, 2011). In currently existing governance schemes, participants are never equal, which is why the most powerful groups, the most homogenous and those that enjoy a strategic vision of their own interests are the ones that always accumulate the largest probabilities for success (Graña, 2005). Decisions are built within a community of closed and sealed policies to any influence that does not come from high-level public servants or the private sector involved in the real estate and construction business. This kind of policy communities remains in the shadows, away from the public, which is why their policy management is a lot like a black box that hides the way in which decisions are reached and are only presented to society as an already designed plan or program imposed with no room for modifications whatsoever.

Prats' accuracies are noteworthy in the sense that democratic governance implies a symmetric inclusion, not only of the private and public sectors, but also of the civil and social ones as well. For this, it is necessary for "social interests to have an real opportunity to organize and inform themselves and to participate in the decision-making interactions" (Prats, 2006, p. 28). In this type of governance, the constant symmetric dialogue is the context of the relation between government and citizens.

That is why we cannot talk about just one type of governance, but of several. As for the origin of the initiatives to generate a governance scheme, Tapia Gómez (2007) talks about those that reside among the people; that come "from the bottom" and benefit "those below" when, in adverse circumstances, the State is not capable of dealing with their needs, which is why groups of poor or excluded people organize themselves for solving their situation, forming what is known as "anascopic governances". The type of governance that originates by the initiative of the State or large economic corporations or international organisms are called "reticular governances" and she points that, even these promote network relations among diverse actors, keeping "a vertical perspective –made manifest by their intentions– of legitimizing the prevailing social system; of trying to maintain the *statu quo*" (p. 342). In different terms, these are either "bottom up" or "top down" governances due to their origin, the interests that they serve and the identity of their protagonists.

In the process of public policies, citizen participation constitutes a fundamental element, a condition for the possibility of democratic governance –even a mechanism for social empowerment (Canto, 2008). But we also must recognize that participation can have different significance and effects. It can be limited to give opinions or it can get to watch over and audit management, even redirecting it whenever it deviates from its objectives for the common

good; it can serve to endorse group decisions without objections or it can open the door to considering the needs and points of view of excluded social groups. That is why Peters (2004) warns of the risk that citizen participation is translated in governance as a "pact of simulation" in which civil society organizations lose their autonomy and are only there to legitimize the government's doings. This risk is also present in the participation of groups of families of forced disappearance victims in the implementation of the National People Search System, as we will see below.

The participation that includes citizens in the definition and design of policies and makes them public always faces strong resistance from those actors used to a reduced and select participation that doesn't force them to account for their decisions, or to reveal and scrutinize the reasons why a certain public policy is favored and, with it, a certain project or social future. These resistances can become evident when, on the one hand, formal participation channels are opened but, at the same time, the incidence that they can have on the redirection of government action is limited when they try to guarantee the rights of the excluded or more vulnerable members of society. That is why, in the following sections, we revise the actions that the groups of families of forced disappearance victims have implemented by their own initiative, on the one hand, and, on the other, the model of involvement of these groups which was captured in the General Law in matters of Forced Disappearances, Disappearances Committed by Individuals and the National System of People Search.

If being part of public policy is a form of exercising citizenship, then we must recognize the existence of inequalities that prevent the people's full exercise of their rights. This context must be taken into account when creating institutional forms of participation, since there is a risk that these new instruments become monopolized by those non-government actors that have greater ability and capacity for effective organization and influence which, paradoxically, would turn the institutionalization of citizen participation into another factor that grows and deepens social exclusion.

Citizen councils constitute one of the most used instruments in many countries for formalizing the intervention of non-government actors in public matters, whether in national, state or municipal governments. These are organic mechanisms that imply the insertion of extra governmental actors in the State's administrative structure without turning them into public servants. In occasions, councils are created in non-systematic ways, but in others, they become part of a public policy of citizen participation that cuts through all of the government's management. In any case, the institutional design of these

councils offers different possibilities, all related to the degree of the regime and society's democratization, and to the type of citizenship intended to build. Thus, managing councils are created within some societies in which citizens immerse completely in the policy processes: from defining the public problems that will be attended, to the design, implementation and evaluation of public actions. In other societies, councils have an exclusive consultative nature and their suggestions and opinions are not mandatory for the government's authority that holds the final decision on the matters to be dealt, the design and the execution of programs and, sometimes, even the evaluation of their own performance. In a democratic regime, councils would be integrated by using elective mechanisms that include a diversity of interests whereas, in authoritarian regimes, the leader would designate councilmen, giving preference to powerful economic or ideological actors with whom he/she is compromised, leaving common citizens aside.

On the institutionalization of the formal participation of citizens through rules and standards, the question of "how much institutionalization is needed so as to not suffocate social autonomy and, at the same time, not make citizen participation vulnerable" (Cunill, 2008, p. 127) remains to be solved. However, the rules and institutions do not mark the definitive limit of citizen participation since, in the absence of formal channels, citizens can take collective action that forces an democratic opening in a regime. Recent history shows us that this has happened in several nations –including Mexico: citizen mobilizations push for changes that–, gradually, open the way for the inclusion of more social actors in the process of public decision making. In this text, we will also see how, before the State's indifference, some groups of victims' families tried to access the decision making spheres and introduce the problem of forced disappearances into the public agenda, pushing authorities to accept them as spokespeople in the task of justice administration. This type of governance, pushed from the bottom by victims and human rights organizations, is now being taken by the State's institutions for regulating and molding it through the General Law in matters of Forced Disappearances, Disappearances Committed by Individuals and the National System of People Search, as well as by other instruments derived from it for including protocols of how this should be in the different spheres of the National System of People Search and the State's systems. Thus, a revision of the design of these participation mechanisms, their workings and results has become fundamental, as well as the observance of the direction that the participation of the victims' families takes beyond the formalized legal schemes.

THE GOVERNANCE CREATED BY THE VICTIMS' FAMILIES

From the very first years of the 21st Century, across different entities in the country, groups have emerged reporting the social effects of the increase in criminal violence and the militarized combat against it that began in the 1990s and became worse by 2007. Particularly, the voices and actions of the groups of victims' families are increasingly standing out, demanding the State to recognize the existence of this problem and to take action, not just to penalize those responsible, but to find those whose freedom has been taken away and to amend the damages inflicted on both direct and indirect victims. Ever since 2001, the creation of these groups follows the geography of violence of the drug dealing cartels and the State's militarized combat against them: Baja California, Sinaloa, Chihuahua, Tamaulipas, Coahuila, Nuevo León, Durango, Veracruz, Guerrero, Michoacán, Oaxaca and Sonora[1] (although recently, similar groups have been created in the State of Mexico, Guanajuato, Jalisco, Morelos, Nayarit, Querétaro, San Luis Potosí, Tlaxcala). In Table 1, there is a list of all identified groups between 2013 and 2018. These organizations have taken their demands and painful indignation to Mexico's streets and squares, because they are convinced that this is not an personal problem that could be solved privately through dealing individually with the State, but one that must be talked about in the public sphere because it hurts society and requires the attention of the government, casting serious doubts over its discourses and institutions that proclaim democracy and human rights, and is an evidence of the government's negligence and –in some cases– complicity of their agents.

The families of forced disappearance victims are indirect victims them-selves of this crime. They are the ones that have managed to make way through the indifference of society and the government in order to make this problem visible –which shows that the existing procedures for administrating justice do not work and that the current legal framework neither guarantees the victims' rights nor the search for the truth. These actions have brought these families to the situation's center stage, not as passive receivers of society's sympathies and public assistance, but as active subjects that, in their fight for justice, have become increasingly involved in innovative participatory forms that have empowered them and turned them into important driving forces for change within the legal system and the management of justice administration.

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1   These federative entities coincide with the places where "joint operatives" between the police and the military took place during the last year in office of President Vicente Fox –between 2005 and 2006– and during the presidential term of Felipe Calderón –between 2006 and 2012.

TABLE 1. COLLECTIVES OF RELATIVES OF MISSING PERSONS (2013-2018)

Collective name	States where they are present
Asociación Ciudadana contra la Impunidad, A. C.	Baja California
Unidos por los Desaparecidos de Baja California, A. C.	Baja California
Asociación Esperanza contra la Desaparición Forzada de Personas y la Impunidad, A. C.	Baja California y Sinaloa
Comité de Madres y Familiares con Hijas Desaparecidas en Cd Juárez	Chihuahua
Familiares Organizadas con Red Mesa de Mujeres	Chihuahua
Familiares organizados con Centro de Derechos Humanos Paso del Norte	Chihuahua
Justicia para Nuestras Hijas, A. C.	Chihuahua
Madres Unidas	Chihuahua
Nuestras Hijas de Regreso a Casa, A. C.	Chihuahua
Alas de Esperanza	Coahuila
Familias Unidas en la Búsqueda y Localización de Desaparecidos de Piedras Negras	Coahuila
Fuerzas Unidas por Nuestros Desaparecidos en Coahuila (FUUNDEC)	Coahuila
Grupo V.I.D.A., Víctimas por sus Derechos en Acción	Coahuila
Colectivo Colibrí	Estado de México
Colectivo de Deudos y Defensores por la Dignidad de Nuestros Desaparecidos	Estado de México
Colectivo de Familias de Guanajuato	Guanajuato
Colectivo de Familiares de Desaparecidos "Siempre Vivos"	Guerrero
Comité de Familiares y Amigos de Secuestrados, Desaparecidos y Asesinados en Guerrero	Guerrero
Los Otros Desaparecidos de Iguala	Guerrero
Familias Unidas por Nuestros Desaparecidos Jalisco (FUNDEJ)	Jalisco
Comité de Familiares de Personas Detenidas Desaparecidas en México ¡¡Alzando Voces!! (Cofaddem)	Michoacán
Frente de Víctimas del Estado de Morelos	Morelos
Víctimas y Ofendidos del Estado de Morelos, A.C.	Morelos
Familias Unidas por Nayarit	Nayarit

Continued Table 1.

Collective name	States where they are present
Guerreras en Busca de Nuestros Tesoros	Nayarit
Agrupación de Mujeres Organizadas por los Ejecutados, Desaparecidos y Secuestrados de Nuevo León, (AMORES)	Nuevo León
Fuerzas Unidas por Nuestros Desaparecidos en Nuevo León (FUNDENL)	Nuevo León
Red Eslabones por los Derechos Humanos	Nuevo León, Michoacán, Estado de México, Veracruz
Comité de Familiares de Detenidos-Desaparecidos Hasta Encontrarlos	Oaxaca y Michoacán
Desaparecidos Justicia, A. C.	Querétaro
Unidos Buscando a Nuestros Desaparecidos	San Luis Potosí
Voz y Dignidad por los Nuestros	San Luis Potosí
Desparecidos del El Fuerte, "Las Rastreadoras"	Sinaloa
Unión de familiares de desaparecidos de Sinaloa en los años 70's	Sinaloa
Voces Unidas por la Vida	Sinaloa
Colectivo 21 de Mayo	Tamaulipas
Colectivo de Desaparecidos de San Fernando	Tamaulipas
Colectivo de Familiares y Amigos de Desaparecidos en Tamaulipas	Tamaulipas
Colectivo Milynali Red CFC, A.C.	Tamaulipas
Colectivo Jiménez	Tamaulipas
Colectivo Aldama	Tamaulipas
Colectivo Abasolo	Tamaulipas
Colectivo Reynosa	Tamaulipas
Colectivo Nuevo Laredo	Tamaulipas
Buscando a Nuestros Hijos Ausentes Ciudad Victoria	Tamaulipas
Red de Desaparecidos en Tamaulpas	Tamaulipas
De Pie Hasta Encontrarlos, A. C.	Tamaulipas
Búsqueda Colectiva Zona Sur	Veracurz
Buscamos a Nuestras Hijas A.C.	Veracruz

Continued Table 1.

Collective name	States where they are present
Buscando a los Desaparecidos y Desaparecidas Veracruz	Veracruz
Colectivo de Familares Enlace Xalapa	Veracruz
Colectivo de Familiares de Desaparecidos de Orizaba y Córdoba	Veracruz
Colectivo El Solecito de Veracruz	Veracruz
Colectivo por la Paz Xalapa	Veracruz
Familiares de desaparecidos y desaparecidas de Xalapa	Veracruz
Familiares en Búsqueda "María Herrera" A. C.	Veracruz
Familiares en Búsqueda Coatzacoalcos	Veracruz
Red de Madres Veracruz	Veracruz
Solecito Cardel	Veracruz
Solecito Córdoba	Veracruz
Solecito Veracruz	Veracruz

These are the groups that drive what can already be considered as a social movement made out of victims. Gallagher (2013) stresses that "complex networks of global NGOs working in conjunction with local NGOs and the people's movements of victims and citizens drive the defense of human rights in Mexico". However, in the case of forced disappearance victims, before such complex networks, some of the victims' family members began the fight for making this problem visible by demanding justice on their very own. Once they decided to speak out and take action in public, they formed groups that took collective action. Some of these groups have managed to get support from human rights civil organizations, forming or incorporating more complex networks with actors that sympathize with their cause and demand accountability from their governments in relation to their guarantees of civil rights.

The actions carried by the groups of forced disappearance victims' families go against the current of indifference of their society and governments, and contribute to lay out the need for social grief in the public sphere for the thousand of victims of crime and the fight against it. The struggle of organized victims –specifically in the case of forced disappearances– is what this essay considers to be an example of non-institutional citizen participation demanding accountability; watching over the work of authorities; applying symbolic

sanctions; presenting legal and public policy proposals. These actions have been seen outside any legal frameworks over at least 15 years (considering that the first of these groups reported in the public media date back to 2001 in Ciudad Juárez, Chihuahua; Tijuana, Baja California; and Culiacán, Sinaloa).

The family organizations have made this problem visible in the entities where they carry out their actions, but the placement of this matter in the national agenda did not happen until the caravans organized by the 2011 Movement for Peace with Justice and Dignity (*Movimiento por la Paz con Justicia y Dignidad, MPJD*). The local press of each entity has given different coverage to these groups of families. Among their common activities, stand out the registry of cases that they receive directly or that are published in the media; protest sit-ins –known as *plantones*– in city squares and outside of government offices; press conferences; spreading cases in social media; and investigations of the whereabouts of their loved ones. Among all of these actions, we identified those that could be guided towards the treatment of forced disappearances as a public problem that should be included in the public agenda and for which an integral public policy should be designed. These actions could grouped in the following way:

a. *Case registry and documentation*. It includes recollecting the information of their loved ones' cases and of those cases registered in the same federative entity, using data from news in local media and the reports they receive whenever they carry out public events and people approach them to ask them for help in their own cases. In this way, these groups have come to measure this problem with greater accuracy than the government itself. Not only do they keep track of the number of forced disappearances, but also analyze as well, allowing them to detect similarities and tendencies in the different occurrences of this crime. The most polished product of this work is the reports that some of these groups have presented.

b. *Public denounces.* Sit-in's, protest marches –even fastenings and hunger strikes. These are some of the actions they carry out on the streets, squares and in front of government offices, always carrying posters with the pictures and names of their missing loved ones; with the police patrol car numbers involved in certain cases; pointing the names of neglecting public servants. Aside from the squares and streets, public denounces have also spread extensively through the Internet in blogs, social networks and alternative media. These groups coordinate themselves for presenting these denounces –some even presenting their own official statements regarding certain situations of their struggle.

c. *Dialogue with the authorities.* In several occasions, these groups have sought communication channels with the state or federal government authorities, but only on very few occasions have they been listened. Some have only managed occasional meetings, while others have even managed to formalize public meetings for analyzing certain cases of forced disappearance. The formal and periodical dialogue experiences between the authorities and the families of forced disappearance victims have been developed by groups in Coahuila and Nuevo León, where they have carried out strategies a little bit more systematic of dialogue through the establishment of periodical tasks forces for tracking the progress of cases. These groups include the United Forces for Our Forced Disappeared in Coahuila (*Fuerzas Unidas por Nuestros Desaparecidos en Coahuila, FUUNDEC*), ever since 2009, and the Group of Organized Women for the Executed, Kidnapped and Forced Disappeared of Nuevo León (*Agrupación de Mujeres Organizadas por los Ejecutados, Secuestrados y Desaparecidos de Nuevo León*) since 2011. Below we will specify the nature of these interaction schemes.

d. *Push for legal frameworks.* The groups of families of forced disappearance victims have elaborated legal initiatives and have sought for lobbying them in parliaments, although, commonly, they end up resorting to public rallies for pressuring lawmakers to listen their demands. These initiatives fight for the recognition of victims' rights, the classification of the crime of forced disappearance, as well as for several support measures for families that go through a series of economic and social problems because of the forced disappearance of their loved ones and need legal recognition for declaring their absence a forced disappearance, without meaning that they are deceased.

e. *Search of forced disappearance victims.* Search brigades in the field, occasionally accompanied by government agents, that have led to the discovery of dozens of hidden mass graves all over the country.

f. *Network creation.* The families of forced disappearance victims build ties with similar groups in different states, looking for the solidarity and accompaniment of other civil organizations so that they can also carry their cause. In 2010, several groups of families formed the National Campaign against Forced Disappearance (*Campaña Nacional contra la Desaparición Forzada*), together with other popular and human rights organizations. In March of 2015, the Movement for Our Disappeared in Mexico (*Movimiento por Nuestros Desaparecidos en México*) was formed by groups of victims' families and organizations that offer their support and accompaniment. In 2016, the National Search Brigade for Disappeared Persons (*Brigada*

Nacional de Búsqueda de Personas Desaparecidas), integrated by groups from Guerrero, Coahuila, Sinaloa, Chihuahua and Baja California, dedicated itself to searching human remains and hidden mass graves. Other networks in several states include the "Link" Network for Human Rights (*Red Eslabones por los Derechos Humanos*) and the United Forces for Our Disappeared in Mexico (*Fuerzas Unidas por Nuestros Desaparecidos en México, FUNDEM*). Some state networks have also been formed, like the Citizen Community in Search of the Forced Disappeared in Tamaulipas (*Comunidad Ciudadana en Búsqueda de Desaparecidos en Tamaulipas*).

g. *Memory building.* Special dates like the 10th of May (Mother's Day); the last week of May in which the World Week of Forced Disappearances is celebrated; August 30, the International Day of Forced Disappearance Victims… These are all special occasions in which groups of families organize public events for reminding society and the authorities of the problem's current situation and their lack of response before it. The publishing of books and testimonial videos is another form of building a memory of the victims of forced disappearance and not forgetting this national tragedy.

THE DIALOGUE MODEL PUSHED IN NUEVO LEÓN

Among the many undertaken actions of these groups is the dialogue with authorities for a precise tracking of concrete cases of forced disappearance, with the purpose of reviewing the progress of government investigations and not only demanding them to find and punish the guilty parties but, above all else, to find the victims. The participation of these groups in the investigation process of law administration offices does not follow any established formal channels because laws do not comprehend this sort of involvement –which is why these groups of victims resort to drive these kind of innovations. In some cases, they have been so successful that they have even created semi-formal channels for talking to the authorities: these channels do not exist before the law, but they are carried out in official settings, become formal investigation processes and are made public as legitimate participations. This achievement has a lot to do with the opportunities offered by the context and the capacity of political incidence.

Among the experiences of direct dialogue with authorities, the case that has reached its fullest and most lasting expression is in Nuevo León, where the Group of Organized Women for the Executed, Disappeared and Kidnapped of Nuevo León (*Agrupación de Mujeres Organizadas por los Ejecutados,*

Desaparecidos y Secuestrados de Nuevo León, AMORES), accompanied and advised by a NGO, Citizens in Support of Human Rights (*Apoyo a los Derechos Humanos A. C., CADHAC*) has developed a scheme of dialogue and cooperation with the state's attorney general's office ever since 2011. The UN's Task Force on Enforced or Involuntary Disappearances considered this liaison as a "good practice" in its September 2015 report (GTDFI, 2015). In general terms, these are formal encounters between families and authorities, in which case files are revised with the purpose of evaluating the progress of several investigations. These are interaction schemes created and modeled by the victims' families themselves as they went along, together with human rights activists that found the disposition of some state authorities to participate. These are extra-legal mechanisms that have introduced groups to the center of the formal spheres where the administration of justice takes place. They have managed to call attention on the urgency of finding the whereabouts of victims –since justice administration has focused on the pursuit of the related crimes and search for the responsible parties, without looking for all the missing people.

This model for dialogue began in 2011. In that year, when violence was at a peak, the Caravan of Solace (*Caravana del Consuelo*) reached Monterrey on June 7th, driven by the Movement for Peace with Justice and Dignity (*Movimiento por la Paz con Justicia y Dignidad, MPJD*) headed by the Mexican poet Javier Sicilia and Emilio Álvarez Icaza. After arriving at the square of the Civil College, they listened the testimonies of people looking unsuccessfully for their disappeared family members, without support from the authorities. Sicilia and Álvarez suggested paying a visit to the state's attorney general and, by midnight, then state attorney Adrián de la Garza received a group of families of forced disappearance victims, CADHAC representatives and MPJD members, and committed to show them progress in their matters. That is how a process of dialogue began between the state' attorney general's office and the families of forced disappearance victims advised by CADHAC. This process continues through periodical meetings in which case files are reviewed, proposals are made and agreements are reached for advancing these investigations. Between January of 2011 and January of 2018, 30 meetings of this type have taken place.

Days before each of these encounters between families and the attorney general's office, CADHAC issues a statement broadcasted by the media and in social networks for rallying society to join them on the day of the meeting, marching from the square of La Purísima to the state's attorney general's office, some six blocks away, and wait outside these premises for hearing the results of the meeting. By the end of the meeting, CADHAC issues another statement

to inform if there were any new advances or what new difficulties were found in the progress.

These dialogue meetings are formal, collective, face-to-face encounters between public servants of the state's attorney general office (district attorneys, coordinators, sub-prosecutors and prosecutors) and families of forced disappearance victims (AMORES), accompanied by CADHAC to review the compliance of tasks in the investigation of each case. In each gathering, agreements are reached in relation to new tasks that should be carried out in each case (localizing and questioning witnesses, follow-up of clues, transfer official documents to other government's agencies that could support the finding of victims or gathering new evidences). The families are key informant for investigations to move forward since they are the ones that supply vital facts that could determine their direction. The revision and evaluation of the fulfillment of these commitments is a key part of this dialogue.

The difficulty of passing from a scheme in which victims are not taken into account and their families are left behind to one in which there is a formal dialogue between them and the investigative authorities with the purpose of finding these disappeared persons, is reflected in this statement given by CADHAC's director, Consuelo Morales:

> At first, it was horrible. Neither the State nor us trusted each other. The truth is that those first meetings were tense; you could cut the air with a knife. It wasn't until the eighth meeting when they offered us a soda –because we had been working for hours and hours without a break. But gradual changes began taking place. I believe that, basically, changes took place because we were arguing based on facts. It wasn't about going in and blaming public servants just for blaming someone. It was about working, reviewing case files, detecting at which point did investigations stopped and finding how to carryall this work through. It was somewhat technical (from an interview made on August 27, 2012).

With the 2015 change of government, the meetings between families, CADHAC and the state's attorney general's office continued, although in the absence of the state's attorney general and without his direct participation, unlike the years before, in which he had personally attended the creation of 23 task forces between 2011 and 2015. The direct involvement of the state's attorney general, the sub-prosecutors and directors of different areas, favored accountability, since district attorneys and their coordinators presented a report of their work not only before the victims' families, but also before their superiors in the hierarchy. Besides, is there should be any difficulty presented itself in the implementation of tasks, the attorney general was there to offer solutions

that could streamline the investigative work. In 2017, only two meetings of this type took place. During meeting number 28, carried out on April 27th, the mechanism for work was reassessed. This is how CADHAC explains what happened in their press release following the meeting:

> This time, besides our usual revision, we used a new work model, looking to identify different variables of information for finding people. Even though we will continue to use the case revision method that we had been using up to this point, this new method intends to paint a bigger picture of the social context of violence that has been taking place in our state ever since 2007 and to understand the role that each of the involved actors had in it. We hope that this new path allows us to get closer to the truth and to find justice for the victims of these crimes and their families.

