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The e-Journal of Economics & Complexity

*An Interdisciplinary Journal on
Development and Global Studies*



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Introductory Editorial

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In the mid-1970s, the rise in oil prices, the devaluation of the dollar and the introduction of floating exchange rates with the collapse of the Bretton Woods system, as well as the fall in productivity gains, led to a radical break with the development model that had dominated the last thirty years – what the French economist Jean Fourastié called ‘Les Trente Glorieuses’¹ (the Glorious Thirties). From the Marshall Plan to the first oil crisis, between 1947 and 1973, the extraordinary period of fast economic growth in Europe is remembered today as a Golden Age that had at its center the idea of a strong State, with the public sector serving as a social model (the Welfare State) and an economic engine to give the economy a profound orientation: the major industries, banks and insurance companies belonged to it, as did many strategic means of transport.

After the seminal work made by the Swedish Gunnar Myrdal in the 1930s with special reference to the importance of government action to provide a corrective to Market’s failures², two milestones appeared in the UK:

1. William Henry Beveridge’s Plan³, centrally administered and financed equally by employers, employees and the State, based on three key points: a) the extension of family benefits and allowances (such as unemployment benefits and pension) of the same amount to the whole population, regardless of previous income level, and not only to those who had paid contributions; b) universal health care, c) full employment policies.
2. John Maynard Keynes’ General Theory⁴ challenging the belief in the laissez-faire free market associated to the idea of government interventions as the source of problems, minimal State intervention and the natural tendency to full employment, by emphasizing the importance of governmental interventionism and expansionary fiscal and monetary policy during a recession, through: a) public investment programs, and b) interest rate reductions.

And it was in the United Kingdom that the epochal turning point took place that closed the season of Keynesianism and state dirigisme to give way to monetarism and neo-liberalism, led by the three watchwords of (trade and financial) liberalization, privatization and deregulation, with the corollaries of draconian

¹ J. Fourastié (1979).

² G. Myrdal (1934).

³ W. B. Beveridge (1944).

⁴ J. M. Keynes (1936).

reductions in social services and the principles of universalism. The UK Prime Minister Margaret Thatcher embodied the so-called 'neo-liberal' ideas that had been brewing for ages in right-wing think tanks and which, once implemented, radically changed the face of the world economy, making free market/capitalism, meritocracy and competition the guiding principles that inform common sense.

What must never be forgotten is that the space conquered by the Market and the private sector and taken away from the State, since the mid-1970s, has been the result of deliberate political choices made by state governments and reforms of state law. That is, the governments deliberately made the decisions.

In times of globalization crises, such as the current ones, following the pandemic crisis and the inadequacy of global governance systems to address the major global challenges - starting with climate change -, the importance of the multiple and non-unidirectional and intertwined links between the globalization process, the crisis of the State and the evolution of Law should not be underestimated. It is precisely from this triangulation that the article written by Luis Fernando Bermeo Álvarez, PhD candidate at the Doctoral Scholar in Law, Universidad del Norte (Colombia) and scholarship holder at the doctoral school on the SDGs of the international network involving and linking some 40 doctoral programmes in Africa, Latin America and the Caribbean, Asia.

Taking up some central passages of the article, just as the State has changed due to globalization, so has the Law; nowadays, there is no longer a clear separation between public and private, domestic and international legal procedures, while new mechanisms have been created that imply a modification of the legal sovereignty of the countries, even the national constitutions themselves. All this contributes to delineating the features of what can be called transnational law. If we think about international trade and investment, human and other rights, refugee law, criminal law, and security, the global governance processes, in terms of actors and norms, are constantly guided by an interplay between national and international levels. In practice, globalization also means a change in the scale of decision-making, to the detriment of the sovereignty of its Member States; however, the recent financial, pandemic and Ukraine war crises seem to have led to a rediscovery of the benefits of an interventionist State in global arena, but without bringing the role of the Welfare State back into focus. Given the general theoretical framework, it seemed appropriate to open this issue of the journal with such an article. This issue of the journal only collects articles written by PhD students of the network and collects six additional contributions.

Still on the subject of the balance between State and Market and the dynamics of development, in many developing contexts, we observe the disconnect between the 'rhetoric' of rights and opportunities and the 'reality' of service delivery. As recently demonstrated by Akshay Mangla with reference to the case of rural India⁵, differences in bureaucratic norms – informal rules that guide public officials and their everyday relations with citizens – generate outcomes, so that bureaucracy influences how State enacts policy mandates, as well as citizens and

⁵ A. Mangla (2022).