On the celebration of August 30th, 2017, the International Day of Forced Disappearance Victims, in a new press release, CADHAC announced the achievements of their dialogues with the authorities:

> […] they increased their attention and resources for the search, reviewed the files of 236 forced disappeared people, 63 people were taken into custody, 22 were sentenced (of which, 18 were police officers) and 169 people were found (94 by way of their DNA; 75, still alive), as well as approved a protocol for immediate searches, just to mention a few. This allowed some families to find their loved ones, mitigating the pain of all other families by giving them a ray of hope. However, from the year 2015 on, there has been a setback from all that had been accomplished. The disappearance cases remain open. Families that haven't found their loved ones yet suffer not only because they do not know where they are, but because everything else that their absence entails: boy and girls without their father or mother; grandmothers that lost their sons or daughters and now must raise their grandsons, aside from living through a serious damage to their economic situation, worsening of health conditions, problems with bank credits and social housing, criminalization of their families, among many other difficulties they must face.

Through periodical dialogues with the Attorney General's Office of Nuevo León (*Procuraduría General de Justicia de Nuevo León, PGJNL*), CADHAC and the victims' families that form AMORES, they detected that the human and technological resources of the ministerial police weren't enough to carry out a field investigation effectively before the enormous amount of forced disappearance cases in the state. That is to say that the political good urgently had to be accompanied by an increase of personnel and technical resources of the state's attorney general's office, both in quality and quantity. To contribute to the creation of search mechanisms, in may 2013, a task force was organized for

elaborating the Search and Investigation Procedure for Forced Disappearance Victims, in which participated Fernando Coronado, representative of the Human Rights Commission of Mexico City; Alan García, from the Mexico Office of the High Commission of the United Nations for Human Rights; Luis Eduardo Zavala from Monterrey's Technological Institute (*Tecnológico de Monterrey*); and Alejandro Valencia, an independent advisor in matters of Human Rights in Colombia, as well as members of the legal team of CADHAC. Other work meetings also took places with members of the PGJNL, until they were able to structure a document that set the procedural guidelines of the state attorney general's office before cases of forced disappearances and set the standards of the actions to be taken. This protocol also encompassed a State Questtionaire for Immediate Search (*Formulario Estatal de Búsqueda Urgente, FEBU*) that is filled by public servants from the Orientation and Report Center (*Centro de Orientación y Denuncia, CODE*) whenever they receive a forced disappearance report. The protocol established the creation of a Unit of Immediate Search which began operations in March, 2014, under the name of Specialized Group of Immediate Search (*Grupo Especializado de Búsqueda Inmediata, GEBI*). This unit relies on full-time specialized and dedicated personnel that searches for forced disappearance victims, with capabilities for responding instantly to any presented report of missing persons, since its objective is to focus completely on the search and location of missing people without regarding under what circumstances did the disappearance occurred. This unit has the responsibility of carrying out all the required tasks of an immediate search of missing persons, from the moment in which the authority receives the report. An evaluation of the GEBI's first year of operations –from March 2014 to March 2015– showed an efficiency of 88% of the received cases (CADHAC, 2015). However with the state's change of government in October 2015, the Procedure of Search and Investigation of Missing People stopped being applied and the GEBI stopped receiving missing person reports. In a new supervision carried out by CADHAC in 2016, the organization found that the GEBI's efficiency had lowered considerably and that its operation even had deviated from its main objective: the setting in motion of the Protocol of Search and Investigation of Missing Persons. CADHAC's assessment of GEBI, published at the beginning of 2017, encompassed the quantitative and qualitative investigation of the GEBI's work from April 2015 to December 2016. It was found that all reports related to involuntary or forced disappearances were not handled by the GEBI but were channeled to different areas of the PGJNL, where the Protocol of Search and Investigation of Missing Persons was not followed, while the GEBI destined its time and resources to handling reports of missing or lost persons. The main conclusion of this assessment

was that the GEBI has drifted away from the main objective for which it was created: to be an efficient and effective mechanism for the immediate search of forced disappearance victims.

After 30 work meetings, some forced disappearances victims have been found alive, but these only happened when their families approached CADHAC immediately and made reports before the authorities during the first hours or days after the event happened. Thanks to this organization's pressure in those cases, it has been possible to find a forced disappearance victim at some police station, even if their presence at those premises had been previously denied by government agencies. Therefore, we cannot talk about a change in the police structure yet since, if it wasn't for CADHAC's intervention, families would be ignored by the authorities whenever they reached them to ask if their loved one was detained by them.

GOVERNANCE REGULATED IN THE LAW

The General Law in matters of Forced Disappearance Victims, Disappearances Committed by Individuals and the National System of People Search, in its 2nd Article, establishes that its objective, among other things, is:

> VII. To establish the form of participation of families in the design, implementation, supervision and evaluation of the actions of search and identification of Forced Disappearance Victims and Not-Found People, as well as guaranteeing their contribution in the investigation stages, so that they can include their opinions, receive information and contribute leads or evidences.

Of all the mechanisms set to comply with the aforementioned, the General Law describes the National Citizen Council, an enquiry body of the National System of People Search, which is the higher branch for articulating efforts to search and find forced disappearance victims. Federal and state public servants, and three representatives of the National Citizen Council, according to Article 45, will predominantly integrate this system:

> Article 45. The National System is integrated by:
>
> I. The principal of the Secretariat of the Interior that will preside it;
>
> II. The principal of the Secretariat of Foreign Relations;
>
> III. The principal of the Office of the Attorney General of the Republic;
>
> IV. The principal of the National Commission of Search; who will work as an Executive Secretary;
>
> V. The principal of the Executive Secretariat of the National System of Public Safety;

VI. Three people from the Citizen Council that represent each of the sectors that form them;

VII. The principal of the Federal Police;

VIII. The principal from the Local Search Commissions, and

IX. The person that designates the National Conference of Justice Administration.

It is evident that the weight that the Council may have in the decisions made within the System is minimal, since its sessions will be valid with the assistance of the majority of their members –without specifying the need for the Council members to be present. Also, resolutions will be reached through a majority of votes and, in case of a tie, the President will have an additional –and decisive– vote (Article 45). This superior branch is in charge of "dictating the guidelines that regulate the participation of families in the actions of the search" (Article 49, Section XV). Also, in the specific case of family members, their participation is minor, since only one of them can take part in the System's sessions, since the other two representatives of the Council before the System should be part of organisms of human rights or else, experts in matters related to the General Law. These are the three sectors that form the National Citizen Council.

The Law establishes that the National Citizen Council will be integrated by:

I. Five members of the victim's family;

II. Four well-known and respected specialists in the protection and defense of Human Rights, the search for Forced Disappearance victims or Not Found People or in the investigation and pursuit of the crimes provided by this Law. It will be guaranteed that one of this specialists will always be in forensic topics, and

III. Four representatives of human rights organizations of civil society. (Article 60).

The Senate is in charge of designating the members "after a public enquiry with the organizations of families, organizations defending human rights and organized groups of victims and experts" in matters of forced disappearances, people search and human rights. Designated people will take over their charge for three years, without the possibility of reelection, without executing public servant positions simultaneously and exercising the charge in honorable fashion, without remunerations nor compensations.

From among its members, the Council will name a committee for the evaluation and supervision of the work developed by the National Search

Commission, a decentralized organ of the Secretariat of the Interior (*Secretaría de Gobernación, SEGOB*), in charge of carrying out the actions of searching for forced disappearance victims and not-found people –National Search Program– in the whole national territory, driving the liaisons between the authorities in charge of the people search tasks and to set the mechanisms for communication, participation and evaluation of civil society and families that contribute to the achievement of the objectives of this very same Commission.

The General Law provides that the members of the System shall supply the information that the Council requires for functioning and SEGOB should provide its needed financial, technical, infrastructural and human resources. The Council can issue recommendations, opinions and proposals, making them available for the System's members so that they can consider them in their decisions, with no obligation to follow them –but obliged to justify their negative to do so. However, the recommendations above only refer to the integration, guidelines and operation of the National Search Commission –they do no affect the work of other agencies that form the System, like the Office of the Attorney General of the Republic, in charge of the investigation of crimes through the Specialized Prosecutor.

In fact, the Council's attributions refer to:

a) Suggestions.
b) To offer opinions.
c) To request information.
d) To supervise.
e) To contribute to the advance of public policies that result from the Law.
f) To contribute to the direct participation of families.
g) To report any detected irregularities before the authorities.
h) To issue recommendations for the work of the National Search Commissions.

Of all of these attributions, the only ones that could favor a participation that could control the management, policies and programs that result from the General Law are the last two in the list.

As for different forms of participation for families, the mechanisms are yet to be designed. The General Law establishes that the tasks for searching forced disappearance victims will be carried out by the National Search Commission, an decentralized administrative organ of SEGOB, while the investigation of crimes of forced disappearance and disappearance committed by individuals will be carried out by Special Prosecutors in the charge of the Office of the Attorney General of the Republic (*Procuraduría General de la República,*

PGR) and the specialized prosecutors created in each federative entity depending of their respective attorney general's offices. This means that the task of searching for victims has been separated from the task of prosecuting the crime. The participation of the victims' families in the tasks of searching and the prosecutor's investigation will be subject to two specific protocols. The System is in charge of drafting the Standardized Search Protocol and the National Conference of Justice Administration and the Standardized Investigation Protocol. Both protocols must comprehend "the mechanisms to keep families informed of the search actions carried out by the authorities" and "the procedures for the participation of families in searches and investigation" (Article 99, Sections XXI and XXIII). In the elaboration of these protocols, the participation of experts in the field, civil society and family members must be taken into account, in compliance with international standards. For the updating of protocols, participatory evaluations by the families are being considered, among many other mechanisms. The General Law is more explicit in the participation of family members in searches, while not so much in tasks of investigating the crimes. Regarding searches, it points that family members and their representatives may accompany and follow-up the search tasks, as well as have access to leads, evidences, proofs and results related to these tasks. Regarding the investigation carried out by the Specialized Prosecutor on crimes of forced disappearances and disappearances committed by individuals, the participation of family members will be restricted by the terms of the National Code of Legal Procedures (*Código Nacional de Procedimientos Penales*). Regarding the access to files, it is pointed that family members can have integral access to search results, and can even have a single free copy of the tasks carried out. In regard to investigation files on crimes of forced disappearances, it is established that family members have the right to access them, without specifying if they can or can't access copies. It is also advised, in Article 137, that the proposals of families regarding tasks can be taken into account by the authorities, but on the contrary, they are only required to explain their negative to follow them.

The participation of family groups and the civil organizations that accompany them is also laid out for the design, implementation, supervision and evaluation of the National Search Program in the charge of the Commission and the National Program of Exhumations and Forensic Identification in the charge of the Office of the Attorney General of the Republic.

Title Four of the General Law is dedicated to the rights of victims. Regarding to their participation, it is indicated that it shall be carried out according to the protocols approved in the matter.

IMPLEMENTATION GAPS OF THE GENERAL LAW

The General Law came into effect in January, 2018. It began with the process of selecting and designating the principal person of the National Search Commission. On March 7, Roberto Cabrera took office after a procedure during which several candidates were interviewed in sessions with family members that were transmitted in social networks. Cabrera received the guarantee of 166 groups including groups of victims, civil organizations and experts. However, this fact contrasted with the federal government's decision to change the Commission's ascription that –according to Article 50 of the General Law– it is a decentralized organ of SEGOB, but on April 2nd, the Federation's Official Journal published an agreement issued by SEGOB in which the National Search Commission would be under the responsibility of the National Public Safety Commissioner, which means that the search for missing persons will be one more task of public safety in conjunction with the Federal Police, the Federal Protection Service and Social Prevention and Rehabilitation –areas also in the charge of the National Public Safety Commissioner.

The integration of the National Citizen Council generated non-conformities among family groups. In Tamaulipas –the entity with the greater number of missing persons registries according to the RNPED–, no representative of the five groups that responded to the invitation from the Senate was selected to be part of the Council (Hernández, April 24, 2018). In the local sphere, the General Law does not specify a deadline for the creation of the Citizen State Councils, which is why a delay would be expected just like it happens in other implementation phases.

In other federative entities, the process of integration of the local search commissions has been somewhat uneven in some cases, aside from the fact that it came in late, since the General Law dictates that these should be integrated during the first 90 days after the law came into effect –which happened on April 16. To this date, there has not been one single Local Search Commission installed in any state.

In Nuevo León, the designation of María de la Luz Balderas Rodríguez on May 23 had the support of the AMORES group, but the group FUNDENL refuted, contending that Balderas hadn't fulfilled the commitments she had with forced disappearance victims' families when she was a prosecutor coordinator of the State's Office of the Attorney General, with even four recommen-dations[2] of the State's Commission of Human Rights (*Comisión Estatal de Derechos Humanos, CEDH*) due to unjustified delays in investigations related to people disappearance in cases corresponding to Balderas' management

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2 Recommendations 52/2013. 6/2017, 7/2017 and 15/2017.

(Robles, May 28, 2018). The call was published on April 13 and did not establish under what mechanisms would the selection of the Commission's principal would be carried out but, thanks to press releases, we know that a jury was formed with representatives from local universities and civil organizations before which three candidates appeared. Finally, the jury selected Balderas, although without informing which evaluation criteria did they follow neither the grades that each candidate got during the selecting process. In Jalisco, on April 24, a call was published, but on May 14, the state's government had to declare it void after the non-conformity protests from civil organizations and groups of victims' families for not being included in the selection process. A second call was then made. By the end of May, there weren't any news on the forming of other local search commissions, but in the State of Mexico, Guerrero, Nayarit and Jalisco, the selection process was on the way, while in other entities like Tamaulipas, Coahuila and Michoacán, groups complained about the delay on the call's publication.

The General Law does not specify to which government area will the local search commissions will depend upon. In some federative entities, this hasn't been specified yet and, in others, the decree to create the corresponding Local Search Commission remains to be announced. For example, in Nuevo León, even though a principal has already been selected, it remains to be determined upon which branch will this Commission depend and its creation to be decreed. Whereas in Jalisco, on April 16, a decree was published, creating the Local Search Commission and indicating that this would be a decentralized organ of the General Secretariat of the Interior. In those same terms, a creation decree was published on April 20 for the Commission in Guerrero and, on April 30, in Nayarit. On April 17, in the State of Mexico, a decree was published creating the entity's People Search Commission as an administrative and decentralized organ of the Secretariat of Justice and Human Rights. On May 3, in Jalisco and in Veracruz, a decree was published creating the Commission as an organ assigned to the General Consolidation Management of the Criminal Justice and Human Rights System that depends on the Subsecretariat of the Interior of the General Secretariat of Interior.

By the end of May, 2018, in more than 20 states the creation of the local search commissions were still to be formalized and its principal was yet to be designated. The National Search System had to be installed by July 16, but this requires all local commissions to already be integrated all over the country, since these are all part of the System. Once the system is installed, there will be guidelines announced for the participation of families in the search of their loved ones that are victims of forced disappearances.

FINAL CONSIDERATIONS

Before the approval of the analyzed General Law, several federative entities already had protocols and procedures for carrying out immediate searches for victims of forced disappearance: Nuevo León, Estado de México, Veracruz, Colima and there even was an Authorized Procedure by the PGR. Even so, according to the National Registry of Data of Missing or Forced Disappeared Persons (*Registro Nacional de Datos de Personas Extraviadas o Desaparecidas*) there were 4,754 victims of forced disappearance reported in 2016 that are yet to be found and, in 2017, there were 4,973. These are the two years with the largest numbers of registered disappearances of the past decade.

Therefore, the elaboration of search protocols is nothing new in the Law –these already existed and there are no official assessments of their effectiveness other than these growing numbers of forced disappearance victims that remain to be found. We will have to wait for the creation of a new Authorized Search Protocol and an Authorized Investigation Protocol, their set in motion and the results that they obtain for assessing their efficiency.

Still with no legal framework to encompass them, ever since a few years ago, groups of victims' families had constituted themselves in critical networks that managed to make the problem of the thousands of unpunished forced disappearances in Mexico part of the public agenda –as well as the State's indifference and incompetence to stop these crimes that are still reported, day by day; to find the victims; to punish the responsible parties; and to amend the damages caused to all victims of these crimes. One of the most accomplished cases of participation of victims' families and human rights activists "from the bottom" is Nuevo León, where a dialogue developed through 30 formal work meetings with the state's attorney general's office and –even there– the number of victims that remain to be found is overwhelming. Although this dialogues scheme is considered to be a good practice by the UN's WGFID, it cannot be considered as a model adopted by the state's attorney general's office –now district attorney. The prevalence of forced disappearances and the slowness of the investigations of these cases –as proven by the four recommendation made to the state's human rights commission– show that this problem is yet to be admitted as a public problem, as well as the search for answers that constitute lasting policies to stop the problem and facilitate its victims' access to justice.

Although this formal dialogue mechanism with the PGJNL hasn't necessarily been the driving force for finding all the disappeared persons, it has given well founded arguments to families and to the CADHAC to face public servants with detected concrete failures; to point specific areas that require attention; to develop search and investigation protocols; to authorize registries

of cases of forced disappearances; to set-up DNA banks all over the country; to set mechanisms that force telephone companies to give information; and to coordinate work between federal, state and municipal government institutions.

This model of dialogues represents a social and state interface (Gurza and Isunza, 2010) of citizen participation for the families of forced disappearance victims –who are victims as well, although indirect ones– aimed at exercising control and holding authorities accountable over their investigation work. This participation managed to insert itself in the administrative structure where attorney generals operate in order to hold them accountable for the progress of their investigations and watch over their development. This specific form of participation is not contemplated in the legal framework.

With regard to the participation model for families proposed by the General Law, on the one hand, it recognizes the rights and establishes that these must be guaranteed but, on the other hand, it seems to try to fit the ways in which families so far have managed to be part of the search for their loved ones and demand justice into controllable moulds.

It is not clear if once the General Law comes into force, and once the corresponding legal frameworks are created in different federative entities, will the governance scheme created by family groups will continue in Nuevo León, or if these will have to be subjected to formal mechanisms provided by the legal framework which, by the way, seems to focus the participation of families more in searches than investigations. Even though the localization of forced disappearance victims is a priority for groups of victims' families, the pursuit of justice is only accomplished by effective investigations of the related crimes and the punishment of responsible parties by judges and courts. In just prosecution and justice administration lies the guarantee of the right for truth.

Before the General Law's approval, groups of the victims' families had already formed critical networks that managed to introduce themselves into the formal spheres of justice administration with certain degree of prominence and to place their demand to find their loved ones on the table. In that formal sphere, government actors also have their own interests, which could create tensions and even break their relations with these groups. There lies the challenge for the groups of victims' families before governance that comes "from the top" in the General Law: they would have to keep their leading role without giving up their rights, but also without closing the communication channels with government public servants, in order to discover the truth and find their loved ones that have been forcibly disappeared.

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GOVERNANCE IN CHILDCARE

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ABSTRACT: Given the wide action margin of public administration, governance practices can happen at different hierarchical levels, topics and varying groups of interest. The present case study lays out a governance practice in the topic of childcare in Ciudad Juárez, Chihuahua, where, due to pressures from different interest groups, dialogue spaces were established with the intention of influencing the state's related public policies. Our objective is to analyze the determining factors that facilitate the implementation of the basic principles of a governance model for the interaction between different interest groups. The article concludes with some useful recommendations to be considered in local governance models. To achieve this, the Analytic Governance Framework was used as a reference to diagnose this collective process. The methods used were observation, participatory action research, expert panels, interviews, and documental analysis.

KEYWORDS: governance, citizen participation, social policies, childcare, participation

INTRODUCTION

The different levels of government have the duty of implementing public policies focused on providing the ideal conditions for boys, girls and teenagers to enjoy the human rights that the Political Constitution of the Mexican United States guarantees them and ratifies in several international agreements.

In the state of Chihuahua, the concern that these human rights are indeed guaranteed is still valid. Even though the latest study carried out by Unicef Mexico (2015) showed that Chihuahua had progressed as the result of imple-

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menting programs aimed at lowering children's mortality rate, widening the range of basic education and offering better levels of social protection, it is also true that the current government still faces the challenge to keep reducing the levels of extreme poverty that still affect 40.8% of the state's boys, girls and teenagers, aside from reinforcing programs to reduce the mortality rate among mothers, prevent pregnancies at young age, child migration and the eradication of violence against children and teenagers.

If aside from this, we add the fact that an urban and border context increases the risk factors for children (UNICEF, 2015), it is justified that one of the strategies that became important in protecting and improving the quality of living for boys, girls and adolescents was the creation of safe environments for childcare within the reach of the most vulnerable sectors (United Nations' Children's Fund, 2015).

As an urban and border town, socioeconomic conditions in Ciudad Juárez, Chihuahua increase the risk factors for boys, girls and adolescents. This city concentrates 40% of the state's population (INEGI: 2010), but it is also the home of 490,000 residents that live in conditions of multidimensional poverty (SIPINNA, 2017).

These conditions of poverty, in large measure, are due to a mix of low incomes –the city's main source of employment is the manufacturing sector– and the high costs of living. Added to the population's economical situation, one must consider different factors like: a) 20% of this city's homes are single-speakers, b) a high percentage of women are part of the working sector, c) a lack of public spaces close to the neighborhoods where they live (INEGI, 2010), d) desynchronized school and working hours –which explains why almost 100,000 boys and girls from 0 to 6 years old are left alone or in the care of one of their brothers (Coria, 2013); e) there aren't enough childcare facilities within the economic reach of these kinds of families, and f) the existing facilities are not distributed so that these kinds of families can access them when they need to do so (González-Martínez, 2016).

The combination of all of the aforementioned situations worsens the vulnerable condition of boys, girls and adolescents by exposing them to environments of growing family violence, as evidenced by the clear increase of lawsuit cases of neglected childcare (See Image 1) (González-Martínez, 2016) (Ochoa, 2017).

One way to offer security to boys, girls and adolescents is to guarantee the childcare facilities that they need. These facilities include nurseries ("*guarderías*") and daycare centers ("*estancias infantiles*"). The difference between these two is that the first one is characterized by focusing its attention on providing the essential aspects of food, hygiene, sleep and health, while the

second one is considered to include educational activities for boys, girls and adolescents, aside from the care of all said essential aspects as well.

Civil society and the government have carried out important efforts to increase childcare facilities but, still, these don't seem to be enough. Up until March 2017, one nursery for every 1,926 boys, girls and adolescents in childcare ages was estimated within the city (See Image 1). Also noteworthy is the fact that, in seven years, the number of boys, girls and adolescents in childcare age has increased slightly (INEGI, 2015), but the number of nurseries accounted for in the Statistical Directory of Economic Units remains unchanged (INEGI, 2017).