firms' expectations, thereby impacting development process. The stereotype of Weberian bureaucracy, coined by Max Weber as a hierarchically structured, professional, rule-bound, impersonal, meritocratic and disciplined body of civil servants was conceived as an ideal type of Public Administration which operates outside the political sphere⁶. During the last decades, this model has been seriously criticized as inaccurate and misleading, but the relevance and failure of public administration structures, norms and efficiency are intimately tied to the development of modern States. With reference to this theoretical framework, the article written by Luis Esteban Karamaneff, PhD candidate at the *Consejo Nacional de Investigaciones Científicas y Técnicas (CONICET) - Escuela de Política y Gobierno* at the Universidad Nacional de San Martín (UNSAM) (Argentina) investigates the case of the government of San Luis, a peripheral province located near the geographical center of Argentina, as a successful case for overcoming the limits of bureaucracy and able to transform its productive structure in a period of ten years by locating a huge number of industries in its territory. The author highlights how the mechanism of by-passing Public Administration, through a strategy that involved a group of intermediaries to offer the province as the best possible option for relocating an industry to private actors was a successful option for attracting investments and establishing industries. Again, the indication that is drawn is not to contrast roles of public and private actors in promoting economic development. Rather, it is a question of understanding how to make use of the tools that are available to the legislator and the policy maker to temporarily address structural limitations of the State apparatus in order to make the most of opportunities to involve the private sector - in a non-substitutive form - to promote development, while at the same time seeking to strengthen the capacities of the Public Administration that will then be called upon to play its role.

A central theme in international debates on development in Africa, Asia, Latin America and the Caribbean is the role played by and the interaction between different – and sometimes competing – societal components such as the State, the firms and the Market, civil society and households. In this context, the debate on State versus Market, the concept of bypassing bureaucracy can be radicalized and not grasped as a temporary tool. In the same way, placing the emphasis on the propulsive function of public investment does not mean pitting public and private against each other, but rather understanding how to re-contextualize the debate on the role of the State in the economy for addressing the economic, social, environmental and technological challenges raised by the present state. There is no doubt, however, that one area of bitter confrontation between legitimate but opposing interests is that of negotiation of labour disputes, which are an inevitable part of the working relationship. This is an important topic because dispute resolution is a thermometer of the state of freedom, of inequalities, of the exercise of workers' rights, of the contraposition and/or composition of interests between capital and labour, and of the exercise of third-party status by the State, called upon to protect rights and, in particular, the vulnerable forces in society. In the context of globalization-related changes, this is particularly important, given the

⁶ F. Sager and C. Rosser (2021).

precariousness of work in its contractual forms and the existence of the widespread phenomenon of the working-poor, which make essential the issue of what the International Labour Organization (ILO) defined as decent work. Relatively little is known about the scale, nature and causes of labour disputes and resolution mechanisms at subnational level across the continents. Typically, disputes fall into national disputes of interest and rights, extended disputes of interest concerning collective (pay) agreements, localized disputes on matters of interest, concerning employment problems, working time and restructuring with short work stoppages, localized disputes concerning workers' rights and grievances over company policies, disputes concerning public policies. At the same time, the labour disputes resolution mechanisms include workplace consultation and cooperation arrangement(s), collective bargaining, trade unions, the right to organize protests including strikes, collective labour contracts, tripartite coordination (with the involvement of State ministry) and labour court (with Judicial/legal adjudication), but quite a different issue is whether and how much are the institutional channels practically available to workers for dealing with labour disputes⁷. Transaction costs (combining time, money, emotional energy expended in disputing) as well as satisfaction with outcome(s), effects on the relationship and recurrence of disputes are useful criteria to assess the effectiveness of labour dispute settlement arrangements and procedures in concrete cases. The article written by Nguyen Thi Minh Tien, from the Faculty of International Studies, Hanoi University, who earned her PhD with a final dissertation on "Legislation on collective labor dispute resolution of Vietnam and Italy in comparison", takes its starting point from the ILO principles recommending the measure of Labor Conciliation to settle collective labor disputes after the failure of collective bargaining to explore legal practices and limitations in Vietnam. Based on a careful examination, the author finds that in most cases, workers do not opt for conciliation or collective bargaining, but resort to spontaneous strikes as the first solution to disputes in Vietnam. This evidence points to the need to review the adequacy, current practice and effectiveness of Vietnamese mediation rules, as well as the representative role of trade union organizations in dispute resolution, in order to improve the efficiency of conciliation activities and promote Vietnam's compliance with international labour standards.

Inter-institutional dynamics of cooperation and/or competition can also be found within the same macro-institution. In other words, it is not only the sometimes difficult and conflicting relationship between the State and the Market or between workers and employers, but also, within the State, a difficult relationship between the central government and the sub-national government, as well as between different ministries, can be detrimental to effectiveness and efficiency. An area of exceptional importance, especially today in the context of a global government debt crisis that reduces degrees of freedom and room for manoeuvre in public spending policies, is the fiscal relationship between the central and local governments. Over the last five decades, the world has experienced various major

⁷ ILO (2013).

debt waves, affecting mainly developing countries: the Latin American debt crisis of the 1980s, the financial crisis in Asia in the late 1990s, the global financial crisis of 2007-2009 and, more recently, the African debt crisis, which has been ongoing for two decades. Over the past few years, then, the economic and financial impact of the COVID-19 pandemic and the war in Ukraine determined a worsening of the debt crisis. Even if debt dynamics varies significantly across countries, according to the International Monetary Fund (IMF) Global Debt Database⁸, in low-income developing countries total debt ratios have continued to increase (driven by higher private debt) and governmental management of the high debt levels will become increasingly difficult if the economic outlook continues to deteriorate and borrowings costs rise further. In a context of limited resources, the distribution of fiscal resources to different levels of government may be, in fact, a political bargaining tool to build tactical alliances. Pablo Palumbo, PhD student at the *Escuela de Política y Gobierno* (EPyG) - Universidad Nacional de San Martín (UNSAM) (Argentina) analyses the strategy adopted by president Mauricio Macri (2015-2019), a conservative coalition leader who defeated Peronist candidate and ended 12 years of Peronist rule⁹, to secure the governors' cooperation on various policy initiatives despite belonging to a different political party. In particular, the president granted some local governments more fiscal freedom and kept the governors divided in order to neutralize power of the majority of Peronist governors. A practical implementation of famous "divide and rule" policy (in Latin: *divide et impera*) as a way to maintain power divisively. According to the author, the experience analysed shows how the outcome of the difficult fiscal bargaining between the different levels of government depended heavily on presidential agency and the choice to link the agenda on fiscal federalism, the agenda on intergovernmental relations and the agenda on presidentialism in Argentina.

In addition to those indicated, there is another level of building cooperation dynamics through processes and institutional architectures essential to democratic life that concerns, in particular, trust between citizens and government. Citizen participation in public policy processes has to be formalized by creating legitimate spaces for deliberation and participatory policy design help achieve high-quality processes for citizens to shape public decisions. Various practices aimed at engaging stakeholders in public policy creation and decisions making are under research scrutiny¹⁰; Alexandra Lizbona Cohen, Uruguayan PhD student at the Universidad Nacional de San Martín (UNSAM) (Argentina), contributes to these questions by analyzing a number of practices aimed at involving stakeholders in public policy development and decision-making in Uruguay. In particular, The Broad Front (*Frente Amplio*, FA), a left-wing political coalition, was the ruling party of Uruguay from 2005 to 2020, with two presidents: José Mujica (2010–2015) and Tabaré Vázquez (2005–2010; 2015–2020). The

⁸ <https://www.imf.org/external/datamapper/datasets/GDD>

⁹ Caitlin Andrews-Lee published an interesting analysis focused on Argentine Peronism – a s compared to Venezuelan Chavismo – to investigate the nature and trajectory of charismatic movements from the perspectives of both leaders and followers in Latin America. See: C. Andrews-Lee (2021).

¹⁰ For a recent literature review, see K. Saguin and B. Cashore (eds.) (2022).

author clarifies that FA considered the involvement of citizens in the policy-making process a central pillar over the eight elections in which it competed (1971-2014). However, once in power, the innovation in terms of participation mechanisms were diverse with great variations; these differences can be summarized in terms of the materialist/post-materialist cleavage (labor and redistributive policies versus water policy), which overlaps in important ways with the presence/absence of innovative participation mechanisms cleavage. She argues that the key factors of innovative participatory designs are identified by combining a map of the participatory institutions carried out by the FA governments and a field-work with in-depth interviews with qualified informants from both the political, technical and social spheres. There is broad consensus in the literature that institutionalizing deliberative processes strengthens democracy and increases trust in government; at the same time this institutionalization depends on the specific context, aims and process. A look at the recent case in Uruguay is a useful contribution in this regard.

At the level of key actors who inhabit and animate territories and contribute to the dynamics of change, there are not only governments and citizens. Increasingly, the strategic importance of private sector partners, whether related to the business sector in the various sectors or to the specific financial sector, whether or not they are for-profit-enterprises, has been consolidated. There is one particular area of interest that has emerged with increasing prominence in the literature of this century and has also found its way into eJ&C and that is microfinance. Microfinance is a powerful instrument to promote the development of societies and to ensure the inclusion of a large portion of the population in the economic and productive sphere, especially in societies where polarization in access to assets and income is pronounced. There are alternative approaches to microfinance in terms of priorities, mechanisms, commercialization, timing, targets and outreach of interventions as well as diversity prevails in evidence on impacts and the context matters a lot. In any case, the formulation of regulation and public policies is a central issue everywhere because microfinance, which certainly had seductive elements on a cultural level as well in a context dominated on a global scale by a common sense linked to neo-liberalism and the centrality of entrepreneurial spirits, is obviously not the panacea for poverty¹¹. Yi Yi Win, PhD student at Department of Economics, Yangon University of Economics (Myanmar), poses the problem of how to determine the extent of the penetration of microfinance institutions in Myanmar. In particular, the author follows literature's evidence that breadth and depth of outreach are both desirable objectives, but there is a trade-off between them and Microfinance Institutions (MFIs) must choose their priority, by taking into accounts that sustainability is positively correlated to breadth, whereas there is a trade-off between depth and sustainability. The analyses are conducted on secondary sources, using a classic multiple regression model with secondary data referred to the 2015-2020 period,