IMAGE 1. CONCENTRATION OF CHILD POPULATION, NURSERIES, DAYCARE CENTERS AND RECEIVED CALLS FOR NEGLECTED CHILDCARE IN CIUDAD JUÁREZ
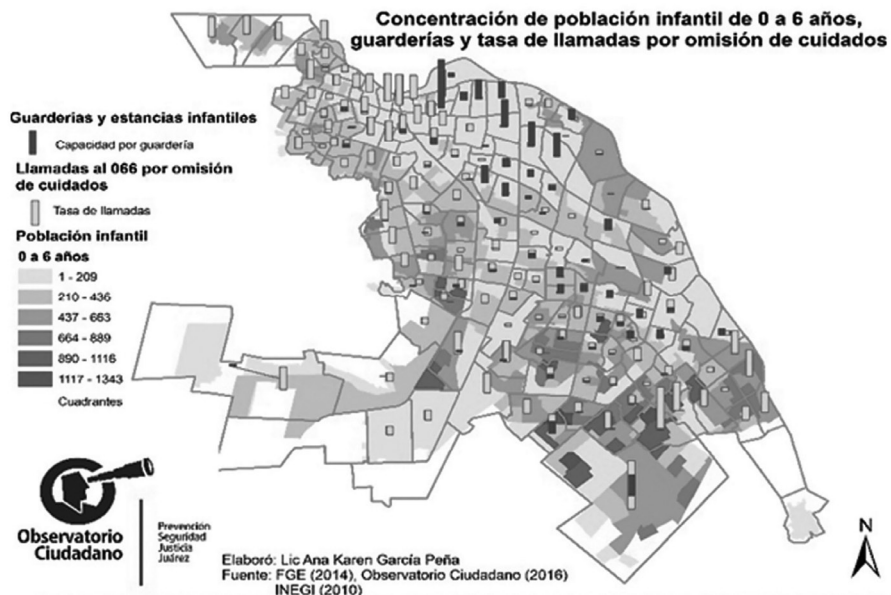
Source: Trust for citizen competitiveness and safety.

As one can conclude from this analysis, the main social problem lies in the impossibility of the boys, girls and adolescents of many families in vulnerable situations to access childcare facilities that are free or affordable according to their economic situation.

That is how the increase in childcare facilities became a promise during the political campaign of the state's current government. In February of this year –recognizing that 180,000 boys and girls of Chihuahua have been detected

to be in need of childcare–, it announced an investment of 30 million pesos for opening 150 Daily Childcare Homes and 15 million pesos for granting scholarships to girls and boys that cannot pay a minimal tuition (Government of the state of Chihuahua, 2017).

This public policy –aimed at solving part of the problems discussed above– caused unease among the members of the Child Welfare Center Network, a group of 71 organizations dedicated to offering low cost childcare services in the city. They publicly expressed that they felt excluded from the benefits of this social policy (La Polaka, 2017).

From that point on, the Child Welfare Center Network requested work meetings with members of the civil society and different branches of government for defining the real needs of childcare (Bustamente, 2017). That is how several interest groups with veto powers came up, demanding a governance process that should gather state government agencies –like de Secretariat and Sub-secretariat of Social Development and the State's Parliament Commission on Infancy; the Secretariat of Social Development, as a municipal agency– and groups of organizations dedicated to childcare.

The process of governance in Chihuahua was taken as a case study, with the purpose of documenting and analyzing the dynamics adopted by different interest groups, which can be useful for identifying certain determining factors that may have a positive or negative influence in the implementation of principles of participation, transparency, accountability, efficiency and coherence considered by Cerillo (2005) as basic in the process of governance.

To achieve this purpose, we began by recognizing that the governance process is complex and that the description of its principles is necessary –but not enough– to analyze the inner relations and identifying factors that affect the obtained results. That is why, we resorted to Hufty's Analytical Framework of Governance (2010) as a point of reference to analyze this case study in terms of the following broad analysis categories: the actors involved, the problems prescribed by all of those involved, focal points, regulations and processes.

The applied methods for collecting information included participatory action research, observation during meetings between the Child Welfare Center Network and agencies of the state's government, analysis of newspaper sources, interviews with the different actors involved and the configuration of a panel of experts.

The participatory action research methodology was used because the diagnosis of the problem of childcare began with social actors, turning them in fellow participants in the processes of recollecting information, making decisions, critical thought and action (Colmenares, 2011).

The three following methods were useful for gathering information on behaviors, as well as documenting and analyzing the agreements and discussions set forth in this process of governance. For their part, information was obtained from the panel of experts following four childcare models which, together, declared to look after more than 10,500 girls, boys and adolescents: Nurseries from the Mexican Institute of Social Security (*Instituto Mexicano del Seguro Social, IMSS*), Daycare Centers of the Secretariat of Social Development (*Secretaría de Desarrollo Social, SEDESOL*), Daily Childcare Homes and Childcare Welfare Centers. The municipality's Office of Social Development and the state's Sub-Secretariat of Social Development also participated representing government organizations.

The representatives of the different models of childcare operating in Ciudad Juárez presented their advantages and features, the problems they face and the requirements for promoting the opening of more childcare facilities. On their part, the representatives of the government agencies presented their respective work plans and projects for childcare in the city.

After having described the conditions that favored the surge of a process of governance related to childcare, in this article, we will continue with the analysis of different concepts of governance that exist and their general implications on a government's actions, thus showing its complexity and the need to resort to the concept of public action as an adequate framework that allows us to explain the emergence of governance processes, as well as the results of its implementation.

Then, by using the Governance Analytical Framework as reference, we will review the concrete experience of the governance model in childcare, therefore, we will analyze the emergence of the different actors that were part of this process, we will describe the different perspectives from which interest groups perceived the main problem, the regulations that influenced the participants' behaviors and attitudes, as well as the focal points –understood as the spaces and alliances where the agreements and resulting negotiations of the process took place.

Finally, we will conclude by delineating some final considerations around the case study –specifically with the intention of identifying the lessons that came from this analysis and could be useful for strengthening the basic principles to be considered in a model for local governance.

THE COMPLEXITY OF GOVERNANCE

In general terms, whenever we talk about governance, we refer to the spaces of interaction among several interest groups which are resorted to for establishing dialogues and agreements in the decision-making process of specific topics. These spaces of interaction are possible in both the public and the private spheres.

The term "governance" gathered strength in the public sphere, once the efficiency of government actions in the world began being questioned; once the impossibility of the State's omnipresence to solve all of the challenges and problems in increasingly complex societies was recognized (Aguilar, 2016). In this sense, Aguilar argues that the government is a legitimate and necessary agent for managing society but, due to its inability to define the future of social interest by itself, it must resort to collaborating with different actors and become an articulator of the actions of several actors.

It then implies the transition of a traditional model of intervention in public affairs to a collaborative one, in which the government –although still considered to be the key actor in the definition and implementation of public policies– converges with several different perspectives and purposes geared towards a joint analysis, creation, implementation and assessment of public policies. This kind of collaboration requires a type of coordination that, according to Jessop (quoted by Carmona, 2005), implies the actions of different actors and interacting mechanisms to become institutionalized and formalized, and which are resorted to achieve common objectives in public affairs. Therefore, the interrelations between civil society, the State and the market –the sectors whose borders are increasingly blurred– had to be reconsidered (Peters, 2000; Le Gales,1995 quoted by Carmona, 2005).

In this sense, Mayntz (2005) describes governance as an alternative way to govern and contrarian to the model of hierarchical control, for resorting to a more cooperative model in which state and non-state actors participate in mixed public-private network.

Based on the cooperative nature of this concept, good governance is considered to be the one that guarantees the participation of all actors involved in the matters at hand; the one whose participants have the possibility of making their corresponding decisions; and the one in which agreements are reached. For this to happen, the following principles are suggested as basic: participation, transparency, accountability, efficiency and coherence (Cerrillo i Martínez, 2005).

For Cerrillo (2005), governance is based on the participation of different actors with interests, resources or perspectives that could be incorporated in the collective decision-making process, in turn, limited by a series of established

regulations and agreements. Also, it must prove to be a transparent process, open to questioning the decisions it reaches and are applied by the public sector, to pursuit the agreed results and to show political leadership and an institutional commitment to carry agreements through.

As a pillar of governance, the participation of citizens encompasses all kinds of individual or collective actions that have a public purpose and go beyond the private realm to affect the decision-making processes of public policies. In this sense, the CLAD (2009) defines it as a process of social construction of public policies that, according to the general interest of a democratic society, has the capacity to channel, respond or extend the economic, social, cultural, political and civil rights of people and the rights of organizations or groups that integrate them, as well as of indigenous communities and people.

This form of intervention of private actors in public activities is considered to be useful (Baño: 1998), since it is supposed to improve public administration, affect public policies, control administrative actions and serve as an opposition to public servants considered to be experts. That is why the exercise of citizen participation in governance is based on the obligation of all private individuals or legal entities that manage public resources to give the necessary information to explain and justify the actions that were carried out (Schedler, 2008).

For his part, Prats (2005) understands governance as "the structure or guidelines that emerge within a sociopolitical system as a common result of the interaction efforts of all involved actors". In function of this concept, he asserts that the success of the interactions of the different actors is influenced by the recognition of all the parties involved; that the problems to be solved are complex, dynamic and diverse; and that is why neither the public nor the private actor possess the whole knowledge and the resources for the implementation of public policies. Therefore, governments must become facilitators of social and political interactions; must create or favor spaces for negotiating and facilitating agreements aimed to solve public problems.

For Rosenau (1992), governance is a phenomenon that encompasses both government institutions and informal institutions that may employ non-governmental mechanisms and include those persons and organizations looking to satisfy their interests and desires. All of the aforementioned is to establish shared goals that may or may not become legal responsibilities.

It is clear that there is great variety of definitions in literature that describe the ethical principles of governance. To a large extent, this is because this is not the exclusive process of a certain type of organization, hierarchical level or specific subject –normally, problems are approached from a multidisciplinary perspective, with no certain temporality, specific territoriality or a particular number of actors (Carmona, 2005). If added to a polysemic concept, we

include the fact that the cultural, economic, political and perception factors of all the participants involved exercise an influence in the process, we will see an increase in the complexity of their implementation.

This complexity can be seen in texts such as "The White Book of the Europpean Union" (Europpean Communities Commission, 2001) and Carrillo's contribution (2005), which recommend a general frame of reference of common principles to which the process of governance must be circumscribed to. In a more detailed manner, there are manuals that offer guidelines to carry out governance exercises (CEAM, 2012) (*Fundación Futuro Latinoamericano,* 2015) and make special emphasis in implementation methodologies considered to be repeatable, but are also adjusted to the technical specifications of a particular subject.

Even though, governance is not considered to be a regulatory concept. Each society decides to develop their own forms of governance, decision-making or conflict resolution systems among its members, regulations and participant institutions (Hufty, 2010); it is recommended to resort to this process as an useful element in those contexts characterized by a credibility crisis in the actions of its government, and where collective decisions must be made for looking for efficiency in the fulfillment of objectives and the effectiveness in the use of public resources (Santos, 2014).

GOVERNANCE AND PUBLIC ACTION

The recognition of the complexity of the process of governance is manifested in the difficulty to define a concept that allows a greater depth exploration of the surge and inner relations in which agreements are reached. Durán (quoted by Cabrero, 2005) criticizes the concept of governance because he considers it to be more of a sentence than a method or a theoretical framework to explore the subject –which lacks the analysis that allows to expose the functioning of the political system and the surge of the reached agreements; and recommends to resort to the concept of public action to identify the participating actors and how did they come up, as well as to understand the logic of these actors to produce an efficient action.

The concepts of governance and public action are not unconnected since the first one references the change of the second one and emphasizes the collective sense of the public action that, in turn, allows the understanding of the real dynamics being implemented (Cabrero, 2005).

Public action is not reserved to the exclusive use of governments. This concept is supported by the recognition that governments do not monopolize neither politics nor work in public topics, therefore, society resorts to different

ways to build and qualify public problems, aside from the capacity to come up with answers, contents and processes to take them on. (Thoening, 1997).

So, public action implies a shared responsibility among government and civil society. Because the government's presence and actions are not the only requirement to give meaning and direction to public policies: society and its actions are required as well, because it helps to define a problem and offer resources that contribute to its solution (Santos, 2014).

Durán (quoted by Amaya, 2010) defines public action as: "the capacity to define collective goals, of mobilizing the necessary resources to pursuit them, of making the decisions imposed by its attainment and to assume the consequences that result from it". That is how public action becomes an instrument of government that allows the coordination among public and social actors to articulate the resources that are dispersed at the moment (Santos, 2014).

While governance is used as a concept that refers to the changes that public action goes through, local governance refers to the demarcated process of a specific territory where the government is closer to its citizens, there is an urgent nature to solve public problems and it becomes relevant because it usually found in areas of greater conflicts like those related to economic development, public services and social policies (Santos, 2014).

In the local realm, governance can become the perfect means to address collective actions that result in actions that are more efficient, cooperative and articulated with society (Carmona, 2005).

Even when all authors agree that governance is a process that favors the solution of public problems, they recognize deficiencies in the local administrations that make them difficult. The experiences analyzed by Santos (2014) show that there is a lot to do in that sense, asserting that municipalities have not managed to implement a public policy process that opens the door to evaluation, transparency and accountability, even when it has been demonstrated that it is possible to institutionalize the developed processes.

WHO IS WHO IN CHILDCARE?

Strategic actors

Since several decades ago, Ciudad Juárez has had a civil society with wide experience in the social sector. Several Civil Society Organizations (*Organizaciones de la Sociedad Civil, OSC*) have developed and implemented models of childcare, placing this topic in the political arena and influencing the approach of public polices looking to guarantee the rights of boys, girls and adolescents to access childcare. For their part, all three branches of government

have implemented public policies of childcare in the city, but they still seem not to be enough.

As it is seen in the following table (See Table 1), federal government takes care of 5,966 boys and girls in 106 nurseries of its own or through which it grants subsidies for every child that is looked after (IMSS nurseries, subrogate nurseries of the IMSS and daycare centers). Civil society offers a low cost model just as Daily Childcare Homes and Child Welfare Centers do so[1]. Together they take care of 3,087 children, in a total of 84 facilities.

TABLE 1. MAIN CHILDCARE MODELS IN CIUDAD JUAREZ

	Child Welfare Centers	Ministry of Social Development (Sedesol)	Day Care Centers (IMSS)	Daily Care Homes
Number of organizations	71	77	29	13
Ages of girls and boys attended	4 a 12 years old	From 1 year old to 4 years old, to 6 years old children with disabilities	45 days to 4 years old	From 18 months to 6 years old / From 6 to 9 years old
Girls and boys attended	2,850	1,800	4,166	237

Source: The authors with data from representatives of each of the childcare models on March 24, 2017.

With no intention of dismissing the work carried out by the public and private sectors in the benefit of childcare, in this occasion we will focus on identifying the strategic actors that participated in the process of governance subjected to study. By strategic actors, we refer to any individual or organization that have veto powers over a policy due to their control over certain resources of power from their public position, manufacturing factors, information and ideas; and because they have the capability of carrying out social mobilizations or because they are considered as moral authorities (Prats, 2003).

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1 They receive the support of the municipality of Ciudad Juárez, in a model that is –up until totally– considered to be unique in the country.

DAILY CHILDCARE CENTERS

More than 27 years ago, Daily Childcare Centers came up as a project financed by the Ford Foundation and the initiative of Guillermina, a social activist, who is also the general director of the social organization Orientation Center for the Working Woman (*Centro de Orientación de la Mujer Obrera, COMO*) (Calvo, Montenegro & Montero, 1993).

Worried about the increase of boys, girls and adolescents that stayed alone in their homes (Montero, T., 2012), she began a model of low cost childcare, taking care of minors of 45 days to 5 years of age in a neighborhood considered to be an Area of Priority Attention. In spite of implementing a low cost model, the fees that parents could actually afford only managed to cover operation costs but not the compensation of the facility's personnel. This situation showed that for a childcare model for low-income people to work, resources must be permanently guaranteed through donations or government subsidies (Montero, 2012).

The main representative of this daily childcare model promotes the opening of more facilities in the city. Her career is respected and well known in the social sector. She is considered as a strategic actor because, aside from the recognition of her social work, she belongs to the Infancy Network of this city, she keeps a close relation with many other OSC of activist nature and with members of Academia, with whom she has collaborated in influencing several public policies.

Up until March 2017, there were 13 Daily Daycare Centers in the city. With capacity for taking care of 300 boys and girls, these daycare centers look after 237 children, from 18 months to 9 years of age, in shifts from 4:00 am to 6:00 pm, charging a weekly fee of $250 pesos, and surviving thanks to the donations and the volunteer work of their caregivers. These centers do not rely on a government subsidy, even considering that the attention that each child receives approximately costs $400 per week (UACJ, 2017). The Daily Daycare Centers are organizations that acquire the legal concept of Civil Association. This model of childcare has worked with a large degree of success in the state's capital, where there are large numbers of organizations of this type.

CHILD WELFARE CENTERS

Child Welfare Centers are low cost childcare facilities that look after a population group of between 4 and 12 years of age. These organizations can also adopt the legal concept of Civil Association, private individual or legal entities.

To this date, this concept of daily daycare only operates in Ciudad Juáreaz, where there are 71 centers of this type, its service schedules vary depending on the population's needs, but they generally begin by 5 am and close at 7 pm. All of these centers take care of more than 2,800 children, representing an occupied capacity of between 60 and 75%. The fee per child is of $300 and they can receive a municipal subsidy of $100 per week (UACJ, 2017).

This model of childcare came up by the end of the nineties as an initiative of the Santa María Social Development Civil Association (*Asociación Civil Desarrollo Social Santa María*). Located in one of the poorest zones in the city, its members noticed that a large number of boys and girls stayed alone at home while their parents left to work –an undoubtedly dangerous situation for the well-being of the boys and girls in the area. After realizing that the public models of back then –the IMSS nurseries– excluded an important number of boys, girls and adolescents of between 6 and 12 years of age, they decided to create care facilities for them (Torres, 2013).

As a member of the board of trustees of this association, one of its representatives promoted and turned this childcare model into a municipal public policy. She became part of a municipal public administration that belonged to a different political origin from the one in which she was active and created the Office of Municipal Child Welfare Centers, which granted financing, through loans of use, for opening Child Welfare Centers in private homes and civil or religious associations that wished to provide the service.

The main promoter of this care model is recognized for her political career. She was a member of the Mexican parliament and has the capacity to reach agreements with several political sectors in common topics. No longer as a political actor, but as a social activist, she promoted the creation of the Child Welfare Center Network as an unified front for defending the common interests of this sector, aside from influencing the creation of other social organizations of civic nature. Her main interest is to continue her work replicating Child Welfare Centers all over the country.

SOCIAL DEVELOPMENT MUNICIPAL OFFICE

This municipal agency is in charge of the Office of Child Welfare. It takes on the role of promoting independent childcare centers. They give economic support for adapting physical spaces, they advice and support the filling of paperwork and attainment of municipal permits, as well facilitating training courses on childcare for guaranteeing a minimal quality in the service they provide to boys, girls and adolescents.

The Municipality has regulations that endorse the transfer of resources from public funds to independent organizations through the legal concept of a loan of use while, at the same time, supervise the correct use of said resources (Municipality of Ciudad Juárez, 2008).

These regulations recognize the creation of independent organizations of the municipal government with tripartite collaboration –public, private and social sectors– that may be installed in educational facilities and, generally, within any institution interested in replicating this project and committed to tending to the general food, recreational, service and care needs of minors under their responsibility (Alvarez & Reyes, 2014).

In these facilities, the leadership of two persons operates: the Head of Child Welfare and the Head of Municipal Social Development. The first one ran a Child Welfare Center for many years. Different interest groups recognize her personal experience and academic resume.

On the other hand, the Head of Social Development has a career in the political realm. She was a member of parliament and a candidate for the municipal presidency of Ciudad Juárez, for a political party to which she later resigned. Now, she is part of an independent government, which hasn't stopped her from keeping a friendly relation with the representative of Child Welfare Centers and several state parliament members.

For being an agency of the municipality' public administration, the Head of Municipal Social Development becomes a strategic actor with the resources and the necessary networks for participating in this governance process.

SUB-SECRETARIAT OF SOCIAL DEVELOPMENT OF THE BORDER

Ciudad Juárez is the city with the largest number of people living in poverty in the whole state. That is why the Secretariat of Social Development created a Sub-secretariat for taking care of specific matters that arise from this area.

Both state agencies are strategic actors, not only because of their influence and the public resources that they have for implementing public policies, but also for recognizing the careers of their head public servants as activists and within the social sector. The Secretary, an academic and social activist that has defended interests related with farmers and field workers, also has a large political career, having been a state and federal parliament member in several occasions. For his part, the Sub-secretary of Social Development has also been distinguished as an academic and social activist in Ciudad Juárez for more than 30 years. Together with several members of his family, he has created social

organization and participated in the creation of social policies, which is why he has wide experience in and knowledge of the social sector.

All of these strategic actors are accompanied by their networks of influence in other groups, which are used as support during negotiations in governance.

WHAT IS THE PROBLEM?

As it can be seen, there is a civil society with the necessary experience and career in these matters. To omit governance models in these conditions is like taking one-sided decisions that would create conflicts.

While it is true that interest groups agreed on the urgent need to increase the number of childcare facilities for minors with low-income families, it deferred from the implementation of this policy.

The announcement of the state's government spending millions of pesos in a single model of daily childcare created several disagreements among different interest groups, who focused the discussion on three main topics: the restricting of a certain type of organization to receive public resources for giving this type of services; the age groups of the minors to be cared for; and the cities that would benefit from these public policies.

When it was confirmed that these resources would be destined to a single childcare model. Even though these OSC perform valuable work, they dominate the state's capital and, to a lesser extent, the city that groups the largest amount of people living in poverty, limiting their care to girls and boys of between 1 and 9 years of age. Thus, the following question comes up: why would you take care of some and not of the others?

Starting with the recognition that the problem can be reduced to a discrepancy between what should be and what actually is (Hufty, 2010), then, as seen by several actors, the three discussion topics are reduced to one general problem: the discrimination of the right for care of boys, girls and adolescents of between 6 to 12 years of age, through the inequality in the distribution of public resources towards a single model of childcare (Bustamante, 2017).

The differences of opinions in this topic, allowed a glimpse of the positions from which they established the arguments that reflected the discrepancies between what should be and what actually was. A combination of political and administrative considerations, interwoven with legal and social regulations that mediated the relations and behaviors of these different interest groups, came into the mix.

The state's government announced the use of several million pesos as the result of a commitment it made during its political campaign. This commitment was not accompanied by a public presentation of a diagnosis to justify the

implementation of this social policy, with no clear guidelines neither for the conditions of the support it offered, nor for the way in which it pretended to spend said amount of money in a such a short period of time.

The seemingly absence of a strategic planning that was clear and available for interests groups created the sensation that politically biased criteria were being used, favoring the state government's political image in detriment of organizations that were considered to serve the municipal government's public image.

The Child Welfare Center Network requested information that supported the government's decisions and established communications with public servants from the state government. This information was partly given verbally and turned out to be insufficient for the Network's members who, by demanding more information, assumed that the posture of some public servants was not to favor the Child Welfare Center Network (Childcare Network Center, 2017).

The perception of this position's immobility, added to the temperamental incompatibility of some public servants with representatives of civil society created an escalation of conflicts that opened the door to alliances between several groups and taking the discussion's arena to the media.

REGULATIONS AND FOCAL POINTS IN THE GOVERNANCE PROCESS

To begin the governance's process from a tense standpoint is not simple. Even when many of the strategic actors had been active in the social sector, the regulations of governmental actions seem to modify their behavior, placing each member in a specific position to be defended.

Hufty (2010) considers that every society has different regulation systems (institutions) promoted by different actors that coexist, overlap and compete –all at the same time. This situation of regulatory pluralism becomes a source of conflict whenever each actor or coalition of actors tries to impose their vision in a relationship of power that cuts through formal or informal political systems.

The process of governance is influenced by several regulatory systems. In the process being studied, the social regulations –that in Hufty's view (2010) tend to set the behaviors and attitudes that are socially accepted by the majority of interest groups– took on a relevant role. It was observed that the inappropriate handling of what were perceived as social regulations tended to polarize positions and discouraged the participation or established the conditions to create alliances between several interest groups.

Some actors that assumed the position of public servants focused on questioning the nature of the Child Welfare Centers and their affiliation to the municipal or state government, refused to visit some of these facilities until there was a greater clarity of their legal nature and tried to establish their own conditions for starting a dialogue. Also, they felt attacked because the Child Welfare Center Network went to their superior authorities looking to negotiate the destiny of the resources in play; politically bullied by the demands of public information and attacked for giving statements to different media that were considered to be false (Politikkón, 2017) (La Polaka, 2017).

On the other hand, before the absence of a diagnosis that could support the decision of public policies in infancy-related topics –specifically in relation to the real needs of the population between 6 and 12 years old– the Child Welfare Center Network requested, again and again, to set discussion tables for a deep analysis of the subject. Added to the refusal of the sub-secretariat's public servants to take part in such discussions, at meetings and during an academic forum (UACJ, 2017), the Network perceived aggressive and imposing attitudes that damaged the communication between both parties even more.

As it can be inferred from the aforementioned, the reconciliation of social regulations between the different actors represented the most conflictive aspect and what caused a fracture in the communication process. Hufty (2010) considers that regulations –ever present in the process of governance– are reproduced, redefined and modified by collective action and, therefore, are able to influence the behavior of actors as a consequence of the process of governance.

A damaged communication, a lack of clarity in the operating rules for spending public resources and the omission of presenting technical studies as evidence to support the rationale of the decision of certain public policies favored the alliances between some interest groups and their respective relationship assets with the finality of pressuring government agencies in the public sphere.

One alliance was formed by the Child Welfare Center Network and the Social Development Office, who managed to get the support of the State Parliament's Commission for Boys, Girls and Adolescents to exert political pressure aimed at the allocation of resources to such models of childcare. Each one of these interest groups made demands in several printed media. Exhibiting the problem in mass media distorted the messages and provoked conflicts among the state's agencies to the point of breaking them apart.

At the end, the process of governance was carried out eliminating strategic actors. The groups that represented the interests of the Child Welfare Center Network reached direct agreements with the Social Development Office.

These included the allocation of public resources for these organizations and the creation of operating regulations for their use, prioritizing those spaces located within the Priority Areas, without disregarding the support given to the Daily Daycare Centers model (Corral, 2017).

Even when such agreements were reached, and concrete actions were defined from this conciliation of interests, the lack of conditions to facilitate sufficient transparency, accountability and perception of an institutional commitment had social and political costs.

Beyond favoring the coordination of different social actors towards one single common goal, it divided and created mistrust between a social sector that had worked together for many years; it discredited the current public administration's work; and it distorted the social purpose of looking after of Chihuahua's boys, girls and adolescents.

CONCLUSIONS

To speak of governance in the public sphere is to reference the interaction spaces of different interest groups, both public and private, which are resorted to when there is need to set dialogues and agreements in the decision-making processes of certain public problems.

For a process of governance to be developed, it was observed that interest groups must secure certain previous conditions that favor the compliance of the basic principles of participation, transparency, accountability, efficiency and coherence –which are necessary in the process of governance. Of the case study analyzed the following considerations can de concluded.

The process of governance begins when there is an acceptance that, in increasingly complex societies, the public sector cannot solve social problems on its own. This acceptance demands public servants to carry out a previous diagnosis of the existing social strengths and create the necessary efforts to include all interest groups that are well informed in the matters to be discussed.

In this sense, Ciudad Juárez is recognized as an area where several social actors –with respected careers in caring for boys, girls and adolescents– coincide. These conditions are ideal for creating spaces for governance that are inclusive and fostering the conditions for a balanced participation.

When taking part in a process of governance, a collaborative form of governing is taken, which is why –in regard to the autonomy of different strategic actors– it is a necessary condition. As part of a strategy that seeks the political legitimacy and the efficiency of the public expenditure, governments allocate public resources to private organizations that carry out childcare

activities. Therefore, public servants must consider these organizations outside the subordinated realm of the governmental sector.

In this sense, the rules that regulate government action influence the behaviors and positions of each participating actor in a specific position to be defended. To foster the participation of the different actors, one must seek to dilute these positions in the search of a greater meeting of the minds, avoiding a polarization of opinions as much as possible.

In the process of governance, different social and political interests are reconciled, but common interest must always prevail. Whenever political considerations dominate over who will take the credit for the decided actions, it becomes an obstacle for the coordination between different governmental actors, contributing to an increase of the distrust between interest groups and polarizing positions. In result, institutional commitments and the efficiency of public policies tend to be overshadowed.

The reconciliation of interests based on a position of equals favors the respect to the rules of behavior by different strategic actors, forces them to adapt to diverse personalities, needs and dialogues spaces that lead to collaboration schemes that guarantee the compliance of all reached agreements by all parts.

A favored –and increasingly professional– social sector demands a rationale for decisions made by the government sector. In this case, the operation diagnosis and guidelines became a necessary condition for the accountability and transparency that strengthened the binds of trust between different interest groups from the very beginning.

To carry out the process of governance with interest groups that work directly with different models of childcare allowed for the compensation of the shortcomings in the definition of public policies, the fostering of the collaboration between civil society and government together with their respective relationship assets. In this sense, the result of good governance allowed to set better conditions for guaranteeing the rights of boys, girls and adolescents for better care conditions; on the contrary, to omit processes of governance can lead to contribute to the division and destruction of social capital in detriment, in this case, of the living conditions of boys, girls and adolescents in the state of Chihuahua.

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THE HUMAN RIGHT TO DRINKING WATER AND SANITATION IN MEXICO: HOW TO MAKE IT EFFECTIVE?

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ABSTRACT: The objective is to understand what mechanisms of governance contribute to make the human right to drinking water and sanitation effective in Mexico. The methodological strategy we used is a case study of the Tijuana-San Diego cross-border region with the purpose of comparing two different traditions of governance within one same geographical context. The main finding suggests that it is the governance framework –and not economic capability– what determines the effectiveness of water policies. Specifically, we obtained three lessons on the mechanisms of governance and three lessons for desirable objectives in new legislations. Summarizing, paying attention to the mechanisms of governance is recommended instead of arguing axiomatically in favor of this right.

KEYWORDS: Human Right to Drinking Water and Sanitation, Mechanisms of Governance, Tijuana-San Diego, General Law of Water, Mexico.

INTRODUCTION

International water organizations agree that the water crisis is a governance crisis and not a technical one. Today, in spite of large technological advances, the matter of inequality continues to be a structural problem of contemporary society. This inequality has much to do with corruption and bad governance (Banco Mundial, 2017). Particularly, people of underdeveloped countries are demanding the most urgent solutions, since their countries have amassed the sufferings of poverty. In fact, one of every four residents of the cities of the

world still does not have access to improved sanitation installations and 27% of the residents of cities in the underdeveloped world do not have access to tap water at home. This pressure is growing due to the fact that 95% of urban expansion in the next decades will take place in the underdeveloped world. Mexico is among this group (ONU, 2011).

Underdeveloped countries also must face the challenge of financing future development projects while maintaining their current infrastructure at the same time (OCDE, 2015). However, the developed world presents serious water problems as well. One of the present challenges is the growing uncertainty on the future of the availability of hydraulic resources due to the competition between different water users, like citizens, farmers, industries and natural areas. Based on the information above, the basic difference between the water challenges of the underdeveloped world and the developed one only lays in the urgency of the answers that are needed.

Mexico is among those countries that require urgent answers to water-related problems. Additionally, this country recognizes the human right to drinking water and sanitation in its Constitution. This is a challenging situation since –in spite of having urgent hydraulic problems– it assumes the international commitment of guaranteeing this human right. Now, *how can it be guaranteed?* It is precisely this question what serves as the premise of this research. To answer this question, we suggest the methodology of a case study.

A central challenge in the Tijuana-San Diego region is to find a sustainable balance in water distribution among the different users on both sides of the border (Van Schoik, 2003), since the dominating factors in the region are dryness and demographic growth (Bradley and De la Fuente, 2003). On the one hand, Tijuana is considered to be one of the most thriving metropolitan regions in Mexico, since this city offers many assets to the urban cross-border region, including cheap and qualified labor, affordable housing and medical attention; it also has multi-national corporations and a massive binational tourism system. For its part, San Diego is considered as one of the most inhabitable cities in the United States. It offers a nice business environment, thanks to its diversified economy based on high technology, highly qualified labor and tourism, making it an international destination to carry-out conventions (Kada and Kiy, 2004).

The Basin of the Tijuana River is an ecosystem whose natural water flow is from Tijuana to San Diego, creating several problems that result from the flooding of the river and the dangerous waste materials it transports. This watershed has water problems like the deterioration of the local sources, the extreme dependence, intensive uses of the land in the construction with tendencies to forming a cross-border megalopolis (Castro-Ruiz, *et al.,* 2006).

In fact, the Colorado River has been a source of conflict in the border between the United States and Mexico, because when the level of the river diminishes, the hydraulic stress increases and, therefore, Mexico starts complaining of the quantity and quality of the water it receives (Getches, 2005). In contrast, the specific case of the cross-border metropolis of Tijuana-San Diego has been more cooperative than competitive, since both cities have developed cooperation mechanisms.

In spite that these cities have two different systems of governance, they are intimately related. They have a history of cooperation, in which the international wastewater treatment plant in San Diego and sewer water treatment in Tijuana stand out as examples. Also, in recent years, San Diego has sold drinking water to Tijuana, since this city has faced supply crisis due to several reasons.

WHAT IS THE HUMAN RIGHT
TO DRINKING WATER AND SANITATION?

The immediate precedent of the recognition of the human right to drinking water and sanitation lies in General Observation number 15 of the Committee of Economic, Social and Cultural Rights of the United Nations. Article I.1 of said observation sets that the human right to water "is indispensable for a decent human life" (UN, 2002). In Mexico, the right to water is also defined as a guarantee that each of us will have access to sufficient water that is healthy, acceptable, physically accessible and affordable for personal and domestic use.

The explicit recognition of the human right to drinking water and sanitation took place on July 28, 2010. The General Assembly of the United Nations, through Resolution 64/292, reasserted General Observation no. 15 of 2002 in the sense *that clean drinking water and sanitation are essential for the fulfillment of all other Human Rights* (UN, 2010a). This resolution exhorts States and international organizations to invest financial resources in the training and transference of technology to particularly help underdeveloped countries. Additional, the objective is that the drinking water and sanitation supply must be healthy, clean, accessible and affordable for everyone.

In the same way, the Human Rights Council of the United Nations, through resolution A/HRC/RES/15/9, on September 2010, reasserted that drinking water and sanitation is part of the international law and legally binding for all States (UN, 2010b). Based on these precedents, Mexico materialized the human right to drinking water and sanitation in the reform to Article 4 of its Constitution in February 8, 2012, affirming that:

> Every person has the right to access, dispose and sanitize water for personal and domestic consumption in a manner that is sufficient, healthy and affordable. The State will guarantee this right and the law will define the bases, support and modalities for the access and equitable and sustainable use of hydraulic resources, establishing the participation of the federation, federative entities and municipalities, as well as the participation of citizens for the attainment of such ends (Diario Oficial de la Federación, 2012; Constitución Política Mexicana, 2017).

Specifically, the human right to drinking water and sanitation recognized in the Mexican Constitution implies that water and sanitation must be sufficient, healthy and affordable. First, water must be sufficient, meaning that its supply per person must be sufficient and continuous for personal and domestic use. For example, the World Health Organization (WHO) suggests that the minimal amount required for the aforementioned are 50 liters per resident per day. Secondly, water must be healthy to the extent that is freed of microorganisms, chemical substances and radiological dangers that constitute a threat for human health. Lastly, water and sanitation must be affordable to the extent that a home's economy cannot be affected by getting it. For example, the United Nations Development Program suggests that the cost of water should not go over 3% of a home's income (UN, 2016).

It is worth noting that the Mexican Constitution resumed the right to water stipulated by the United Nations almost entirely, however, *it didn't include* the commitment to accessibility, i.e. physical accessibility within or near a citizen's dwelling. This implies that the water source should be less than 1,000 meters away from somebody's home and the displacement time for getting it shouldn't be over 30 minutes (Howard and Bartram, 2003). My interpretation of this fact is that Mexico did not commit with physical accessibility due to the irregular geography of several of its small communities. However, this doesn't suggest that Mexico gave up the effort for gaining greater accessibility of water to its residents.

This constitutional reform has become urgently relevant, because the Mexican Parliament has the obligation of creating *The General Law of Water* with the purpose of setting a legal framework that guarantees the completion of the right to water in Mexico. Specifically, setting the jurisdiction of each branch of government, as well as the mechanisms of citizen participation. In Mexican federalism, the difference between a Federal Law and a General Law is that the first one only regulates activities of the federal realm, while the second one sets the jurisdiction of the federal, state and municipal realms around the completion of a human right recognized by the Constitution (Serna, 2009).

The federative entities' faculties are most ambiguous in the hydraulic Mexican federalism, since they depend on the capacities of each one of them for widening or restricting the scope of their actual jurisdiction. The attributions are clearer in the municipal and the federal realms. Regarding the second one, Article 27 of the Mexican Political Constitution sets that water is a natural resource of the national public domain, because public policies on hydraulic resources should have the federal government's consent due to the use of national waters. In the municipal realm, Article 115 of the Mexican Political Constitution sets that municipalities have the faculty and responsibility to provide the service of drinking water and sanitation to their populations, which is why municipalities seem to be the most visible responsible parties for protecting the right to water.

However, municipalities in Mexico are loaded with responsibilities and devoid of the sufficient institutional capabilities to carry them out (Merino, 2005). Before this context, the new General Law of Water in Mexico seeks to coordinate competences (federal, state, municipal) and the efforts of different actors (public, private and social) to guarantee the human right to water. Therefore, the guarantee of the human right to drinking water and sanitation is a responsibility of the Mexican State, which implies the existence of effective governance that includes the participation of every actor. It is precisely the approach of governance what allows a better explanation of the opportunities and challenges of guaranteeing the right to water in Mexico. Below is a brief description of the situation of the service of drinking water and sanitation in Mexico. It is a general revision for understanding the structural coincidences and differences that exist in different regions. The relevance of this brief re-counting is to underline the importance of history in the development of the water governance institutions.

SITUATION SUMMARY OF THE SERVICES OF DRINKING WATER AND SANITATION IN MEXICO

The situation of the services of water and sanitation in Mexico is diverse, i.e. the country's situation cannot be generalized and thought of in terms of a single solution for the different problems of each one of its regions. For example, in spite that 90% of the Mexican population has access to drinking water and sanitation, there is an inadequate availability in terms of quality and quantity. Behind that high coverage number, there are very diverse situations such as: sanitary problems due to the poor quality of the water, excessive work loads on women as the responsible parties for water supply at homes, high

costs for the poorest due to buying their water in tanker trucks, as well as sewer water downloads in the open, without the proper treatment (Barkin, 2006).

These situations have become more intense in the urban areas of Mexico, since this country has one of the highest rates of urban growth in the world. Paradoxically, the Mexican southern states, which rely on the highest availability of water, are the ones with the lowest coverage rates in terms of access to drinking water and sanitation. On the other hand, the northern states, which in its majority are seated in arid areas with low availability of water, are the ones with the highest rates of water availability. To a large extent, these differences are due to the economic development of these regions. However, aside from water availability, the common denominator that these regions share is an underdeveloped culture of water (CONAGUA, 2016a).

The culture water is more needed in countries with a low quality and quantity of water. Mexico is one of the countries with the least availability of water in the world. In spite of that, 16% of this country's aquifers are overexploited and the amount of governance needed for public policies focused on reducing water consumption just doesn't seem to exist. Also, only 20% of sewer water are reclaimed and the use rate of recycled water is almost non-existent. 80% of sewage water that is not treated, is poured directly to receptive bodies like rivers, lakes and seas (CONAGUA, 2016b). In this sense, water culture in Mexico is based on the scarce awareness on high consumption of water and on the effects of low quality water in the environment and human health, in the users of water as well as in the majority of the agencies responsible for delivering the service (Domínguez, 2006).

The mechanisms of water governance used in Mexico during the past century followed three different models. First, during close to the whole XX Century, a centralizing approach was favored, pushing for more supply sources. Second, during the second half of the XX Century, a decentralized approach was favored, focused on reducing water demand (CONAGUA, 2016b). Third, the current paradigm of water governance in Mexico is based on hydraulic sustainability, which focuses on making decisions that have an economic, social and environmental support, i.e.: for the long term. However, it is important to stress that the governance models for water have been driven as a discourse from the central government, which doesn't guarantee that water users, in different regions, adopt said principles in actual practice.

In this sense, the present study aims to underline the governance mechanisms, both formal and informal, that allow the fulfillment of the human right to drinking water and sanitation in Mexico. Instead of arguing in favor of said right, the purpose of this research is to offer evidences that help materialize said right in practice. For that, a methodological qualitative strategy, based on semi-

structured interviews, was used with the purpose of knowing the mechanisms behind an effective water policy and management.

Below we present a case study formed by two coexisting different governance systems. It is the Tijuana-San Diego cross-border urban region. The city of Tijuana, as part of Mexico, recognizes the right to water and sanitation, while the city of San Diego, as part of the United States, does not recognizes this human right. The purpose is to analyze the mechanisms of these two different governance systems that, nevertheless, are interdependent, because water bodies do not respect geographical or political borders. This case study is relevant because it has historic moments of cooperation and conflict at the same time.

THE CASE OF THE TIJUANA-SAN DIEGO URBAN CROSS-BORDER REGION

The Tijuana-San Diego cross-border urban region was selected as a case study because it relies on three different modes of governance. On the one hand, the city of Tijuana has a tradition of hierarchical governance, which has translated into a centralization of its decision-making processes (Weber, 1978). On the other hand, the city of San Diego has a market-style governance tradition, which has translated into a wide decentralization and a variety of agencies in charge of lending the services of drinking water and sanitation (Ostrom, 1974). Also, the cross-border relation between these two cities shows a scenario of a new type of governance of networks, which has translated into joint solutions to the hydraulic problems that beset them (Kooiman, 1993).

For a better understanding of the Tijuana-San Diego cross-border urban region, it is necessarily to contextualize it in the Lower Delta of the Colorado River, which has been the main water supply for both cities. In fact, farmers of both sides of the border have been the users to get the largest volumes of water. For their part, cities had not been relevant actors in negotiations. This is because the volume of water that occupied the cities did not represent a major problem for farmers. However, before the current urban growth, conflicts between cities and farmers have increased. Now, cities compete for water.

In the case of Tijuana-San Diego, history has not been as simple as a conflict between a strong country and a weaker one, since each problem has brought different scenarios. For example, these cross-border cities have fought together in matters of water supply and, at the same time, have been in conflict in matters of sanitation. That is to say that cooperation and conflict have been in function of the joint interests at play, not because of the sympathy between the

actors involved. Even then, there were several occasions of conflicts between agencies of the same country and cooperation with agencies from the other (Samaniego, 2004). Contextualizing, we now present a summary table with Tijuana-San Diego's main socioeconomic characteristics.

TABLE 1. SOCIOECONOMIC DATA: TIJUANA (MEXICO) AND SAN DIEGO (U.S.A.) CITIES IN 2014-15.

Socioeconomic characteristics	Tijuana	San Diego
Economic sector engine	Manufacture	Military
GDT per capita (annual dollars)	$10,119	$60,175
Income per capita (annual dollars)	$2,685	$31,043
Consumer prices (New York, base 100)	52.86	81.76
Unemployment rate (%)	6.5%	4.8%
Poverty line per home (one person-annual dollars)	$1,705	$11,880
Poverty line per home (additional person-annual dollars)	$1,705	$4,160
GINI index. 0 (total equity) 100 (total inequity)	0.44	0.47

Source: The author based on BANAMEX (2014), County of San Diego (2015), U.S. Department of Commerce (2015), U.S. Census Bureau (2015), CMIEE (2015).

According to Table 1, Tijuana and San Diego have different socioeconomic characteristics despite being independent cities. In spite of San Diego's GDT per capita being almost six times superior to Tijuana's, these cities cannot contain environmental problems within their borders. We now present more data that illustrate their differences and coincidences.

TABLE 2. WATER SECTOR DATA IN THE CITIES OF TIJUANA (MEXICO) AND SAN DIEGO (U.S.A.) IN 2015

Water sector characteristics	Tijuana	San Diego
Liter consumption/resident/day	186 liters	333 liters
Dependence on imported water (%)	90%	87%
Distributed water per year (cubic meter)	98.5 million	276.3 million
Treated water per year (cubic meter)	86.5 million	248.7 million
Treated water (%)	87%	90%
Treated water for reclaiming non-drinking water per year (cubic meter)	5.5 million m³	15.4 million m³
Reclaimed non-drinking water (%)	5%	6%
Percentage of water used in bathrooms in regard to the total inside of the dwelling (%)	70%	23%
Percentage of water used in gardens in regard to the total use of water inside of the dwelling (%)	15%	53%
Total assets of the urban water organization (annual dollars)	$121 million	$652 million
Total assets of the urban water organizations (annual dollars)	$484 million	$4.0 thousand million
Total liabilities of the urban water organization (annual dollars)	$162 million	$2.5 thousand million
Net financial position of the urban organization of water (annual dollars)	$322 million	$1.5 thousand million

Source: The author based on CESPT (2015, 2016) and the City of San Diego (2015a, 2015b).

According to Table 2, Tijuana and San Diego share historical problems, in spite of having different economic capacities. In fact, interviewed public servants in Tijuana agreed that economic capacity is the essential factor to explain why San Diego's water policy is more effective. Within this hypothesis lies the question of the present investigation. *How can you make the human right to drinking water and sanitation effective?* With a larger budget? To answer the question, the main actors in the decision-making process of the water sector of Tijuana and San Diego were interviewed. 25 interviews were conducted in total: 11 on the Mexican side, 11 on the US-side and 3 in binational organizations. The criterion for selecting these parties was balancing between branches of government, as well as for the private and social sectors. We conducted interviews with public servants from the water sector at the municipal, state, county and federal level, as well as two entrepreneurial organizations and two organizations of civil society per city.

The fieldwork was carried out between the months of March and November of 2016 in the cities of Tijuana and San Diego. The average duration of each interview was an hour. General questions were made around the topic of urban water policy with the purpose of shining some light on the governance framework that facilitates the effectiveness of water policy. Actually, the design of this investigation is qualitative and the used methods were semi-structured interviews and council analysis. The combination of documents with the information of the interviews was very rich in order to answer the research's question. It provided details and depth around the governance framework of the water policy.

In fact, qualitative research often affects the lives of those being studied. Then, anonymity is protected in order to avoid possible damages to their work. To protect anonymity is not a bias in the answers of the interviews. On the contrary, it represents an advantage because freer answers are obtained. On their part, interviews weren't recorded with the purpose of creating an environment of trust and to protect the informants. (Bok, 1978; Hopf, 2004). Notes were taken in a notebook and this does not take anything away from the results of a semi-structured interview, because there is a base model for capturing the spirit of the answers and to help the interviewer maintain credibility for future research activities (Hermanns, 2004). Summarizing, the present research has the advantage of valuable information, since it was obtained through relaxed interviews, without the pressure of self-censorship on certain answers that could have been taken out of context in a recording.