¹¹ On the subject of microfinance market risks, an alarming Bloomberg documentary, entitled "The Dark Side of Microfinance" was published in May, 2022. See: <https://www.bloomberg.com/news/articles/2022-05-06/video-how-microfinance-is-hurting-those-it-was-meant-to-help?leadSource=verify%20wall>

with “Outreach of MFIs in Myanmar” as the dependent variable. The results do not show conclusive evidence in terms of statistical significance and, among other findings, it is interesting to note that “Total assets” is the only independent variable with a positive coefficient being statistically significant and that MFIs with a business logic are less likely to provide services to the poor and lenders. This article also found that the type of institution (NGO, corporation) is not relevant for the extent of MFI outreach, differently from other studies.

Referring again to the specific case of Myanmar, the article written by Soe Yu Hlaing, PhD student at Department of Economics, Yangon University of Economics (Myanmar), focuses on a different topic, but not completely unrelated. In fact, child nutrition is the central topic and, just to draw attention to the connection between nutrition and the subject of the previous article, microfinance indirectly aims at improving child nutrition in marginalized areas¹². A healthy and balanced diet is essential, especially during the first 1000 days of life. It is the only way to prevent delays in the physical and mental development of children. Malnutrition and the weakening of the immune system that is often associated with it make people more vulnerable to infectious diseases, such as tuberculosis. The World Health Organization (WHO) estimated 2.7 million children die each year from undernutrition, representing 45% of all child deaths. Coming to the specific case of Myanmar, according to UN figures, the estimated number of internally displaced people since the coup at the beginning of February 2021 has exceeded 700,000, including more than 250,000 children, as of 1 June 2022. In terms of education, more than half of the country's children, about 7.8 million, are still not in school. The UN has documented 260 attacks on schools and education personnel since the coup, and 320 cases of schools being used by armed groups between February 2021 and March 2022. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) published a Myanmar Humanitarian Response Plan 2022 in January 2022¹³, showing that more than 13 million people – including children and women among the most vulnerable – are now in moderate or severe food insecurity and many families can no longer afford enough food to eat. Poverty is back to levels not seen since 2005. While these are some features of the worrying general picture described by the UN, the article focuses on some more specific aspects deducible from the data collected in Hlaing Thar Yar Township, which is one of the biggest and most populated townships in the country, located in the western part of Yangon. Most residents of this populous quarter of town are low-income and the majority work as physical laborers in factories, and are mainly internal migrants from Ayeyarwady Region after the Nargis Cyclone in 2008. A stratified random sampling method was applied to select the sample of 200 households from four wards of Hlaing Thar Yar Township. The questionnaire was designed to assess the nutritional status of children under five years and its correlation with household demographic characteristics, socio-economic factors, mothers' awareness and dietary diversity intake. Beyond the more specific aspects that emerge, the overall picture appears less worrying than expected,

¹² For example, see: A. R. Smyth et al. (2020).

¹³ <https://reliefweb.int/report/myanmar/myanmar-humanitarian-response-plan-2022-january-2022>

since 4.5% of children's nutritional status resulted at a Moderate Acute Malnutrition status, while 22.27% were At Risk. Nonetheless, the author stresses that data confirm that mothers' or caregivers' awareness and dietary diversity were the strongest factors affecting children's nutritional status and can make the difference. Many mothers or caregivers in Hlaing Thar Yar suffer from low education, low family income, unstable jobs, but they have good environmental knowledge and keep their children healthy. We can plausibly say that the combination of social and environmental context is a crucial determinant of childhood undernutrition: in rural areas, a lower access to an improved source of drinking water may prove decisive in leading to a greater problem of child malnutrition compared to urban regions.

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Contemporary globalization and its impact on the Law: analysis of a historical reconstruction

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Abstract

This article presents a reconstruction of the historical context of contemporary globalization, based on the analysis of facts that are considered relevant since the 70's of the 20th century, in the framework of the international system created after the Second World War. Its aim is to establish some political consequences that followed from this phenomenon in terms of the crisis of the State and its relative impact on the Law, including conceptualizations of the detachment of both notions, which arose in this same historical context, and the creation of non-State legal forms. This implies a theoretical and political challenge at present, in the face of the defense of fundamental rights, as well as in the context of contemporary globalization and its consequences, in terms of the weakening of the State and the autonomy of the Law with respect to it.

keywords: State, Non-State Law, Globalization, Soft-Law, Constitutionalism.