Generally, a reasearch's findings suggest that it is the governance framework, and not economic capability, what determines the effectiveness of water policy. That is to say, that the human right to drinking water and sanitation will be effective as long as its governance improves. When this happens, water agencies strengthen their capacities and generate greater resources for investment, but not the other way around. The main aspect that this research showed is that governance framework affects the effectiveness of water policies in a delayed manner. This is to say that the mechanisms of governance have non-immediate impacts, since it is the cultural, regulation and the involved actors' system what predetermines decisions on public policies. In this sense, it is relevant to pay attention to the models behind these decisions.

In the case of Tijuana, the model that moves the decision-making process is what I call *the metallic effect.* That is to say that the majority of the actors make decisions in function of the necessary investment to develop infrastructure. They consider infrastructure to be the fundamental piece to solve hydraulic problems. However, this model represents the main obstacle in the innovation

of water policies, since the intellectual model for problem solving does not allow thinking *outside the box.* Therefore, a stall in the hydraulic policies takes place, since solutions are anchored to the generation of infrastructure and lose other models out of their sight when thinking about problems and solutions.

The mode of governance that prevails in Tijuana is hierarchical. Centralization in decision-making becomes an obstacle in the innovation of water public policies. It is evident that the low complexity of the institutional framework of the decision-making process limits effectiveness. By low complexity I mean that people were recruited on the logic of a political apparatus, making decisions without any real counterbalance. This logic ignores professional merit as a fundamental principle to recruit, hire and promote personnel. On the contrary, the logic of a political apparatus recognizes the loyalty of a person to political groups as the key to belonging to the system. This phenomenon was present in the history of the United States until the end of the XIX Century, when personal and political influences were more valuable than scientific and technological preparation.

In the case of San Diego, the model that moves decision-making is what I call the talent *effect.* Contrasting what happens in Tijuana, in San Diego, talent is valued as a central element to compete for more resources and credibility. The system of governance in San Diego can be explained by the weights and counterweights generated by the different water agencies involved. That is how agencies try to get the best possible talents and, therefore, compete with better information, practices and strategies to satisfy their customers. In that sense, the competition between agencies creates innovative practices that are replicated by the other agencies. The dark side of this model is the lack of cooperation in long-term common projects. Sometimes, water agencies do not cooperate in regional infrastructure, therefore, the agencies that do not cooperate end up receiving the benefits. This phenomenon of a stowaway or *"free-rider"* becomes an obstacle in taking advantage of economies of scale.

The mode of governance that prevails in San Diego is market style. The decentralization in decision-making creates multiple centers in the process, which generates a very healthy competition that sets off a race to satisfy customers. Since customers can clearly identify the water agency that best fits them, they push for a better service of drinking water and sanitation. This pressure is in function of the closeness with their customers, since there are multiple agencies that split the market in small portions. A fundamental aspect in the effectiveness of the hydraulic policies in San Diego is the legitimacy of legal power. An externality of the intense competition between water agencies is the permanent conflict, which can even reach jurisdictional organisms.

Since the conflicting actors trust their judicial courts, legal resolutions are an effective mechanism of the water governance system in San Diego. This throws evidences to consider that the effectiveness of a system of governance by markets requires a trustworthy judicial power.

In the case of Tijuana-San Diego, the model that moves decision-making forward is what I call the *ensemble effect.* The system of governance of the Tijuana-San Diego urban cross-border region can be explained by the inter-dependence between these two cities. That is to say that it is very difficult to separate and attack a city's different problems and solutions around water in an isolated way. This is due to the fact that water does not respect geographical limits. For example, the natural fall of water is from Tijuana to San Diego, where, during raining season, sewer water and trash from Tijuana ends up in San Diego's shores. In this sense, San Diego's authorities cannot solve the problem from within their territory, which is why they have developed binational strategies. Such is the case of the international plant of treated water, financed by both countries so that Tijuana's reclaimed water is treated in San Diego.

Networks are the mode of governance that prevail in Tijuana. Coopera-tion in the decision-making processes is in function of the interdependence among both cities' actors. Governance networks elevate the impact of each intervention in public policies, since they gather the capabilities of different public, private and social actors from both sides of the border. Even the effectiveness of water policies can be more explained by this kind of regional networks than by national regulations. The dark side of governance networks is the co-dependence that develops when these relations are asymmetrical. For example, Tijuana tends to depend on San Diego's scientific and technological innovations. Likewise, San Diego has a helping attitude towards Tijuana. Therefore, when actors are asymmetrical, the synergy of their joint capacities is not fully taken advantage of.

Summarizing, governance framework influences the effectiveness of water policies. In fact, each mode of governance (hierarchical, markets, networks) has its own paradigm which emphasizes certain practices but suppress others. In that sense, the lesson obtained from this research is the need to contextualize each governance framework to its actual reality. By all of this, I mean to say that the design of hydraulic policies and their respective laws require an understanding of the models and practices behind each governance framework.

LESSONS FOR THE NEW GENERAL LAW
OF WATER IN MEXICO

The lessons of the Tijuana-San Diego cross-border urban region offer some light for the process of Mexico's new General Law of Water. Specifically, these lessons throw evidences that strengthen the governance framework that surrounds the public policies destined to guarantee the human right to drinking water and sanitation. So far, there are two proposals in that regard: a law initiative in the Mexican parliament and a proposal made by citizens.

The initiative that was proposed within the Mexican Parliament is based on the coordination of the three branches of government, having for premise the clear enunciation of each one of their responsibilities. Likewise, it aims to promote the participation of citizens and the private sector. This proposal considers water as a national security matter, since it can have a considerable impact in many different sectors (*Cámara de Diputados,* 2015). For their part, the citizens' proposal is a national strategy that sets the bases for guaranteeing this human right through the coincidence of the public and the citizen sectors. These proposals open spaces for citizens to participate in the decision making process in matters of water in cities and communities, recognizing local space as a central element of water governance (*Iniciativa Ciudadana,* 2015).

The main difference between these two initiatives is that the Citizen Initiative *(Iniciativa Ciudadana)* incorporates the participation of citizens in a more creative manner, through integrating neighborhood representatives before the local water collegiate organisms. For their part, the Initiative of Parliament *(Iniciativa de la Cámara de Diputados)* practically proposes the same centralized strategy as the present one, in which the National Water Commission has a crucial role. In the same way, the greater coincidence between both initiatives is that they consider important to evolve towards a new governance of water, based on the integration of decision-making processes of the private and social sectors. I consider that the tension lies in the way to think about the mechanisms that will put this new governance of water into play.

In the context of the creation of a new General Law of Water, the present research proposes six lessons that were thrown by the case of the Tijuana-San Diego cross-border urban area. On the one hand, the lessons in governance are: to professionalize, decentralize and counterbalance. On the other hand, the lessons of management are: to diversify, recycle and sustain. Just as this research argues, it is governance framework what sets the conditions to improve the management and public policies of water, that is: to professionalize, decentralize and counterweight are substantial aspects. However, three fundamental management subjects are incorporated, that is: to diversify, recycle

and sustain, since these have been key pieces for success in other cities, like San Diego. Now, I present the scheme of this proposal.

TABLE 3. PROPOSALS FOR MEXICO'S NEW GENERAL LAW OF WATER.

Lessons on water governance	Description
Professionalize	Bring career professionals to the water sector, from the local to the federal levels.
Diversify	Promote diversification of water supply sources.
Decentralize	Promote decision-making in local spheres, involving all those groups that are interested.
Recycle	Stimulate recycling of treated waters as a strategy for a new water culture.
Counterweight	Set redundant decision-making systems with the purpose of generating debates.
Sustain	Raise awareness around the need for economic, social and environmental benefits.

Source: The author based on field research in the Tijuana-San Diego cross-border urban region.

Among the lessons of Water Governance, *the first one* refers to the imminent need to rely on a career professional service within the water sector, from local to federal governments. Today, there are talented individuals within water organizations –however, there is no appropriate system for recruiting and promoting the best of them. *The second lesson* implies the real decentralization of decision-making. Mexico is a very diverse country because of its geography and social and environmental problems. Therefore, it requires a complex framework for decision-making. *The third lesson* refers the design of counterweights in decision-making. This has the finality of encouraging debates among all the actors involved, as well as their accountability. This institutional scenario of counterweights would push to reach win-win agreements.

Of the Water Management Lessons, *the first one* is to diversify the drinking water supply sources. For example, 20 years ago, the cities of Tijuana and San Diego depended approximately 90% on the water of the Colorado River. Now, Tijuana hasn't changed its level of dependence on that source, while San Diego has decreased it to a dependence of around 50%. It is noteworthy that Tijuana is currently building a desalination plant that will substitute the water coming from the Colorado River. This situation shows that the supply strategies on the Mexican side do not consider the vulnerability of depending on one single source of water supply.

The second lesson consists on recycling treated water. In spite that there are efforts in the treatment of sewer water, the recycling of this kind of waters is close to none. This is related to the culture of water, since users are reluctant to accept recycling water options, particularly in agriculture and human consumption. In San Diego, water organizations have been promoting the recycling of water for human consumption as an alternative for the future. For example, in some California counties, like Orange County, where the Disneyland theme park is located, there are recycling systems for human consumption. In the case of Tijuana, these proposals are more difficult to implement, since the quality of water and the perception of water recycling are so much lower in comparison with the northern side in the United States. Curiously, there are people that have consumed treated water in Disneyland without realizing it.

The third lesson implies having a culture of water sustainability in the decision-making process, i.e.: to raise an integral economic, social and environmental awareness. For example, the model of infrastructure that exists in the majority of underdeveloped countries consists in developing infrastructure without a vision to sustain these projects over time. Special attention must be paid to the financial system of public works in water and sanitation-related matters, since they can result in an ill-oriented system that is build just for the sake of it. Summarizing, *the lessons of Water Governance offer the mechanisms to carry out the objectives thrown by the lessons of Water Management.* Which is to say that, in this research, water management throws the "what" while governance throws in the "how".

CONCLUSIONS: MAKING THE HUMAN RIGHT TO WATER EFFECTIVE IN MEXICO

The main conclusion that this research aims to underline is that the new General Law of Water should focus on the what as well as on the how, i.e. as much as in the desirable concepts as well as on the mechanisms to achieve them. The most relevant aspect of the recognition of a human right for drinking water and sanitation in Mexico is the international exposure of water policies. International organizations have reasons for reviewing the compliance of said human right. In that sense, the best General Law of Water will not be the one that incorporates the fashionable and politically correct concepts, but the one that incorporates a design to strengthen the governance capacities of water organizations. That is to say that the human right to drinking water and sanitation will not become effective through a dead document, but through concrete actions; by being clear and concise, instead of ambiguous and extent.

It is important to underline that the recognition of a human right in a Constitution does not represent an automatic materialization. For example, many organizations in the United States acknowledge that it is better to have a human right in practice than only within the written law. Anglo Saxon legal culture (in this case, the North American one) prioritizes actions and practice, while the Latin culture (Mexican in this case) prioritizes the thorough writing of the law for arguing the motives for the authority's actions. For example, transparency and accountability in the United States happens in practice instead of dialogues, arguing motives before public opinion. In contrast, transparency and accountability in Mexico happens in the realm of legal requirements that become a limit for its materialization. Which is to say that Mexican culture sees the Law as a specific mechanism for justifying its actions, in contrast to the United States where Law is appreciated as a series of general principles for actions that regulate the obtaining of public results.

It is extremely important to underline this idea, since the new General Law of Water must be understood as a regulation body that will be interpreted in environments where pre-existent organizational cultures and routines will be protected. So, the new law should clearly incorporate the governance mechanisms that turn out to be more adequate to the Mexican reality.

Now, is the specific case of the Tijuana-San Diego cross-border urban region a good example to pick up lessons and incorporate them in a Mexican general law? Yes, since it is comparative case study of one same geographical region with two different systems of water governance. This allows us to think outside the box, since the mechanisms and models behind each of these systems are compared. In that sense, we can stress what actions are making a difference on one side of the border, as well as reaching win-win arrangements generated between both border cities. These lessons are directly related with the governance of water in metropolitan areas. The main lesson for metropolitan areas is the need to generate actions to strengthen the interdependence between cities and avoid codependence of some cities towards others.

Likewise, the case of a cross-border urban region offers an international take on this problem. Which is to say that, in spite of the guarantee of the human right to drinking water and sanitation taking place in local spaces, the international influence is always present. The modern world is marked by connectivity –which can enable the dynamics of communications and mi-grations. Public problems are not completely related to a territory as they were before. Now, public problems tend to become international, cross-border, metropolitan, i.e.: transterritorial (Castells, 2011).

Specifically, the governance mechanisms that this research proposes are based in professionalization, decentralization and counterweight. In relation with professionalization, it is necessary to foster meritocracy in the recruitment and selection of human resources in the water sector, from municipal to the federal governments. This element must be present in the new General Law of Water. Also, decentralization is required in decision-making processes. Since water has a local impact and a regional trajectory, several different perspectives are required for the problems at hand. For example, before a situation seen from the federal government's angle, the presented problems and solutions can turn out to be inappropriate for certain regions in the country. That is why it's desirable that the new Law is flexible regarding decision-making. When Laws are so specific, they run the risk of putting a straight jacket to water organizations. In that sense, the spreading of the decentralization of the decision power of state and municipal governments is recommended.

However, decentralization all by itself does not have the desired effect when there are no counterweights among the actors involved. That is why it is necessary to incorporate weights and counterweights in the design of decentralization of decision-making processes. Here is where the proposal of a new governance of water comes into play, i.e. the government recognizes the insufficiency of its capabilities for facing these problems. In order to achieve its ends in a more effective manner, it seeks both private and social participation. That is what the new governance of water is about: about the cooperation between the public, private and social sectors (Aguilar, 2012).

Before finishing, it is necessary to be critical before this proposal. To professionalize, decentralize and counterweight will not come by magic once the new Law is promulgated. It is important to point out that these governance mechanisms require a culture that backs its implementation. Then, the design and the writing of the new legislation must be aimed at changing the game, changing the power play, to discourage illegitimate businesses around investment in public works in drinking water and sanitation.

Before this situation, the present research proposes to change the current bet on promoting public works towards one based on promoting scientific and technological knowledge. The proposal is to pass from a model where bureaucracies and politicians promote investments in public works with a purpose in itself towards a model that revolves around scientific proposals. Without a doubt, this new proposal will not solve all problems and won't be exempt of negative consequences. However, it is worth to make the decision and change the promoting strategy for public works, which so far have been insufficient. In contrast, this new bet based on scientific intelligence will bring greater economic and environmental benefits. However, the social aspects

of hydraulic policies must be reinforced, since science can be quite socially insensitive. For that, it is necessary to incorporate interdisciplinary committees in which no interest weights more than the other.

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THE LEGAL-CONCEPTUAL PROBLEMS OF MEXICO'S METROPOLITAN AREAS: PROPOSALS FOR A NEW COMPETENCE DESIGN

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ABSTRACT: The present text was encouraged by a double purpose: on the one hand, to ponder on the problems of metropolitan areas, presenting conceptual vacuums and some antinomies in Mexico's legal system; and, on the other hand, to draft a new competence design for the current branches of government, as well as imagining new and appropriate political apparatus for the new urban realities.

KEYWORDS: City, Metropolitan area, Megalopolis, Competence, Government.

> *"The most beautiful and highest*
> *forms of knowledge are those that deal*
> *with the organization of cities and families".*
> *– Plato.*

INTRODUCTION

Without a doubt, the two greatest inventions of the human species are the modern State and its cities. These two forms of association are an increasingly perfected expression of humans' need to live in society and to materialize their political nature (*zoon politikón*). Before these two, all other technological creations, like the Smartphone, the computer or the Internet, become secondary, since they were created –and are only possible– thanks to the political association par excellence: the State. Before the complexity and difficulty implicit in this form of social organization, all other inventions can be considered as consequent.

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However, present day large urban agglomerations have created tensions in the concepts and paradigms that brought them to life: municipal autonomy against the sovereignty of states; territorial distribution of power based on political and administrative divisions instead of the necessary, but nonexistent, distribution of power in metropolitan areas; and the State, the most characteristic archaic political association, based on the territorial nature of public life's problems projected against the growing complexities and 'transterritoriality'[1] of current public problems [security, the environment, mobility, etc.].

On the other hand, without a doubt, the Nation-State that resulted from The Treaty of Westphalia faces challenges and problems of global scale that widely surpass the purpose and breadth of said system. In the same way, municipalities –an invention even more ancient than the modern State– have also been overwhelmed by the phenomenon of metropolitan areas and their chaotic problems. Therefore, it is very difficult to explain and, even yet, trying to solve these new realities through institutions and concepts that belong to different times and realities.

CITY, URBAN AGGLOMERATION, AND MEGALOPOLIS: REALITIES AND TENDENCIES OF THE MODERN WORLD

Contrary to what is commonly believed, cities are not a recent phenomenon. The existence of many of them is registered in history since the earliest times. Of course, their organization, infrastructure and functions have radically differed through time. However, it is very important to point out that:

> A city is a collection of architectural forms in space and a fabric of associations, corporations and institutions that occupy this collective structure (…) cities were instituted as centers of royalty and clerical power; where a king's first action was the construction or "re-dedication" (sic) of a temple so it could be a dwelling for whichever god ratified and sanctified their pretensions of absolute authority (Mumford, 1979: pp. 385-386).

In fact, since time immemorial, cities have distinguished themselves for being the seat of formal, political and/or religious power, and of other informal powers as well, like the economic –whether lawful or unlawful–, cultural, scientific or of any other kind. Cities are seats for power and knowledge. Just as the American philosopher Lewis Mumford (1979, p. 388) so correctly mentions: "the capacity for cultural storage of a city of barely 100,000 residents widely surpasses that of any electronic computer".

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1 This context is taken from Luis F. Aguilar Villanueva (2017).

With that being said, it is convenient to state clearly that a city[2] and a metropolitan area are not the same thing. Commonly, a metropolitan area is understood as a group of cities established in two or more municipalities, whereas a city can exist within a single municipality –or can, in fact, be a municipality– without it necessarily involving a metropolitan area.

In that regard, the Organization for the Economic Cooperation and Development (OECD, 2017) defines a city as "a local administrative unit where the majority of its population –of at least 50 thousand residents– lives within one urban center".

The fact that, in any part of the world, cities are the most relevant matter in life and public debate doesn't seem coincidental: decision-makers, and social-sciences scholars endlessly discuss them in their problems. It is not surprising. Quite correctly, Rodrigo Borja (2018, par. 28) states that:

> Urban spaces are the territorial base for collective action. That is where political ideas are expressed, debates are developed, conflicts are raised, social and political struggles take place. Urban spaces are the stages for the social, cultural, legal, political, economical and religious lives of people.

In this sense, the international stage of cities appears quite challenging: human populations are increasingly, and more intensely, concentrated in urban centers, in cities. According to the United Nations (UN), 54% of the world's population currently dwell urban areas and, for the year 2050, this percentage is expected to rise to two thirds of the world population (UN, 2014: par. 1).

At first, it must be said that migration from the fields to the cities, and the increasingly concentrated human settlements in urban areas suggested the fact that people were looking for better living conditions and how to obtain their main satisfiers in more accessible ways. However, these forms of social association and coexistence have gone on to produce benefits for just a few. Paradoxically, today, what is common among large cities or metropolitan areas suggests, instead, a degradation in the quality of life and an exacerbation of social conflicts, as well as the breaking of the most elemental rules of civilization and social coexistence[3].

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2 City "is the term applied to the *polis* of the Classical Greece and, by analogy, to other similar political communities like, for example, Carthage, republican Rome and some medieval cities, like Flanders and Italy in particular. Unlike these former examples, which owed their loyalty, in nominal occassions, to a Monarch or Lord, the *polis* didn't recognize an outsider sovereign. Normally they were not cities in the modern sense, but did have an urban center, usually fortified, for political and religious ends" (Brunt, 1991: p. 119).

3 "In a 2006-2007 special report on the state of cities all over the world, the United Nations Program on Urban Settlements warned that, if things continued as they currently are, for the year 2020, aproximately 1,400 million people will live in the precarious settlements that surround metropolis, without the essential public services and with high levels of violence and criminality. The report stressed that, in the year 2006, 1,000 million people lived in such conditions. 10% of them lived in developed countries, while the rest were distributed in the poverty belts of cties in Africa, Asia and Latin America". (Borja, 2018: Consulted voice: 'urban planning').

Today, the concepts of 'city' and 'metropolis' are synonymous. Essentially, they relate with a fundamental point: how preponderant is the type of economic activities of a population settled in a specific territory. In this way, the relevance, as well as the quality and the social penetration of 1) their infrastructure [roads and means of communication]; 2) the secondary or tertiary sector of their economy; and 3) the population density are factors that define if a certain concentration of people lives in a city or in a rural area.

As it was made clear above, 'city' and 'metropolis' implied synonymy. However, the academic jargon used in the international concert points that 'metropolitan area' and 'urban agglomeration' maintain that very same relation of conceptual equivalence. In that regard, it is convenient to quote Chuanglin and Danlin's (2016: p. 126) definition of an urban agglomeration:

> A spatial form of integrated cities that is highly developed. This happens when the relation between cities changes from simply being competitive to become cooperative in order to allow a global economic development.

In that sense, Luis Unikel (1974: p. 181) states that metropolitan areas or zones can be defined as:

> The territorial extension that includes a central city and its adjoining political and administrative units (or other units belonging to said metropolitan areas) with metropolitan characteristics (such as workplaces or places for the residence of workers dedicated to non-agricultural activities) that maintain a socioeconomic interrelation that is direct, constant and has a certain magnitude with the central city (or with the urban are).

The evident process of population 'mega concentration' in urban areas contributed to another even more provocative and complex phenomenon for their governments: the megalopolis. In that regard, the UN's World Meteorological Organization (WMO, 2018: p. 2) points that these:

> Are usually defined as cities whose populations surpass 10 million residents, currently encompass less than 0,2% of the Earth's surface and, yet, accommodate one of every ten people of our planet. Most residents (…) live in cities of developing and least evolved countries.

On the other hand, for Platt (2010: p. 223) a megalopolis is a:

> Super metropolitan urban regions that subsequent to World War Two. It represents a new geographic settlement characterized by a very high population density; major internal and external fluxes of people, goods, money and

information; a lack of focus on urban and rural land; and the acquisition of a dominant role in the national and international economy.

Presently, there are 20 megalopolis in the whole planet. Just as the WMO warns, these are urban phenomena that can be seen, particularly, in the Third World or in developing countries –with the exception of the ones registered in Japan. (See Table 1).

Regarding the aforementioned, the UN (2014: p. 7) agrees by identifying megalopolis merely as a Third World phenomenon since "16 of these are in Asia, 4 in Latin America, 3 in Africa, 2 in North America and one in Europe". Furthermore, it is convenient to point that, while it is true that, in 1990, there were barely 10 megalopolis in the whole planet, for 2014, this number practically tripled (28). (See Table 1).

CHART 1. POPULATION CONCENTRATION IN MAIN CITIES OF THE WORLD IN POPULATION TERMS: 2016 VS. 2030 [PROJECTION] COMPARISON.