1. Introduction

According to Max Weber (1964), the Law is a concept linked to the State. One of the main characteristics of the State is its ability to make mandatory norms and the power to enforce them through legitimate coercion. Therefore, from Weber's comprehensive sociology, Law is an attribute of the State. This sociological concept of Law deals with its "legality" or "validity", leaving out concerns about justice or morality, which for Max Weber are things different than law. The essential difference lies in the capacity of the State to impose norms and enforce them through the legitimate use of violence, while, in his theory, moral rules escape this exclusive characteristic of legal norms.

In this context, between the end of the 19th century and the beginning of the 20th century, it was difficult to think of Law as a phenomenon that could eventually transcend the frame of reference of the State. However, during the 20th century and into the 21st century, legal regulations have escaped the margins of the State. To illustrate this situation, legal scholars have created a conceptual distinction between Hard-law and Soft-law (Aguiló, 2015), to demarcate the boundaries between State law (Hard-law) and non-State law (Soft-law). Perhaps this distinction between Hard (or strong) and Soft Law (Laporta, 2014, p. 60), is due to the conceptualization that Weber made of it, in the sense that Hard-law can be

imposed by the State in a strong or harsh way, while Soft-law lacks this characteristic (Aguiló, 2015, p. 1064). Moreover, in this work it is important to understand and highlight the existence of a Law beyond the referential framework of the State, by virtue of globalization, through the construction of a historical context from the 70's of the 20th century, i.e. what Zupi calls the second, third and fourth wave of globalization (Zupi, 2019, pp. 19 - 20), through the approach of Global History¹ (Conrad, 2017).

From now on, the reconstruction of this historical context will be developed, to later specify the political consequences of this phenomenon both in the State and in the Law, and thus establish a theoretical basis necessary to determine one of the theoretical and political challenges that Globalization in Law brings with it, that is, the defense of fundamental rights beyond the framework of State actions.

2. Building a historical context of contemporary globalization

To realize the full possibilities of this economy, we must reach beyond our own borders, to shape the revolution that is tearing down barriers and building new networks among nations and individuals, and economies and cultures : globalization. It's the central reality of our time.

William Jefferson Clinton. 2000.

After the Second World War a new international system was configured that structured a new organization in the relationship between countries, developing and improving what had already been started after the First World War. In this context, international trade played a fundamental role, as policies to expand exports and imports worldwide were resumed, after the economic catastrophe produced in part by the protectionism of the 1920s (Findlay and O'Rourke, 2007). Several factors help to explain this complex historical moment.

¹ "The Global Story (...) Pays special attention to cross-border interactions and intertwines. It also admits the impact of structures that go beyond the limits of each individual society. With this, global history recognizes the causal relevance of factors that are not limited to the domain of individuals, nations, and civilizations. The ultimate promise is a perspective whose gaze finally overcomes the dichotomy between the internal and the external" (Conrad, 2017, p. 83).

The first is the creation of international economic institutions such as the International Monetary Fund, the International Bank for Reconstruction and Development, later known as the World Bank, and the General Agreement on Tariffs and Trade, which emerged from the Monetary Conference and Finance of the United Nations in June 1944, at the Bretton Woods hotel (New Hampshire, United States), in order to manage international capitalism and thus avoid the crises of the past (Mazower, 2012, pp. 201 - 202) .

An example of how this motivation materialized in this context was the decision to implement the gold standard at the international level, and establish the dollar as the world's exchange currency, so that each country subscribing to these institutions would ensure their gold reserves and their relative price in dollar amounts, that could be issued (United States) or bought, so that a fixed exchange rate would be adopted in these countries.

In this context, the economic model of the 'Western bloc' was capitalism, in its interventionist variant, promoted by the theory of John Maynard Keynes. This model would lead to the economic growth of the developed countries belonging to this bloc during the two decades that followed the end of the war. However, this was also partly due to the organization of international trade and of the national economies of the developing countries in this same bloc, which were generally former colonies, which configured their economy according to international criteria.

This meant that, for example, these countries concentrated on the production of goods in the primary sector of the economy, and that the marketing prices of these products at the international level were generally stipulated according to the needs of developed countries. In turn, developing countries became importers of technology produced in developed countries (Stiglitz, 2018, p. 26), with prices set from these latter, so that a growing inequality between countries began to emerge; eventually, the G-77 was formed, made up of developing countries, or 'third world', as a way of putting pressure on developed countries in search of a better balance in international trade (Mazower, 2012, p. 299; Anand, 2004, p. 253; Lorenzini, 2009, p. 121).

In turn, the rise of oil as a source of energy for international production and the formation of the Organization of Petroleum Exporting Countries (OPEC) in 1960, by developing countries, with the aim of declaring their sovereignty over their resources (Lorenzini, 2009, p. 120), put additional pressure on developed countries, especially in the Western bloc.

In the 70's, this organization became more relevant when an international conflict broke out between Israel (supported by the United States) and neighboring Arab countries (supported by the Union of Soviet Socialist Republics), in which the latter decided, as a form of retaliation in the context of the Yom Kippur war (between Israel, Egypt and Syria), that OPEC production would be cut and an

embargo was imposed on Western countries that supported Israel, thus increasing the international price of oil, in order to control this market against the domination that multinational trading companies had previously exercised over the producing countries (p. 120). This crisis generated a global recession and strong political repercussions in Western countries, especially in the United States (Mazower, 2012, p. 344).

In this context, the oil crisis hit especially the developed countries of the Western bloc, which had to establish policies to counteract this 'strategy' of 'third world' countries (Lorenzini, 2009, p. 121). A relevant fact amidst the world economic events that developed after this crisis is that in 1971 Richard Nixon had destroyed the international monetary system created by the Bretton Woods agreements, abandoning the gold standard, in the context of the economic crisis experienced between the late 60's and the early 70's.

The scenario of this crisis created an unprecedented phenomenon in the modern economy, known as "stagflation" (Mazower, 2012, p. 344), which is described as stagnation with inflation (Amighini, Blanchard, Giavazzi, 2012 , p. 194). For the first time, the slowdown in production and the increase in unemployment generated inflation (Mazower, 2012, p. 345), contradicting one of the most widespread ideas in economic theory at the time, i.e. the Phillips curve, according to which, 'when unemployment was low, inflation was high, and when unemployment was high, inflation was low and often even negative' (Amighini, Blanchard, Giavazzi, 2012, p. 207). These developments, added to the pressure from the G-77 countries for a "new world economic order", led to a reaction from the United States and the United Kingdom, which would eventually spread out.

In 1974, 1979 and 1981, Augusto Pinochet, Margaret Thatcher and Ronald Regan started their governments, in Chile, the United Kingdom and the United States, respectively, promoting profound changes in the capitalist economic model of State interventionism that until then had dominated in Western countries, and liberalized national economies; this approach would later be called 'neoliberalism', under the influence of the theories of Milton Friedman and Friedrich von Hayek, both economists awarded with the Nobel Prize in the 1970s. The advice of economists educated at the Chicago School, at the University of Chicago ('The Chicago boys'), where Milton Friedman was professor and from which some of Augusto Pinochet's economic advisers came, was key for the dissemination of this 'new' economic trend, as well as the contribution from the so-called "Geneva School" (Slobodian, 2018, p. 8), which describes a groups of neoliberal thinkers involved in the academy from this Swiss city, who also worked for several Geneva-based international economic institutions, such as the World Trade Organization (p. 8).

An analysis of the changes that were made in the economic policy of Western countries, especially developed ones, and later in the majority, can be found in the work of François Bourguignon (2017) "The globalization of inequality", where he

explains that taxation, privatization, deregulation, and structural adjustment were the main tools used to introduce the changes.

In terms of taxation, there were especially 'cuts to income tax' (Bourguignon, 2017 p. 122), as well as the creation of the distinction between 'taxation on capital and savings and taxation of earned income' (p. 123) that produced a 'dual system' (p. 123) of taxation, which taxed both the highest-income group (capital and savings) and the income of the less rich population, male and female workers, to compensate for fiscal spending, taking into account the reduction of the income tax rate.

In fact, as Bourguignon puts it, 'since the income share of capital tends to increase as income increases, the average tax rates for very high-income groups ended up falling' (p. 123). In turn, these reforms to fiscal policy were accompanied by cuts in social spending, or a reduction in the welfare state (p. 124).

In this context, the privatization of public companies, as well as financial and labor market deregulation, also occurred and was promoted (p. 124). The first deregulation or 'financial liberalization' (p. 127) basically consisted in 'the deregulation of operations in financial markets, based on the reestablishment of competition between operators of all kinds and the computerization of markets' (p. 126). In this way, private banks and other operators in the financial sector could compete in the market with less regulation from the State, which increased demand and access to credit (p. 127). It was also possible to create new financial products and the opening of international markets, including capital markets, which produced a 'greater fluidity of international capital mobility' (p. 130).

Another important aspect of this financial liberalization in the monetary policy reforms is that, through banking deregulation, financial entities have a greater margin of monetary creation, through the 'secondary creation' of money (Blondeau, 1983). This implies that the primary issuance of money, made, for example, by a central bank, may fall on a credit made to a commercial bank, which in turn can use the money received to issue credits to its customers. In this process, the commercial bank can grant credits that exceed the amount of the initial credit received from the central bank, as long as the credits granted with the available money received from the central bank maintain a certain amount of money in its reserves, which allows to partially cover the credit received by the central bank.