Rank	City, Country	Population in 2016 (thousands)	City, Country	Population in 2030 (thousands)
1	Tokyo, Japan	38 140	Tokyo, Japan	37 190
2	Delhi, India	26 454	Delhi, India	36 060
3	Shanghai, China	24 484	Shanghai, China	30 751
4	Mumbai (Bombay), India	21 357	Mumbai (Bombay), India	27 797
5	São Paulo, Brazil	21 297	Beijing, China	27 706
6	Beijing, China	21 240	Dhaka, Bangladesh	27 374
7	Ciudad de México (Mexico City), Mexico	21 157	Karachi, Pakistan	24 838
8	Kinki M.M.A. (Osaka), Japan	20 337	Al-Qahirah (Cairo), Egypt	24 502
9	Al-Qahirah (Cairo), Egypt	19 128	Lagos, Nigeria	24 239
10	New York-Newark, USA	18 604	Ciudad de México (Mexico City), Mexico	23 865
11	Dhaka, Bangladesh	18 237	São Paulo, Brazil	23 444
12	Karachi, Pakistan	17 121	Kinshasa, Democratic Republic of the Congo	19 996
13	Buenos Aires, Argentina	15 334	Kinki M.M.A. (Osaka), Japan	19 976
14	Kolkata (Calcutta), India	14 980	New York-Newark, USA	19 885
15	Istanbul, Turkey	14 365	Kolkata (Calcutta), India	19 092
16	Chongqing, China	13 744	Guangzhou, Guangdong, China	17 574
17	Lagos, Nigeria	13 661	Chongqing, China	17 380
18	Manila, Philippines	13 131	Buenos Aires, Argentina	16 956
19	Guangzhou, Guangdong, China	13 070	Manila, Philippines	16 756
20	Rio de Janeiro, Brazil	12 981	Istanbul, Turkey	16 694

Source: The World's Cities in 2016, published by the UN (2016: p. 4).

But the exponential growth of a massive population concentration in cities during the last decades, not only refers to megalopolis. In this regard, it is convenient to stress that, in 1950, there were 77 cities worldwide that surpassed the million residents threshold. However, in the year 1970, that number practically doubled itself with the registry of 144 cities; for 1990, that number grew to 270; in 2015, it grew to 501; and it is forecasted that, for the year 2030, there

will be 663 metropolis all over the world with more than one million residents (INEGI, 2018: p. 15).

In relation to Graph 1, a very particular fact stands out: there are five countries [Korea, Japan, Canada, USA and Mexico] in which most of the population lives in cities or metropolitan areas of more than 500 thousand residents. However, the exact opposite pole is represented by those countries on the right side of the black line, whose population majority lives outside urban agglomerations. All of these countries are European and –with the exception of Norway– they are not the most advanced in that region [Slovak Republic, Slovenia, Czech Republic and Greece].

On the other hand, there is a line in the middle of Graph 1 that represents those countries whose population majority lives in small and medium-sized cities of between 50 and 500 thousand residents, among which Luxemburg is the most extreme case with 83%, followed by the Netherlands, the United Kingdom and Spain, with percentages that go from 36% to 32%. Of the aforementioned, one can infer that an ideal situation would be if, in every country, at least half of the population, or a little more, could reside in this last type of cities [from 50 to 500 thousand residents], while the rest dwelled outside urban agglomerations, or distributed among this type of localities and metropolitan areas of more than 500 thousand residents, but not in a country whose population majority lives in cities of more than 500 thousand residents and within metropolitan areas. This should be the exception and not the rule: it should only be justifiable in cases where a nation does not have a vast territory or doesn't posses enough liable territories for human settlements. (See Graph 1).

GRAPH 1. POPULATION CONCENTRATION IN URBAN AGGLOMERATIONS (2014).

■ Áreas metropolitanas (500 000+)
□ Aglomeraciones urbanas pequeñas y medianas (50 000-500 000)
■ Habitantes que viven afuera de las aglomeraciones urbanas

	Áreas metropolitanas (500 000+)	Aglomeraciones urbanas pequeñas y medianas (50 000-500 000)	Habitantes que viven afuera de las aglomeraciones urbanas
Corea (45)	73.2%	13.4%	13.4%
Japón (76)	68.5%	9.5%	21.9%
Canadá (34)	56.3%	16.8%	26.9%
Estados Unidos (262)	53.5%	15.0%	31.5%
México (77)	50.9%	11.0%	38.0%
OCDE (1179)	48.6%	18.3%	33.1%
Chile (26)	48.3%	24.9%	26.8%
Austria (6)	47.0%	10.8%	42.2%
Bélgica (11)	44.4%	14.7%	40.9%
Reino Unido (101)	40.8%	33.3%	25.9%
Francia (83)	40.4%	25.0%	34.7%
Grecia (9)	40.0%	9.1%	50.9%
Estonia (3)	39.6%	15.8%	44.5%
Portugal (13)	39.3%	16.1%	44.5%
Alemania (109)	38.8%	25.0%	36.3%
Irlanda (5)	37.9%	17.9%	44.3%
Suecia (12)	37.4%	15.9%	46.7%
Países Bajos (35)	37.2%	36.9%	26.0%
España (76)	36.8%	32.3%	30.9%
Dinamarca (4)	36.0%	18.8%	45.3%
Suiza (10)	35.3%	20.9%	43.8%
Italia (74)	30.2%	20.3%	49.5%
Polonia (58)	29.8%	25.0%	45.2%
República Checa (16)	29.3%	17.9%	52.9%
Hungría (10)	28.7%	21.7%	49.5%
Eslovenia (2)	28.0%	11.9%	60.1%
Finlandia (7)	27.3%	25.1%	47.6%
Noruega (6)	25.3%	22.2%	52.5%
República Eslovaca (8)	13.4%	24.3%	62.4%
Luxemburgo (1)		83.1%	16.9%

Source: The Metropolitan Century. Understanding urbanization and its consequences (*El Siglo Metropolitano: Entendiendo la urbanización y sus consecuencias*), published by the OECD (2015: p. 6).

In Mexico, Article 3 of the General Law of Human Settlements, Territorial Ordering and Urban Development (*Ley General de Asentamientos Humanos, Ordenamiento Territorial y Desarrollo Urbano*), in its Fraction XXIII defines 'megalopolis' as:

> A system of metropolitan areas and Population Centers, as well as their areas of influence, tightly related in geographical and functional ways. The minimal threshold for the population of a Megalopolis is of 10 million residents.

It is convenient to stress that this General Law does not estipulate a determined amount of residents for a metropolitan area, considering qualitative –instead of quantitative– criteria in its definition[4].

In this context, the case of Mexico stands out, just as it is shown in Graph 2. The superior level of each bar (except the one that refers to Central America) is the one that covers the population percentage concentrated in urban centers of 10 million or more residents. In this particular case, the fact that Mexico has the largest segment, in terms of percentage units, stands out. In this country, almost a fourth of the population lives in this kind of urban agglomerations, contrasting with the average seen all over the world, where that population percentage doesn't add up to 10%. On the other hand, it must be stressed that, within this same indicator, in Latin America and the Caribbean, the percentage indicated by the bar raises a little above 15%, while, in Brazil, it almost reaches 20%, confirming the hypothesis that this type of cities or megalopolis are more characteristic of developing countries, than of developed countries.

Adding to the aforementioned, the other fact that stands out in Graph 2 is the segment below the bars, which refers to cities with less than 500 thousand residents. The comparative of this shows that a little more than 50% of the total population in the "World" is concentrated in this archetypal cities (which is, and seems to be, correct), while in Mexico, these kind of cities barely receive 30% of its population, which could be inadequate. However, it is paradoxical that in Central America (one of the most underdeveloped regions in the planet), the population proportion in these cities is superior to 60%. That shows that in Mexico, as in Brazil and Central America, human settlements in cities seem to be more unbalanced or lacking in planning and order. It is possible that this has a lot to do with conceptual, legal and constitutional vacuums that keep metropolitan areas from being regulated due to 'municipal separatism' and to 'the sovereignty of federative entities'.

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4 Article 3 of the General Law of Human Settlements, Territorial Ordering and Urban Development, in its Fraction XXXVII defines a metropolitan area as the following: "Population Centers or conurbations which, due to their complexity, interactions, social and economic relevance, form a territorial unit with a dominant influence and represent a strategic importance for the national development".

GRAPH 2. URBAN POPULATION PROPORTION BY CITY SIZE,
IN MEXICO AND THE WORLD (2012)
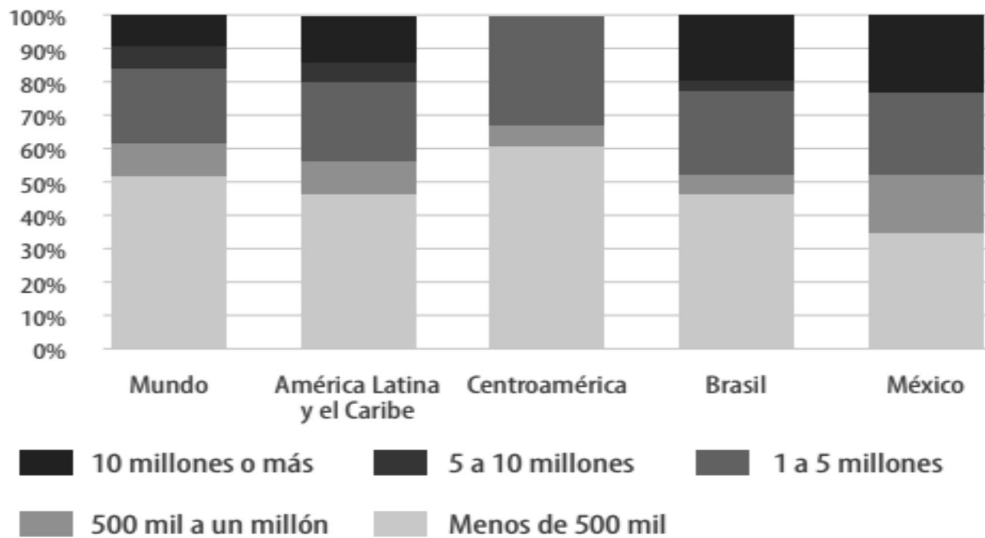
Source: "Compact Mexico: The conditions for intelligent urban densification in Mexico" (México Compacto: Las condiciones para densificación urbana inteligente en México), published by the Republic of Mexico' Senate (2014: p. 6).

METROPOLITAN AREAS IN MEXICO

In our country, the urbanization process shows three particularly relevant stages (INEGI, 2018: p. 15):

> In the particular case of Mexico, according with Anzaldo and Barrón (2009), the urbanization process has gone through three stages. The first one is denominated by a slow urbanization process and rural predominance. It goes from 1900 to 1940 and is characterized by an urban population relatively low, but with a higher growth than the total population (2.6 vs. an annual 0.9%)[5] (…) The second stage, defined by an accelerated and preeminent urbanization, goes from 1940 to 1980. In it, the urban population showed unprecedented numbers of global growth that almost doubled the national scale (5.7 vs. an annual 3.1%). The number of cities with 100 thousand residents or more went from six to 52[6] (…). And, finally, the third stage, one of moderate urbanization

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5 At the beginning of this period, only Mexico City and Guadalajara had more than 100 thousand residents but, by the end of this period, Monterrey, Puebla, Tampico and Torreón were also considered as part of this group.
6 The population of Mexico City increased from 1.6 to 13.3 million people, while Guadalajara and Monterrey surpassed the one million residents. Rural-urban migration was considerably important to this facts.

and diversification, went from 1980 to 2005. In it, although the population growth decreased considerably, it remained high within the urban universe (2.5 against 1.7). The cities of intermediate size (from 500 thousand to less than a million residents) were the ones that grew the most (…) the number of cities with more than million residents increased from three to eight (idem).

In spite of all of this, it is from 1960 and on that the metropolitan areas began showing in the national statistics (see Table 2).

CHART 2. METROPOLITAN AREAS IN MEXICO (1960-2015)

Indicador	1960	1980	1990	2000	2005	2010	2015
Zonas metropolitanas	12	26	37	55	56	59	74
Demarcaciones y municipios metropolitanos	64	131	155	309	345	367	417
Entidades federativas	14	20	26	29	29	29	32
Población total (millones)	9	26.1	31.5	51.5	57.9	63.8	75.1
Porcentaje de la población nacional	25.6	39.1	38.8	52.8	56	56.8	62.8

Source: INEGI (2018: p. 18)

Coupled with the aforementioned, it is convenient to stress that, from 2005 to 2015, the metropolitan phenomenon in our country grew in important ways: metropolitan areas went from 56 to 74, encompassing 72 more municipalities and 3 federative entities more to include, today, a total of 417 municipalities or territorial demarcations, within the country's 32 federative entities. Furthermore, it is convenient to point out that, during that very same period, population increased by a 30%, including a little more than 75 million resident, representing close to 63% of the national population (see Table 2). Moreover, the past table warns that, in 55 years (1960–2015), the number of metropolitan areas in Mexico increased by 84% and the number of demarcations or municipalities that are part of metropolis went from 64 to 417.

One could that say that, at the moment, the 74 Mexican metropolitan areas represent 76% of the national GDP and withhold 90% of the country's investments (Mexican Institute for Competitiveness, *Instituto Mexicano para la Competitividad,* IMCO, 2016; p. 4). The aforementioned shows that, in Mexico, the metropolization phenomenon is more accentuated than in the rest of the world since, currently, 54% of the world population resides in urban areas and, for the year 2050, two thirds of the planet's population will reside in cities, while, our country reached that scenario with at least 35 years of anticipation.

Although it is true that Mexican metropolitan areas started being counted in 1960, it wasn't until the year 2006 that the Metropolitan Fund was created which, in the beginning, was destined only for the construction of public works in the Valley of Mexico Metropolitan Area (*Zona Metropolitana del Valle de México,* ZMVM). It wasn't 2008 and on that this fund's resources began being distributed among other metropolitan areas (Mexico's House of Representatives, 2010: p. 16).

With that cleared, in Mexico, the Secretary of Agrarian, Territorial and Urban Development (*Secretaría de Desarrollo Agrario, Territorial y Urbano, Sedatu*), the National Council for Population (*Consejo Nacional de Población, CONAPO*) and the National Institute of Statistics and Geography (*Instituto Nacional de Estadística y Geografía, INEGI*) defines a metropolitan areas as:

> The group of two or more municipalities in which a city of 100 thousand residents or more is located, with an urban area, functions and activities that surpass the municipalities' limits and incorporates neighboring, and predominantly urban, municipalities with which it keeps a high degree of socioeconomic integration. It also includes those municipalities that –due to their particular characteristics– are relevant to the planning and the urban politics of the metropolitan areas in question. In addition to all of this, the definition of metropolitan areas also contemplates those municipalities with a city of 500 thousand residents or more; those that have cities of 200 thousand residents or more, located in the fringes of the northern and southern boarders and in coastal areas; and those in which state capitals are settled (the latter only when they are not included in a metropolitan area"[7] (INEGI, 2018: p. 35)[8].

Beyond the aforementioned, and in a broader sense that could create problems, one could say that metropolitan areas are the condensed expression of the social realities and the legal and political limitations of the modern world; population agglomerations that transcend legal and administrative divisions as well as competence jurisdictions; a space in which a population develops economic, productive, cultural, leisure and recreational activities, without considering the territorial boarders or limits of municipalities, cities, states and nations.

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7 In this regard, it is convenient to highlight the fact that Mexico's 74 metropolitan areas were determined based on the following criteria: 47 were defined because of an intermunicipal or interstate conurbation; 11 because of their size and for being state capitals; 9 were defined based on statistical and geographical criteria; and 7 were defined for being on the boardering and coastal fringes.

8 On the other hand, according to Sedatu, INEGI and CONAPO, there are four types of metropolitan areas in Mexico, based on population, geographical and politic-administrative criteria (INEGI, 2018: p. 35): 1. Cities located in two or more municipalities with a population of 100 thousand residents or more. 2. Cities located within a municipality with a population of 500 thousand residents or more. 3. Cities located in two or more municipalities in a boardering region or coastal area with a population of 200 thousand residents or more. 4. Cities where state capitals are settled and do not belong to a metropolitan area.

In this context, metropolitan areas are a modern social and urban reality, with a legal, political and administrative structure that is anachronistic, obsolete and insufficient. With no fear of mistake, we can say that the political and administrative divisions of municipalities and states are an obstacle for the adequate and efficient attention to metropolitan realities and needs.

THE LEGAL AND COMPETENCE PROBLEMS OF MEXICO'S METROPOLITAN AREAS

The concept of 'metropolitan area' appears in our *Magna Carta* in only one occasion, ever since January the 29th, 2016, in Section C of Article 122, which refers to the following:

> [...] the Federation, Mexico City, its territorial demarcations, the states and conurbated Municipalities in the Metropolitan Area will establish mechanisms of management coordination in the matters of planning the development and execution of regional actions for the provision of public services, in the terms of the law issued by the Parliament.

In this regard, it is convenient to point that the Law referred in this paragraph, −according to what is ordered by the Tenth Transitory Article[9] of the decree of the constitutional reform published in the aforementioned date –should have been emitted on February 5, 2017. However, to this day, it still remains to be expedited.

Apart from that, it is appropriate to point that, for our Fundamental Law, the only existing metropolitan area in the country is the one in the Valley of Mexico since, grammatically, our constitutional text refers this concept as a singular noun in an article referring to Mexico City. In addition to this, it is important to stress that, in that same cited article, the concept of 'metropolitan' appears on four different occasions: two of them referring to an inexistent "Council for Metropolitan Development", which should have been created by early 2017; and, in the other two, it is cited in reference to "public services of metropolitan reach" and "metropolitan projects"[10].

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9 Tenth Transitory Article: "The Parliament, in the issuance of those laws referred to in the third paragraph of Section B and the first paragraph of Section C of Article 122, must anticipate that these will be enforced from the date in which the Political Constitution of the City of Mexico comes into effect.

10 Article 122, Section C, "For the effective coordination referred to in the last paragraph, said law will set the bases for the organization and function of the Council of Metropolitan Development, which will be responsible for agreeing on the actions in matters of human settlements; environmental protection; preservation and restoration of the ecological equilibrium; transport; transit; drinking water and drainage; recollection, treatment and disposition of solid waste, and public safety. The law issued by the Parliament will set the way in which the measures of the Council for Metropolitan Development will be taken. These could include: a) The delimitation of the territorial spheres and the actions for coordinating the operation and function of public works and services of metropolitan reach; b) The compromises assumed by each of the parts for the assignation of resources for metropolitan projects and…".

On the other hand, the fact that, in the legal field, metropolitan areas only appear in the Federation's Expenditure Budget from 2006 and on, in the aforementioned conditions, aside from being included in the General Law of Human Settlements, Territorial Planning and Urban Development (*Ley General de Asentamientos Humanos, Ordenamiento Territorial y Desarrollo Urbano, LGAHOTDU*) from November 2016 is equally important. Without doubt, this is a tragically critical legal vacuum for metropolitan areas.

On relation to this legal precariousness, it is important to stress that, ever since the year 2000, only 23 initiatives have been presented to the Mexican Parliament in matters related to metropolitan areas; 10 of them had tendencies to reform Article 115 of the Political Constitution of the United Mexican States; another 10 aimed to modify legal statutes such as the Law of Fiscal Coordination, the General Law of Human Settlements and the Federal Law of Treasury Budget and Responsibility; and, finally, the proposal of three new legal rulings: two for the use of bicycles in metropolitan areas and a General Law for Metropolitan Development. Of all the aforementioned, the only one that is exclusively related to metropolitan matters is the last one. All of this illustrates the weakness in the public and legislative debate of this overwhelming set of problems.

CHART 3. TYPES OF LAW INITIATIVES IN MATTERS OF METROPOLITAN AREAS
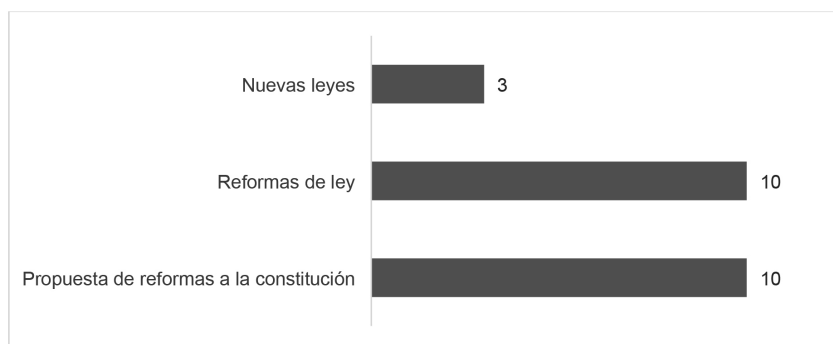
Source: The author(s) with a database of the System of Legal Information (Sistema de Información Legislativa, SIL) from the Secretariat of the Interior.

In the LXII and LXIII Legislatures of the Senate of the Republic (2012-2018), the following four initiatives were presented.

LXII Legislature (2012 to 2015):

•   A reform to Article 115 of the Constitution, which proposes the planning of urban development in those municipalities that are part of metropolitan areas.

- A tendency to turn the Commission for Metropolitan Development into an ordinary commission.

LXIII Legislature (2015 to 2018):

- Two tendencies to issue the Law of Metropolitan Coordination and Development of the Valley of Mexico.

In this context of vacuums and confusions, it wasn't until November 2016 that a set of powers [but not exactly competences] were presented for the first time –although in a very ambiguous and generic manner– before the law, for the different branches of government regarding what the law itself defined as "matters of metropolitan interest", without assigning this responsibility to any particular authority, thus establishing –by defining them in this way– an open contradiction with what is set in Article 115 of the Federal Constitution in matters of municipal competences. (See Image 1 and Table 3).

IMAGE 1. POWERS OF THE GOVERNMENT'S SPHERES
IN MATTERS OF METROPOLITAN AREAS

Source: The author(s) base on the legal Mexican order, which the image refers to.

TABLE 1. COMPETENCE COMPARISON BETWEEN ARTICLE 115 OF THE CONSTITUTION AND THE GENERAL LAW OF HUMAN SETTLEMENTS, TERRITORIAL PLANNING AND URBAN DEVELOPMENT

SERVICES AND MATTERS OF MUNICIPAL JURISDICTION: ARTICLE 115 OF THE POLITICAL CONSTITUTION OF THE MEXICAN UNITED STATES	MATTERS OF METROPOLITAN INTEREST (LGAHOTDU, ART. 34):
Fr. V, a) To state, approve and manage zoning and municipal urban development plans;	I. Planning the ordering of the territory and Human Settlements;
Fr. III, h) Public safety in terms of Article 21 of this Constitution, municipal preventive police and transit;	II. Road infrastructure, transit, transport and Mobility;
Fr. V, b) To participate in the creation and management of their land bank;	III. The land and territorial reservoirs;
Fr. V, a) To state, approve and manage zoning and municipal urban development plans;	IV. The increase of urban density and consolidation and the efficient use of the territory, with safe and quality public spaces as a focal point;
Fr. V, d) To authorize, control and watch over the use of the land, in the sphere of its competence and their territorial jurisdiction;	V. Housing policies and those related to the regional metropolitan equipment;
Fr. V, e) To intervene in the legalization of possession of urban lands;	VI. Localization of spaces for industrial developments of metropolitan nature;
Fr. V, f) To give licenses and permits for constructions;	
Fr. III, a) Drinking water, drainage, sewage system, treatment and handling of raw sewage;	VII. Integral management of water and water resources, including drinking water, drainage, sanitation, sewer treatment, watershed recovery and exploitation of storm water;
	VIII. The preservation and restoration of ecological equilibrium, the sustainable exploitation of natural resources and environmental protection, including air quality and atmospheric protection;
Fr. V, g) To participate in the creation and management of nature reserves and in the making and implementation of planning programs in these matters;	IX. The integral management of solid municipal wastes, particularly industrial and dangerous ones;
Fr. III, c) Cleaning, recollection, transportation, treatment and final disposal of waste;	X. Prevention, mitigation and resilience against the risks and effects of climate change;
	XI. Infrastructure and equipment of strategic and security nature;
	XII. Universal accessibility and mobility;
Fr. III, h) Public safety, in terms of Article 21 of this Constitution, preventive municipal police and transit;	

Continued Table 1.

SERVICES AND MATTERS OF MUNICIPAL JURISDICTION: ARTICLE 115 OF THE POLITICAL CONSTITUTION OF THE MEXICAN UNITED STATES	MATTERS OF METROPOLITAN INTEREST (LGAHOTDU, ART. 34):
Fr. V, h) To intervene in the creation and implementation of public transport system programs whenever these affect their territorial sphere;	XIII. Public safety, and
Fr. III, h) Public safety, in terms of Article 21 of this Constitution, preventive municipal police and transit;	XIV. Other actions that, as proposed by the ordering commission are established or declared by the proper authorities.
Fr. III, b) Street lighting;	
Fr. III, d) Markets and wholesale markets.	
Fr. III, e) Cemeteries.	
Fr. III, f) Butcheries.	
Fr. III, g) Streets, parks, gardens and their equipments;	
Fr. III, i) All other determined by Local Legislatures according to the territorial and social and economic conditions of their municipality, as well as their administrative and financial capabilities.	
Fr. V, c) To participate in the creation of regional development plans, which should be according to the general plans on these matters. Whenever the Federation or states create regional development projects, these should assure the participation of municipalities;	
Fr. V, i) To create agreements for the management and safekeeping of federal areas.	

PROPOSAL FOR A NEW DISTRIBUTION OF COM-PETENCES FOR MEXICO'S METROPOLITAN AREAS

Trying to solve the urban and social problems of metropolitan areas through intermunicipal collaboration agreements, or agreements between municipalities and state governments, can be a measure that doesn't reach the bottom of such problems since, invariably, it implies a pact between public entities that can't give up the exercise of their competences and don't admit intermediate authorities to come between Town Councils and the states –which is why, in

any case, the effects of such actions would merely be palliative or short-term solutions In this way, the main obstacle for the adequate management of the problems in metropolitan areas is municipal autonomy and state sovereignty. The institutional and legal mechanism created to escape these restrictions is the creation of organisms or intermunicipal agencies that do not reach the bottom line of these matters as well, since the entities that create them are the very same municipalities which, of course, won't give up their autonomy or relinquish their competences.

That is why, for the purpose of going beyond the aforementioned, and not falling into the homologation of competences between different municipalities [in which our Fundamental Pact does fall into, in Article 115 of our Constitution], it is useful to think that, in our country, one could distinguish the following branches or competence spheres, by involving the number of municipalities pointed in parenthesis and which are presented below. (See Table 4).

TABLE 2. PROPOSAL FOR NEW DISTRIBUTION OF COMPETENCES IN MUNICI-PALITIES AND METROPOLITAN AREAS, BASED ON THE PRESENTLY GIVEN IN THE POLITICAL CONSTITUTION OF THE MEXICAN UNITED STATES AND THE GENERAL LAW OF HUMAN SETTLEMENTS, TERRITORIAL ORDERING AND URBAN DEVELOPMENT

	METROPOLITAN COMPETENCE	MUNICIPAL COMPETENCE
MEGALOPOLIS WITH 10 MILLION RESIDENTS OR MORE [01]	Transit;	Road infrastructure;
	Road infrastructure[11];	Preventive police;
	To create, approve and manage zoning and urban development plans;	Drinking water [infrastructure];
	Public safety[12];	Cleaning, recollection and transportation of waste;
	To participate in the creation and management of land banks;	Streets, parks, gardens and their equipments;
	Drainage and sewage system;	Street lights;
	Drinking water [distribution and connection];	Cemeteries;
	Treatment and disposal of wastewater;	Butcheries;
	Treatment and handling of raw sewage;	Markets;

11 "Road infrastructure" is understood as beaconing, sign-spacing and traffic signaling.
12 This attribution forces a reform section e) of Article 21 of the Constitution, which would result in the following: "the funds of federal help for public safety will be granted at a national level by federative entities, *metropolitan areas* and municipalities for being destined exclusively to such ends."

Continued Table 2.

	METROPOLITAN COMPETENCE	MUNICIPAL COMPETENCE
MEGALOPOLIS WITH 10 MILLION RESIDENTS OR MORE [01]	Wholesale markets;	To participate in the creation of regional development plans, which should be in accordance with the general plans in these matters. Whenever the Federation or states create regional development projects, they should assure the participation of municipalities;
	To authorize, control and watch over the use of the land, in the sphere of its competence, in their territorial jurisdiction;	To intervene in the legalization of possession of urban lands;
	To grant construction licenses and permits [earnings would go to each municipality];	To participate in the creation and management of nature reserves;
	To create and implement public transport programs whenever these affect their territorial sphere;	
	To settle agreements for the management and protection of federal areas;	
	Creation and implementation of ecological ordering;	
	Civil protection and fire fighters;	
	Housing policies and those related to the regional and metropolitan equipment; with safe and quality public spaces as focal point;	
	Localization of spaces for industrial developments of metropolitan nature;	
	Watershed recovery and storm water exploitation;	
	The preservation and restoration of the ecological equilibrium, the sustainable exploitation of natural resources and environmental protection, including air quality and atmospheric protection;	
	Prevention, mitigation and resilience before the risks and effects of climate change [with the intervention of the Federation];	
	Infrastructure and equipment of strategic and security nature;	
	Universal accessibility and mobility;	

Continued Table 2.

METROPOLITAN AREAS WITH 1 TO 10 MILLION RESIDENTS OR MORE [12]	METROPOLITAN COMPETENCE	MUNICIPAL COMPETENCE
	Same competence as above.	Same competence as above.
METROPOLITAN AREAS WITH 500 THOUSAND TO 1 MILLION RESIDENTS OR MORE [23]	**METROPOLITAN COMPETENCE**	**MUNICIPAL COMPETENCE**
	Same competence as above.	Same competence as above.
METROPOLITAN AREAS WITH 100 TO 500 THOUSAND RESIDENTS [38]	METROPOLITAN COMPETENCE	MUNICIPAL COMPETENCE
	Same competence as above, except for public safety which would be in the charge of the state's government.	Same competence as above.
NON-METROPOLITAN MUNICIPALITIES [2,040]	All the competences of Article 115, except for those of public safety, civil protection and fire fighters.	
INDIGENOUS MUNICIPALITIES RULED BY ARTICLE 2 OF THE CONSTITUTION [961]	Competences given by Article 2 and 115 of the Constitution, plus civil protection and fire fighting. Public safety would be in the charge of the State, but only if it is requested by the community.	

Note 1: The text in normal type refers to literal provisions of Article 115 of the Constitution in matters of public services.
Note 2: The text in italics is related to those public services given by the Political Constitution of the Mexican United States to municipalities, but which are not included in Article 115.
Note 3: The underlined texts have to do with the General Law of Human Settlements, Territorial Ordering and Urban Development.
Note 4: See Annex I to know the metropolitan areas involved in each of these classifications.

PUBLIC SAFETY: THE MOST REPRESENTATIVE CASE OF THE VACUUMS AND LEGAL ANTINOMY IN METROPOLITAN AREAS

One of the main antinomies within Mexico's Federal Constitution is the one concerning the definition of safety included in its Articles 115 and 21. The first one defines it as a "function of the State", while the second one defines it as a "public service" in the charge of municipalities, just as is shown below.

> ART. 115. (…) Fr. III.- Municipalities will be in charge of the following functions and public services. (…) h) Public safety, in terms of Article 21 of this Constitution, municipal preventive police and transit; and ART. 21. (…) [Ninth paragraph] "Public safety is a function in the charge of the Federation, its federative entities and Municipalities, including crime prevention, as well as investigation and pursuit to make prevention more effective, as well as the sanction of civil offences, according to the law, in the respective competences pointed out by this Constitution (…)".

Anybody would say that there is no such contradiction, since it could be understood that safety is a public service in the charge of a municipality complying the function of the State. From the perspective of the most elemental logic, this could be valid. However, from a competence standpoint, one thing excludes the other, since safety is defined as a "public service" in the charge of municipalities, then it can't be a "function" of the State as well, since municipalities are part of the Mexican State.

In view of the aforementioned, below is a chronological re-counting of the historical evolution of how did the concept of public safety appeared in the Constitutional context.

- The original text of Article 115 of the Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos, CPEUM*) established that the Federal Executive Power and governors would be in command of public police forces in the municipalities where they resided.
- In 1983, Article 115 established that public safety will be a public service in the charge of municipalities.
- In 1994, Article 21 of the Constitution was added to define public safety as a function of the State in the charge of all branches of the government that form it.
- In 1999, the corresponding paragraph of Article 115 was added to complement that public safety, in the charge of municipalities, will be in the terms of Article 21 of the CPEUM.
- From 2008 and on, the tenth paragraph of Article 21 of the Constitution establishes that police institutions of the three branches of government must coordinate among them to comply with public safety. That is to say that a policy of municipalities doing without the Federation and other states was not considered to be the most effective.

Since the rules for exceeding a legal or constitutional antinomy are the pre-valence of superior laws over inferior laws, the validity of the criterion of the most recent law over the former one, or else, the enforcement of the specific law instead of the general one. Since in this case, we are dealing with one sole law, the criterion that prevails is temporality, which is why the understanding of public safety as a function of the State must prevail, because this is the most recent criterion incorporated to the Constitution, as well as the coordination between the different branches of government to comply it.

Added to the aforementioned or, better yet, derived from it, the situation of municipal police forces in the charge of municipalities is the following, based on data from the Secretariat of the Interior (El Universal, 2014):

- 1,200 of the 2,457 Mexican municipalities do not have a municipal police.
- 86% of municipal corporations in the country rely on less than 100 police officers.
- 10% of municipal police officers are distributed among 1,100 municipalities, averaging 12 police officers for each one of these 1,100 municipalities.
- Only 14 of Mexico's 32 federative entities have a municipal police force in each of their municipalities.
- 0.6% of municipal police officers are illiterate, 3% lack the basic education, 11.9% have completed basic education and 52% have only completed secondary education.
- Approximately, 40% of municipal police officers receive a gross monthly income of less than 4,600 pesos and less than 4% receive a gross monthly income higher than 12,000 pesos.

For matters related to public safety, and other public services in their charge, the Republic's General Constitution gives the same competences to all muni-cipalities, whatever their population may be, therefore, without considering their budget and institutional competences. Thus, it is beyond disproportionate that our *Magna Carta* gives the same competences and responsibilities to a Oaxacan municipality, in Santa Magdalena Jicotlán, with 102 residents –the least populated in the country–, than to Ecatepec de Morelos, in the State of Mexico, with a population of 1, 827, 868[13].

Because of all of the aforementioned, it is proposed that, in matters of public safety, the distribution of competences among the six branches or competence spheres stated in Table 4, would be the following.

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13 In contrast to the aforementioned, three territories that hold the denomination of state or federal body [Campeche, Baja California Sur and Colima] have less than one million residents, and the two latter in combination do not exceed the population of Ecatepec.

- Megalopolis with more than 10 million residents and metropolitan areas with more than 1 million residents, as well as those with 500 thousand to 1 million residents, would be suitable to comply the function of public safety and transit as a whole, while the function of preventive security would be in the individual charge of each of their municipalities.
- Metropolitan areas with populations of 100 to 500 thousand residents would only have the competence of preventive security and transit. Public security would be in the charge of their state's government.
- Non-metropolitan municipalities and indigenous municipalities governed by Article 2 of the Constitution would only be in charge of preventive security, while public safety would be in the charge of theirs state's government.

In any case, the competence spheres pointed above, and which would be allowed to carry the functions of public safety, must get the institutional capabilities of their corporations accredited. That is: by passing 100% of the trust control trials; relying on a state force sufficient for every 100 thousand citizens, observing international criteria; relying on modern professional equipment for an effective compliance of its functions; paying their officers a monthly income higher that $17,000 pesos, and passing every training course in investigation and arrest, while observing Human Rights.

For avoiding the reluctance of 'large municipalities' of certain metropolitan areas to share their police forces with 'small municipalities' that are part of their same urban agglomeration, it is necessary to go beyond the obstacles in the legislation[14], so that metropolitan areas can be susceptible of receiving the budgetary support of the Federation of Public Safety. Thus, both large and small municipalities will have incentives for sharing their police forces and forming one sole metropolitan force in charge of public safety in their metropolis or megalopolis.

FINAL CONSIDERATIONS AS A PRE-CONCLUSION

How to make traditional governmental entities to accept doing without certain competences or powers for putting them at the service of new agencies focused on solving and handling matters that go beyond both autonomy (municipalities) and sovereignty (federated entities), requiring a coordinated management but without implying the elimination of the municipalities or federated entities

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14 Federal help funds for public safety are only given to states and municipalities. The Constitution does not mention metrpolitan organisms for public safety. In this regard, paragraph 2 of Article 142 of the General Law of the National System of Public Safety sets the following: "The federal help funds for public safety determined at a national level in the Federation Expenses Budget will be distributed, based on criteria approved by the National Council, for federative entities and municipalities to be exclusively destined for these purposes".

involved? Without a doubt, this question poses one of the most important challenges and dilemmas for the disciplines of modern Political Science, Public Administration and Constitutional Law.

Trying to answer the new metropolitan set of problems in the context of the agreements for government coordination or association –where the entities that create pacts are the very same entities that represent the main obstacles for their adequate and efficient management–, means to create palliative measures, subterfuges or, in the best of cases, short-term 'solutions' that will never achieve the desired effects. All of this suggests that the solution will not be accomplished in a horizontal manner, based on the alleged coordination between authorities, which contributes an infinity of evidences to make us think that they won't cease to exercise *their* powers in *their* territories.

Luis F Aguilar has pointed, with bright clarity, that the problems of the existing governments in metropolis don't reside in their 'inefficiency' but rather on their 'insufficiency' to 'tackle public affairs that, today, have become transterritorial matters". Added to all of the aforementioned, he makes an accurate connotation by warning that these new realities "have pushed two trends: intergovernmental and supra-governmental. Metropolis and megalopolis cannot be governed but by inter-governability, supra-governability or new kinds of relations between governments and society" (Aguilar, 2017: p. 8).

Still, it must be considered that, in any case, governing a metropolis through inter-governability can only work within the context of supra-governability. To do so, without considering the latter, would be both inefficient and insufficient. What is required is that traditional authorities relinquish part of their competences to authorities or supra-governmental agencies for the treatment of transterritorial matters, without that being a reason for political and administrative divisions to cease to exist. Of course, it must be considered that these supra-governmental apparatus can neither be autonomous nor self-sufficient.

As Aguilar correctly observes: "The most characteristic feature of trans-territorial matters, and of their treatment or solution, is interdependence" (Aguilar, 2017: p. 9). So, a metropolitan government or governance would imply the harmonic co-existence of territorial and supra-territorial authorities for the management of public matters of diverse nature, and with the largest social possible participation. For this to become possible, a pact or constitutional agreement is needed.

The creation of these agencies implies overcoming important difficulties. Among many, one can think of the (direct or indirect) method for electing new authorities; the origin of the order that creates them (universal suffrage or limited and/or weighted suffrage); the nature of new authorities (individual

or collegiate); the effects of their acts of authority (binding or advisory); the renovations of its bodies (stepped or total); the system for electing collegiate authorities (by electoral registration forms or territorial districts or individuals); the participation or non-participation of political parties in the election of these authorities; the type of democracy to be used (popular and universal vote or by raffle); the demand or non-demand of profiles and requisites for the exercise of certain responsibilities; the reelection or non-reelection of the authorities; and the political responsibility of these authorities. More important yet: what would be the nature of these new agencies or authorities? Would they depend on the branches of the government and/or power currently existing or would they be autonomous constitutional organisms or would they constitute a new branch of government?[15]

Considering all of the aforementioned, below is the delineation of some supra-governmental agencies that could be conceived for the governance of metropolitan areas.

1. A *Metropolitan Parliament,* elected by popular vote during constitutional elections for legislating exclusively in matters of metropolitan interest.
2. A *Metropolitan Council*, integrated by three members of the parliamentary lobby of each municipality, plus an additional member for every 300 thousand residents in the municipalities that exceed said number. It would be a collegiate body for planning and deliberating of the metropolitan policies. The 'absolute majority' would imply 51% or more of the votes, provided that these represent at least 60% of the population; while the 'qualified majority' would imply 2/3 of the votes and the population as well.
3. A *Metropolitan Executive Power*, elected by 2/3 of the members of the Metropolitan Council, helped by metropolitan agencies for lending services.

Another challenge of great importance is the solution to all things related to the relation between: 1) the cities of a metropolis; 2) the cities with the metropolis; and 3) the metropolis with the cities. It is likewise important to secure the guarantees of jurisdictional control regarding each of their decisions. As Enric Argullol correctly points out (2005: p. 15):

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15 Similar challenges are observed by Enric Argullol. To stress over this particular point that "the first point to consider is the form of integration of the government agencies. On this matter, the alternatives between ellection and designation and between direct and indirect election are significative. It is evident that, the different grade of legitimacy will depend on the chosen alternative –as well as the democratic legitimacy of the metropolitan administration. Particularly important is the difference between the organizations that answer to the pattern of local collectivity between the direct ellection of the assembly or council by the citizens, or the designation of its members in an indirect way in which several possibilities can fit depending on the protagonism conceded to the municipalities or to the forces or political or electoral groups". (Argullol, 2005: p. 21)

> The political and institutional context of metropolitan organizations is concreted in several matters: central city and small municipalities; municipalism and its posture before the metropolitan phenomenon; level of trust of the superior levels of government; coexistence between metropolitization and decentralization of cities; territorial distribution and use of services; civil society and metropolitan organization; partisan polarization and institutional collaboration; participation and collaboration and the matter of responsibility; non-equity in the distribution of resources; financial motivation of cooperation and its effects.

As it is shown, the complexity of the required institutions is similar to the reality that is intended to govern. Before this, there is no room for permanent ascription to old paradigms, nor for considering that currently existing institutions are sufficient to solve any problem of public life in a metropolis. It is worthy of setting our imaginations in motion. The sooner, the better. Afterwards could be too late.

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GOOD PRACTICES IN MATTERS OF PUBLIC SAFETY AND JUSTICE IN LOCAL GOVERNMENTS[1]

Guillermo Raúl Zepeda Lecuona*

INTRODUCTION

The 2008 constitutional reform of Mexico's Criminal Justice System has been one of this country's most important reforms in the last hundred years, due to its breadth and content. Its objectives have such range that they affect a wide variety of institutions from all three levels of government.

Even though the central functions of obtaining and administering justice fall on the domain of a state, under the new paradigm of this reform, municipal police forces once again have a very important role as first responders, since investigation tasks have been given to them in coordination with the Attorney General. It should be noted that, besides police forces, there are other areas where considerable modifications have been made like in civic justice[2], in mechanisms for justice enforcement and itinerant justice, or in the expanse of the use of alternative mechanisms for solving controversies *(Mecanismos Alternativos de Solución de Controversias, MASC)*, where the agreement 06/XL/16 was approved for elaborating the Homologated Model of Civic Justice, Good Government and Culture of Legality for the municipalities of Mexico (from now on referred to as the Homologated Model of Civic Justice) for

2 Civic Justicie will be considered as "the ensemble of procedures and instruments of Good Government aimed at fostering the Culture of Legality and to offer a swift, transparent and unobstructed solution to community conflicts generated by the everyday interactions of a democratic society" (*Modelo Homologado de Justicia Cívica, Buen Gobierno y Cultura de la Legalidad para los Municipios de México,* s/f, p. 4).

strengthening the administering of Civic Justice in Mexico at a municipal level.

Mexico faces one of its worst criminality crisis –if not the most important because of the levels of violence and impunity that surpass all historical levels and the way in which their direct consequences are reflected on the distrust that citizens have towards the country's institutions of public safety and for obtaining and administrating justice. Currently, the country has one the highest rates of unreported crimes, with only 6 of every 100 delinquencies denounced. In a scenario such as this, the margin for taking action and improving institutions is quite large indeed.

According to the most recent data[3], 75.9% of Mexico's urban population[4] feels unsafe. In matters of performance, 39.6% of the population of 18 years of age and older considers the Municipal Preventive Police Forces as effective, thus making it the authority body with the worst public perception in terms of its effectiveness. From a standpoint of trust, less than half of the surveyed population declared to trust said institution.

In the face of the increasing spiral of criminality, violence and impunity, there has been an open-mindedness towards centralized response models in which figures such as the Sole Command have been suggested. However, the most effective schemes to reduce delinquency and to prevent violent acts from within society are those carried out under schemes ruled from the bottom to the top, aimed at strengthening communities, reducing the vulnerability of citizens and paying early attention to red flags. Without question, there are high impact crimes that must be dealt with police intelligence and focalized pursuit strategies, but even in these cases, municipalities and metropolitan areas have much to contribute.

We now present a number of good practices in which local governments were able to strengthen communities and to establish effective liaisons with institutions in charge of security and criminal persecution for achieving a wider coverage of attention for victims and the system's users.

• *The good practices approach for improving public organizations*

Due to the inability, ineffectiveness and executive failure of democratic governments to deal with their society's problems, in recent years, two theoretical approaches have been proposed and developed as possible solution alternatives to these problems: governability and governance. Governability is understood as the executive capability and effectiveness of governments to govern their

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3 The National Survey of Urban Public Security *(La Encuesta Nacional de Seguridad Pública Urbana, ENSU)* of the National Institute of Statistics and Geography *(Instituto Nacional de Estadística y Geografía, INEGI)* is applied in quarterly fashion and gathers information on the sense of unsafety, performance perception and the witnessing of criminal conducts, among many other aspects at an urban level.

4 In its last edition (June, 2018), the ENSU had a coverage of 68 cities in the country.

societies (Aguilar, 2016), while governance is "the process through which a society's actors decide their coexistence goals –which are fundamentally contextual– and the different ways of coordination to achieve them: their sense of direction and their executive capability" (Aguilar, 2007, p. 90).

Combined with the aforementioned, there has been a consensus among specialists, academia and several other organisms on the importance of incorporating result-oriented management models that offer an ensemble of tools that could be useful for improving administrative processes, modernizing public action, strengthening institutions and generating conditions for government to deal with and solve society's problems (Aceves, 2015).

Before the scale and the complexity of the organizations participating in the system of public safety and justice administration, the good practices approach has become a fundamental tool, not only for spreading the news of the better actions of organizational managements, but also to replicate them with the purpose of making the operative process of public institutions more efficient and to achieve better results in accordance with the objectives that each of the government's agencies pursues for the benefit of citizens.

A good practice can be defined as:

> That which has proven to function well, produces good results and, therefore, is recommended as a model. It is a successful enterprise, which has been proven and validated, in a wider sense, has been repeated and that deserves to be shared for it to be adopted by the largest possible number of people.[5]

It should be stressed that the adoption and implementation of a good practice must consider the development, procedures and consolidation of the organizations being analyzed and not merely focusing on the results, effectiveness and the satisfaction of the service's users.

The advantages or virtues of good practices can be argued from the standpoint of their impact's evaluation, i.e., from their proposed results or from *the analyses of their practices,* paying attention to how and why the practice worked (Barzelay and Cortázar, 2004, p. 13). Both aspects are important, but the second criterion is key for these models to be extrapolated to other organizations. Several considerable efforts have been made from within civil society to offer tools that allow the good practices approach to be carried out by institutions involved in the system of public safety and justice for it to

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5 Food and Agriculture Organization of the United Nations, FAO. (July, 2015). *Plantilla de buenas prácticas.* From http://www.fao.org/3/a-as547s.pdf

pursue the objectives of each of its agencies[6]. Thus, eleven phases have been suggested for the development and implementation of good practices. See figure 1.