The difference between the amount of credit issued by the central bank and the total amount of credits granted by the commercial bank with the money from the central bank loan will be equal to the total of the secondary issuance of money by the commercial bank. This is important because by promoting the abandonment of the gold standard in 1971 in the United States and its spreading worldwide through financial deregulation, financial institutions can influence monetary policy through the secondary issuance process.

The second deregulation mentioned so far is that of the labor market, in which employment protection measures have been relaxed in most countries, such as unemployment benefits, with the aim of encouraging those who are unemployed to try to work as soon as possible (Bourguignon, 2017 p. 137), however, as Bourguignon (2017) states:

There are several additional ways, in addition to employment protection laws, in which the labor market is regulated, including trade unions and collective bargaining, social contributions or deductions from wages, as well as taxes on wages, compensation unemployment and, of course, minimum wage laws (p. 131).

All these forms have been used in neoliberal economic projects, reducing the union bargaining power (p. 133), for example by establishing the minimum wage in low ranges, with respect to the average wage (p. 134) and cutting the contributions to social security (p. 136), to influence the labor market.

On the other hand, structural adjustment was another of the economic policies that were adopted internationally in most countries, through the management of economic institutions such as the IMF or the World Bank, as a recipe to counteract the crisis of the foreign debt in the 80's (p. 141), in the same context of the emergence and positioning of neoliberalism.

This summary of economic policy of neoliberal tendency is incomplete; however, it allows to specify the historical context and some economic elements of this model of international capitalism, since the mid-1970s. In turn, these same economic elements of neoliberalism are considered as components of the phenomenon of contemporary globalization (Bourguignon, 2017; Nadal, 2011; Mazower, 2012).

In this context, Mazower states that, in 1983, Harvard Business School professor Ted Levitt published an article called "*The Globalization of Markets*", which had a profound influence, and in which he argued that the world had become a single market (Mazower, 2012, p. 363). On the other hand, it is worth remembering the words of Findlay and O'Rourke, when they state that by the mid-90's the majority of the world's population already lived in open economies (Findlay and O'Rourke, 2007, p. 497).

By that time, contemporary Globalization had been installed worldwide. In fact, Mazower himself highlights the words of the president of the United States, Bill Clinton, when, in 2000, in his speech before the State of the Union, he congratulated the population of his country for having welcomed "*the central reality of our time'-globalization*" (Mazower, 2012, p. 362). These references show how, from the 70's of the last century, until the beginning of the 21st century, a historical process developed that internationalized neoclassical economics, and that was named Globalization. Now, it is interesting here to specify what

consequences did globalization have on the international economy and, from there, begin to determine the changes that it produced in the Law.

Joseph Stiglitz (2005), one of the main economic advisers to the US government of Bill Clinton and chief economist of the World Bank, in a book originally written in 2003, described globalization, as, 'the greater integration between the countries of the world as a consequence of the reduction of transport and telecommunications costs, on the one hand, and the elimination of artificial barriers, on the other' (Stiglitz, 2005, p. 14).

In the first chapter of this work, Stiglitz describes some of the policies of globalization, managed until that moment by the United States and other developed countries, through international organizations (pp. 46 - 48). Many of the policies collected in that study have been addressed here when neoliberalism was described, following the work of Bourguignon (2017), such as deregulation and reduction of the fiscal deficit, by the State (Stiglitz, 2005, pp. 65-66).

However, another important aspect of this management of globalization, which Stiglitz collects in his study, and which has been little addressed so far, is the free trade policy, based on treaties that further integrate international markets, but which, according to Stiglitz, were generally designed to privilege the production of developed countries (pp. 70 - 74; 2018, p. 26). This has even been pointed out more recently by Abhijit Banerjee and Esther Duflo, when they criticized the way in which international cooperation programs for food security have traditionally been conducted between cooperating and needy countries (Banerjee and Duflo, 2016, p. 63).

On a world scale, this highlights a policy to free national markets from foreign products, and, therefore, to revalue the trade balance in the domestic economies. Mainly, exporting countries have taken advantage of this free trade movement, and have seen their income increased through greater investments, productivity growth and increased exports, such as the United States, Germany and China, among others.

On the other hand, the profit margin of this liberalizing policy of international markets has left few positive returns to mainly importing countries, which depend on their productive structure and capital markets to maintain stability, or even to be able to see an economic growth. This is the case of countries like Colombia, which generally have a negative trade balance (the total value at current prices of their imports is higher than their exports); therefore, this factor is subtracted from their gross domestic product (CEPAL, 2002, p. 176). The same occurs in most Latin American and African countries. To guide the international management of these policies, the General Agreement on Tariffs and Trade (GATT) was transformed into the World Trade Organization (WTO) in 1995 (Mazower, 2012, pp. 361 - 362).