FIGURE 1
PHASES FOR THE DEVELOPMENT AND IMPLEMENTATION OF GOOD PRACTICES
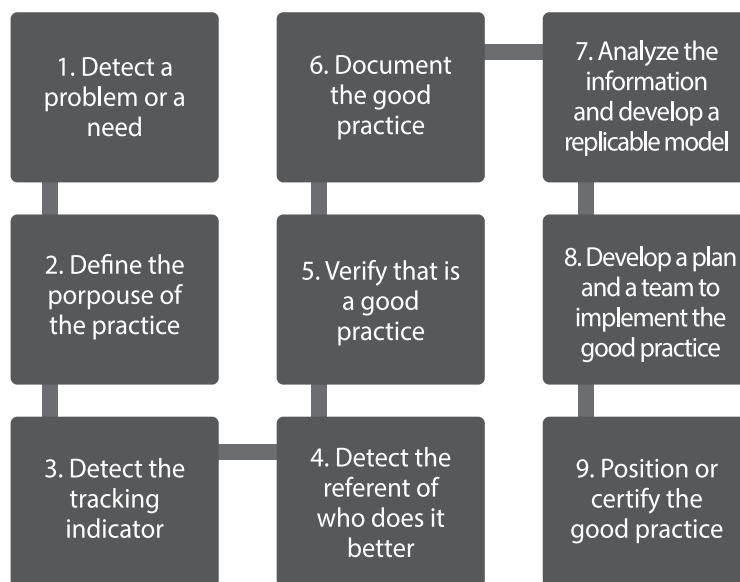
Source: Developed by Zepeda and Jiménez (2017) based on Karlof, 1998 and Keehley, P., Medlin, S., MacBride, S., and Longmire, L. 1997.

Within each of the intervening institutions of the justice system, local authorities –including state and municipal-level organizations– have managed to develop good practices that are considered as key elements for improving said system's performance.

 One of the most important advantages of local governments is that "by being the closest to people's actual living environments, they are also in the best position to identify their needs" (Pascual, 2016, p. 58). At this level, changes in the processes, or even, the implementation of new models of management can be so much quicker and with lesser costs than in other levels of government.

 In recent years, some municipalities have carried out important efforts for improving the way in which they carry out their functions, thus obtaining better results. For example, there have been plenty of advances in matters of

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6 *Guía para la implementación de buenas prácticas de Jurimetría Iniciativas para el Estado de Derecho A.C.* From http://www.jurimetria.org/servicio?id=32

the social prevention of crime, community building, peace culture and a more integral role of municipal police forces as first responders.

- • *Documented good practices in terms of public safety and justice in state organizations*

The advances on the implementation of the adversarial system and the obtained results from these practices have varied and been asymmetrical from state to state. Some of them are yet to see positive results; some have already developed good practices in specific aspects that could be extrapolated to other parts of the country. One example that could also be taken advantage of at a municipal and/or metropolitan level is that of the Integral Help Center for Victims.

The Integral Help Centers *(Centros de Atención Integral, CAI)* that offer justice administration services in criminal matters are considered as a good institutional practice of the justice system. These integral centers are new help models designed for tending to several of the objectives captured on the criminal justice reforms of 2008 and other national legislations for helping crime victims. Some of the reform's main purposes include improving the access to justice, respecting the victims' rights, recovering the public trust on the authorities in charge of operating the justice system (SETEC, 2010, p. 10), as well as reducing the waiting time and costs for people (SETEC-INAP, 2012, p.16), improving the quality of services for users, as well as guiding and channeling citizens towards the correct procedures for the services they need.

The implementation of integral help centers have meant the development of innovation programs and the reengineering of processes for strengthening institutional capabilities, as well as the human and material resources needed to offer help services in effective and efficient manners. Under this logic, these centers must have systems for public guidance and reports, aside from gathering all of the services required by users, plaintiffs and crime victims in a single space ("everything under the same roof"), in order to help victims, receive reports, develop criminal investigations and count on Alternative Mechanisms for Solving Disputes *(Mecanismos Alternativos para la Solución de Controversias, MASC).*

It is important to stress that a determinant factor for the implementation and operation of this new system of justice is the training and development of capabilities among the personnel that will participate in tending the citizens' needs. The advisor or guidance assistance must know the assumptions and requirements of provenance of each of the possible services to which the presented affairs must be referred. Thus, cases can be channeled to:

a) Timely attention.

b) Immediate determination of victims that need some kind of special or urgent assistance or attention.

c) Guidance and channeling to other dependencies.

d) Missing person certificates or records.

e) Determination of cases that qualify for the use of alternative resources of criminal justice and the suggestion of this option to users, informing them that such decision is voluntary; or, if that is the case, to channel the matter to the criminal investigation area of the attorney general's office (Zepeda, 2014).

The early attention modules of Mexicali, Baja California; the Centers for Guidance and Reports *(Centros de Orientación y Denuncia, CODE)* of Monterrey, Nuevo León; and the Early Attention Units *(Unidades de Atención Temprana, UAT)* of Oaxaca, Oaxaca are all part of the justice system's institutional good practices because of the reconfiguration of their processes and the results they have obtained under this new model of integral attention.

For example, Mexicali, Baja California obtained the ISO 9001-2008 certification for its early attention and guidance department that sets a maximum waiting time of 17 minutes. The advisor asks users for information on their needs and demands for services and shows them the button of the procedure they need on the take-a-turn machine. If a turn's time runs close to 17 minutes, an amber flashing light is turned on, signaling the duly trained personnel of the citizen help area to tend the current demand for services, thus keeping the users' waiting time under the standard. In the case of Oaxaca, the waiting time at the "Centro Histórico" Early Attention Unit has an average of 23 minutes, while the average waiting time in Nuevo León varies between 40 and 45 minutes.

It is noteworthy that all three states have different help centers: Oaxaca has seven points for help and reports; Nuevo León has 13 CODES and Mexicali's judicial party has eight attention offices (five within the city and three on the valley of Mexicali). Also, all three systems have 24-hour guards for tending urgent cases.

As for the quality of the attention given, these services have been rated as satisfactory by 85% of their users in different territories, in exiting surveys and in telephone evaluations. These evaluation exercises have been carried out in five states of the country (Zepeda, 2014).

Baja California has a follow-up unit of user satisfaction that monitors all received complaints. These complaints are spread towards the inside of the institution as a manner of feedback, while the complaining public is noticed

that their comments were received and that measures are being taken for improving upon said area of opportunity.

Spreading the news about this type of practices has been an excellent opportunity for entities that have fallen behind in matters of integral attention to crime victims to take advantage of experiences from different places for implementing successful practices that could help their objectives and reform themselves. Such is the case, for example, of the state of Jalisco's Attorney General's Office which, in the Guadalajara Metropolitan Area, a city with more than five million inhabitants, only has one main location for reporting crimes in an area that is not easily accessed by most citizens.

The alternative justice centers of Baja California and Oaxaca should also be considered as institutional good practices, since they present key elements of the paradigm change implied by Mexico's new criminal justice system. To begin with, the professional profile of mediators is very different from the public servants of the traditional system's justice administration. The new mediators have a specialized training and must conclude a series of courses and certifications in order to face the responsibility of facilitating agreements and guiding the restorative or arbitration process to handle conflicts which, sometimes, present high degrees of complexity.

Oaxaca and Baja California's models of alternative justice present important results regarding repairing agreements and their respective compliance. In Mexicali, each mediator is assigned 80 sessions per month and an average of 30 repairing agreements are reached each month. The rate of compliance of reparatory agreements in Baja California is of 97% and of 90% in Oaxaca. On the other hand, it is estimated that a criminal investigation (an investigation file) has an average cost of 12,000 pesos (Zepeda, 2010), while an actuarial analysis made to the received and processed cases in Mexicali, by Organisms Specialized in Application of MASC, indicated a cost of 1,566 pesos (Zepeda, 2014).

Also, both centers of alternative justice systematically generate valuable information for feeding the follow-up indicators. In the case of Baja California, the institution's members have established goals that are known through their Intranet system, which also spreads the information about their advancement and their respective contrast with said goals.

- *Documented good practices in matters*
  of public safety and justice in municipal organizations

In matters of civic and alternative justice there is an important niche of opportunity for municipalities. Article 17 of the constitution establishes that a swift, complete and impartial administration of justice is a right of the people.

However, in practice, there are several asymmetries in the access to justice that limit the compliance of those dispositions. The criminal law reform of 2008 formally introduced the MASC, while the national legislation in the matter didn't come up but until 2014. The development of MASC has been varied all over the country. For example, 51% of solved matters by MASC in criminal justice are concentrated in three states: Baja California, Chihuahua and Guanajuato (in 2014, these three states and Nuevo León concentrated 71% of all solved affairs. Zepeda, 2016). See Graph 1.

GRAPH 1
TOTAL OF CRIMINAL JUSTICE AFFAIRS SOLVED BY ALTERNATIVE JUSTICE IN 2016
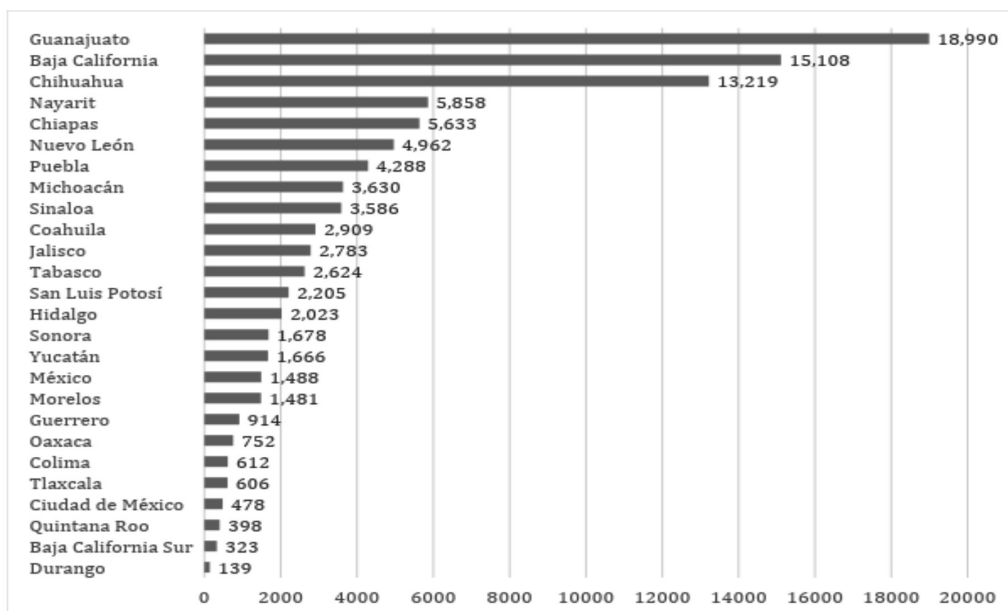
Source: 2017 National Census of State Justice Administration, National Institute of Geography and Statistics.

The MASC principles can also be applied for tending to and managing community conflicts, i.e., a society's everyday problems like those that happen between neighbors or joint owners that, if not handle appropriately, can lead to violence and criminal actions. In this context, community arbitration and civic justice (also commonly known as everyday justice) regain a very important role in the social attention and prevention of crime.

According to data from the National Survey of Urban Public Security *(Encuesta Nacional de Seguridad Urbana, ENSU)*, it is estimated that 35.8% of the population of 18 years of age and older at least went through one conflict

or confrontation in their everyday life during the past three months which, in most cases, happened between neighbors. 86.2% of these cases included conflict situations that had consequences –although the majority of these were not of the physical type, but yelling and the trading of insults. However, if many of these cases were to persist, they can evolve into felonies like threats, injuries and property damage, among many others, which is why it is convenient to tend them at their first signs of manifestation, considering that, above everything else, the investigation capabilities of our justice system have been surpassed.

In 2015, the Federal Government, in conjunction with the Center of Economic Research and Teaching *(Centro de Investigación y Docencia Económicas)* and the Legal Research Institute *(Instituto de Investigaciones Jurídicas)* of the National Autonomous University *(Universidad Nacional Autónoma de México, UNAM)* convened the "Dialogues on Everyday Justice" *(Diálogos por la Justicia Cotidiana),* which included a roundtable on "Timely legal assistance and alternative justice". Among the specific problems identified within this subject are the high cost of the access to justice; the lack of trust towards institutions that deal with the administration of justice; the limited use of alternative justice; the insufficient mechanisms for taking care of community conflicts; the lack of culture in peace and legality; as well as the insufficient number of prepared and well-trained public servants.[7]

On February 5, 2017, a decree was published which reforms several rulings of the Political Constitution of the United States of Mexico in matters of MASC, regulation improvement, civic and itinerant justice and civil registries. Among the new rulings, Congress was authorized for issuing a general law in matters of civic and itinerant justice. On December 5, 2017, the President sent the House of Representatives a Decree Initiative that issued said law –which was approved on April 11, 2018. This law states that all of the countries' municipalities must rely on civic courts, with sizes appropriate to their population density, as well as on an infraction catalogues that could sanction with reprimands, community services, fines or arrests of up to 36 hours.

The federal government also presented the Authorized Model of Civic Justice[8], whose main characteristics are:

* Systemic vision. Actors: civil court, police force, community representatives, facilitators.
* Public hearings.

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7 Final document of the Dialogues on Everyday Justice. (s/f). Recovered from https://www.gob.mx/cms/uploads/attachment/file/79028/Di_logos_Justicia_Cotidiana.pdf
8 National Committee on Public Safety *(Comisión Nacional de Seguridad Pública).*

∗ In situ police action using the proximity approach.
∗ Community work.
∗ Implementation of alternative mechanisms for solving controversies. *(Mecanismos Alternativos de Solución de Controversias, MASC).*

The concept of civic justice is defined as:

> The group of procedures and instruments of Good Government aimed at promoting a Culture of Legality and solving community conflicts created by the everyday interactions of a democratic society in swift, transparent and unobstructed fashion. Its objective is to facilitate and improve a community, avoiding that said conflicts escalate into criminal conducts or acts of violence, through different actions such as the encouragement and dissemination of rules of coexistence, the use of alternative mechanisms for solving controversies, as well as tending to and punishing administrative offences. All of the aforementioned without prejudice towards the uses and customs of indigenous people and their communities.[9]

The National Institute of Statistics and Geography *(Instituto Nacional de Estadística y Geografía, INEGI),* through the National Census of Municipal Governments and Local Offices *(Censo Nacional de Gobiernos Municipales y Delegacionales)*, collects information on municipal justice, among many other topics. This census is carried out once every two years and, up to this date, it has been carried out on four occasions. Previously, in 2009, the National Survey on Government, Public Security and Municipal Justice *(Encuesta Nacional de Gobierno, Seguridad Pública y Justicia Municipal)* was carried out.

According to more recent data, in 2016, a total of 17,036 people were appointed to areas of municipal justice at a national level. Of these people, 3,967 are civil judges or qualified officials; 1,291 are secretaries; 495 are medical personnel; 8,186 are police officers; 2,463 are administrative and support personnel; and 634 belong to other and non-specified positions[10].

• *Municipal case: Help Centers for Victims and Civic Justice in Morelia*

One of the good municipal practices identified in matters of civic justice are the Help Centers for Victims in Morelia, Michoacán. According to data presented by the municipality[11], the Strategy of Help for Victims and Report Reception of

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9 Authorized Model of Civic Justice *(Modelo Homologado de Justicia Cívica).*

10 Data from the 2017 National Census of Municipal Governments and Local Offices *(Censo Nacional de Gobiernos Municipales y Delegacionales, 2017).*

11 Second Government Report by Mayor Alfonso Martínez. (August 13, 2017). *H. Ayuntamiento de Morelia 2015-2018. Apartado de la Comisión Municipal de Seguridad.*

Morelia's Police Department won the second place at the National Competition of Best Practices, organized by the United Nations' Office against Drugs and Crimes, the National Commission on Security, *México Evalúa* and the Ministry of the Interior.

The municipality has three Help Centers for Victims and has managed to service more than 5,600 people since these centers began operations. It has received more than 1,600 reports which were integrated to an investigation file at the state's attorney general's office and followed-up by the Municipal Police's Investigation Division.

In August 2016, the Municipal Civil Court was implemented with the objective of "arranging a system that articulates different instruments and actors with the purpose of regulating interactions through swift, transparent, unobstructed and pacific solutions to the conflicts which are manifested within a community"[12]. At said courts, the main actor is the Civil Judge who analyzes the case and imposes sanctions which range from verbal warnings, fines and compliance of hours under arrest to community work assignation as tools for preventing violence. More than 2,100 public and oral hearings were also carried out.

The design of a follow-up and accompaniment system for the compliance of measures and sanctions imposed by arbitrators and civil judges will necessarily influence the reduction of violence and delinquent actions, since most first time criminals have already committed administrative offences and have records in conflicts among neighbors. A correct follow-up and accompaniment will allow a timely detection of whenever specific supports are needed for restoring order and consolidating the social fabric. The police's goal-oriented approaches find an invaluable resource for focalized preventive actions in these mechanisms.

As one of the positive objectives in violence reduction, the town council stresses that its intentional homicide rate reduced to 18.5 homicides per every 100 thousand citizens in 2016 –a much lower rate than the one in other municipalities from that entity like Apatzingán (86.5), Zamora (73.4), Lázaro Cárdenas (66), La Piedad (51.1) and Uruapan (29.5).

- ### *Final considerations*

Within this context, in which several voices push for centralized measures of public safety and aim to gather all security capabilities at state and municipal levels, it is worth remembering the decentralized and strengthening approaches

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12 Second Government Report by Mayor Alfonso Martínez. (August 13, 2017). *H. Ayuntamiento de Morelia 2015-2018. Apartado de la Comisión Municipal de Seguridad.*

of social capital in a realm like citizen security, which is highly decentralized and highly associated with the social impact of transversal public policies.

The good practices approach, as a tool for the constant improvement of public organizations, allows local governments –whether state, metropolitan or municipal– to make fundamental contributions to increase people's access to institutional mechanisms for solving conflicts; contributes to reduce violence and the vulnerability of the population at risk; improves the help for victims; deactivates conflicts that could escalate to higher levels of violence; offers access to justice; and generates resources for focalizing preventive and dissuasive actions from police forces and, in their case, to set in motion the criminal investigations of the felonies committed.

On the other hand, these practices receive a very positive evaluation from its users, increasing the legitimacy of authorities. In fact, in some state bodies, there is an increase in the rate of reports of conflicts and crimes in virtue of the increase of legitimacy and expectations of receiving effective and quality services.

Police forces and *polis* share an etymological and historical origin. The kings of Spain instructed their mayors to "build towns and give them police". Today, governance in matters of urban security is closely associated to public services and policies in general. The United Nations' Safer Cities Program proclaims that best practices are what communities are built of. They summarize this idea in one phrase: "as much prevention as possible; as much force as necessary".

Finally, it is important to stress that governance and governability by themselves will not achieve the efficacy, efficiency and effectiveness of governmental intervention if public policies are not accompanied by robust management models that can generate public value that translates into the satisfaction of society's needs. In this way, leaving a record of good practices and replicating them in different government instances is an indispensable responsibility for achieving the continuous improvement of the public administration processes.

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BOOK REVIEW
THE SENSE AND SCOPE OF ACCOUNTABILITY
By Ricardo Uvalle Berrones and Maximiliano García Guzmán (Coordinators)

Aimée Figueroa Neri*

Accountability is a term that was positioned in Mexico almost two decades ago, as a priority in the public discourse, the media, legislation, government offices and academic research. To this date, accountability hasn't left the spotlight in the everyday language of the public sector, in spite of the recent boom of different terms, like "the fight against corruption". However, the need to specify the concept that guides its assimilation in the activities and processes of everyday public management is worthy of consideration, again and again. For this reason, the book *The Sense and Scope of Accountability (Sentido y Alcance de la Rendición de Cuentas)*, a collection of 13 texts, coordinated by Ricardo Uvalle Berrones and Maximiliano García Guzmán, offers a conceptual and empiric revision of what is accountability and its limits within democracy, mainly focused on the case of Mexico.

The control of power is the starting point to study accountability and –as it is correctly pointed out by the work's title– its scope as well. Uvalle Berrones, in his text "Political Foundation of Accountability in Mexico"[1], had already begun an analysis of the topic of political power control in democratic states as an origin of accountability. In this new work, together with García Guzmán, he offers us, in the introduction of their authorship, this very same approach, which allows us to better understand the chapters that cover specific mechanisms and empirical cases of accountability, opening a wide variety of related topic studies such as governability, governance, public management, government innovation and government performance, among many others.

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1 Estudios Políticos, novena época, no. 38 (May-August, 2016): 37-55, Mexico.

The book does not group or classify chapters, but they do have a sequence: they begin with a useful conceptual and historical revision made by Carlos Reta Martínez, Alicia Montserrat Islas Gurrola and Víctor Samuel Peña, whose work allows us to distinguish the types and mechanisms of accountability, some of them –like audits and performance evaluations– which are erroneously perceived as synonyms.

Subsequently, the book contains six texts dedicated to the analysis of how accountability actually is or can be seen in Mexican public administration, in the national and federal realms. Thus, the works by Freddy Mariñez Navarro, Arturo Hernández Magallón, Alejandro Romero Gudiño, Ricardo Uvalle Beltrones, Enrique Valenzuela Mendoza, and Maximiliano García Guzmán revise the models of new public management and make a critical revision of traditional institutions, such as the Superior Audit Office of the Federation, comprehending new or transformed forms such as open governments and the new National Anti-Corruption System.

Rinna Marisa Aguilera Hintelholher and Ahaní Gutiérrez Luna account for the results of the Entities of Local Superior Audits. The first author's work is related to the sub-national public debt, while the second author refers to structural and regulation capabilities. As a complement to this segment on the analysis of accountability in governmental realms, Juan Montes de Oca Malváez breaks down the strategic areas for municipal administration and the difficulties it faces.

The last text, authored by Nancy García Vázquez, allows us a glimpse of the Latin American scenario through relating two vigilance systems that are usually analyzed separately –public expenditure and tax incomes–, while both are basic mechanisms for controlling public finances and have an effect over accountability.

Aside from the concentric of the control of power, the commented book contributes to the methodology for researching accountability, since some authors elaborate qualitative institutional analysis, while others rely on quantitative methodology and use published indicators or, else, develop their own indexes.

Classic topics such as the division of power, weights and counterweights, and institutional designs are also analyzed, and new subjects like the regulations of accountability, public value and open government can be read in this volume of more than 400 pages that, as a whole, reasserts transparency and audits as the pillars of accountability, underlining the Superior Audit Office of the Federation, created in the Constitution in 1999, as the most consolidated institution, but still with some areas of opportunity and a great responsibility

over the recent Anti-Corruption Systems, also created within the Constitution, in 2015, and which are still under development.

A final but very important contribution to be pointed out in this collective work is the bibliographical references of each one of the chapters that, as whole, represent a robust collection of classic and contemporary specialized literature.

FACT SHEET

Book: The Sense and Scope of Accountability
      (Sentido y Alcance de la Rendición de Cuentas)

Year: 2017

Authors: Ricardo Uvalle Berrones and Maximiliano García Guzmán,
       (coordinators).

Chapters:

Audits and Accountability *(Fiscalización y Rendición de Cuentas)*	Carlos Reta Martínez
Transversal Accountability: Innovation in the Dynamic of Public Action *(Rendición de cuentas transversal: innovación en las dinámicas de la acción pública)*	Alicia Montserrat Islas Gurrola
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