This is the free market policy that was launched worldwide in the historical context, through two types of liberalization of national economies: free trade

agreements and the opening of capital markets. The former is widely known around the world, as well as in Colombia, to the extent that many countries have entered these treaties to agree on more beneficial foreign trade terms for their different productive sectors. However, one consequence of this policy is unemployment in sectors where imports entered successfully. In turn, this generated a modification of the productive structure of the national economies, since in each country the companies had to specialize the production in competitive sectors in the international market (Johanson and Olaberría, 2014, p. 8), and allowing foreign products to enter with great force to compete in their national markets.

Of course, this has generated benefits and losses in different economic sectors and countries worldwide (p. 8), as stated by Stiglitz (2005) in his opinion about the way in which the United States managed the policies of economic opening, between the end of the last century and the beginning of the current one, through what he calls 'unfair trade agreements' (Stiglitz, 2005, p. 336), which promoted the reduction or elimination of tariff barriers worldwide. However, at the same time, protectionist policies of national productive sectors were implemented that were not subject to the same reduction of tariffs, or through subsidies to national production, so that the benefited products could compete internationally at low prices (such as agricultural products), and disadvantageous clauses for foreign products in free trade agreements with some countries were established; for example, by subjecting the products to compliance with US health, quality and intellectual property standards, which could be modified for the benefit of national producers, thus eliminating international competition (pp. 336-342).

It is important to highlight the relationship between this free trade model and unemployment (Stiglitz, 2018, p. 105). On the other hand, the production costs of different goods were the object of analysis by the companies in the framework of this trade liberalization, and many factories transferred parts of their production chain to countries where they obtained an economic benefit for settling there, by virtue of a reduction of their production costs (p. 102, 105). Thus, if they considered that there was a saving in wages, for example, or in raw materials, or in transport, they could move their production or part of it, wherever they could reduce these costs (Johanson and Olaberría, 2014, p. 15). Again, the consequence of this is related to employment, insofar as where they closed a factory, to move production to another country, they created unemployment, while where they opened the new factory, they created employment (p. 24).

In this sense, the labor market has also become globalized, making many countries consider themselves 'attractive' for foreign investment, due to their weak labor protection, which is reflected in low production costs, lowering wages and others social security rights of workers. At the same time, this phenomenon has increased global inequality between skilled and unskilled workers, as companies demand increasingly skilled workers to qualify their specialized production processes,

thus further widening the income gap, access to formal jobs and social security between the two, globally (pp. 15-20; Bourguignon, 2017, p. 141).

On the other hand, these economic policies are often identified as the causes of the economic crises that followed in the 90's in Latin American and Asian countries, as described by Stiglitz (2005). The financial borders of these countries were demolished, and they entered competition from international banks, usually from developed countries, together with trade liberalization and the consequent reorientation of the national productive structure, which made the economies of the countries that suffered the crises generally depend on foreign loans, or foreign financial investment. Then, suddenly, loans and investments were deemed to be excessive and the banks stopped lending funds or withdrew their investments, underfunding these countries, and leaving them in a crisis status that linked high inflation and unemployment (Stiglitz, 2005, p. 349; Girón, 2002, p. 27).

This is precisely due to the promotion of the free movement of capital around the financial markets in the world, 'which allows the integration of national financial markets into a global financial market that operates 24 hours a day' (Girón, 2002, p. 6), which hinders the investment of these capitals in the productive structure of the countries, and rather encourages their flow. Hence, the national economic agents will probably not be able to take advantage of the income of said capital and, on the other hand, they will be able to benefit from the exchange and interest rates that exist in the different national markets, creating global competition between markets, with the aim of attracting capital, with almost no benefit being produced in the national productive structure.

The risky factor in terms of economic stability of those countries that have competitive financial markets in this system, is the one-sidedness of the decisions of those who invest in them, provided that they can withdraw their investment practically whenever they want. Therefore, the economic agents who use foreign capital can be affected by decisions made by the investor, such as withdrawing direct investment (which could trigger a corporate bankruptcy, and with it unemployment) or claiming indirect investment (loans) very quickly, without the receiving agent being able to achieve the expected returns, having to pay interests and financial costs without having received profits. The volatile circumstances of the markets, such as the mobility of interest rates or exchange rates, would also add to the risks.

This has generated serious economic crises in some states, such as Mexico in 1994 (Sassen, 2007, p. 118) or Brazil in 1997 (Girón, 2002, p. 46), to name a few examples. However, to give numbers on the liberalizing movement of markets that globalization implies, it is convenient to refer to the increase experienced by international trade in goods worldwide. According to the figures from the World Trade Organization (WTO), the export of these goods went from 2,753,000 million dollars in the last quarter of 2005, to 4,790,000 million dollars in the same period of 2019, which implies an increase of 73.9% in 14 years, while imports went from

2,828,000 million dollars to 4,852,000 million dollars during the same period, which represents an increase of 71.5% (WTO, 2020). This without including within the analysis the data updated to 2020 (or 2021), in the context of the global economic crisis produced by the emergence of the new coronavirus SARS-CoV-2, which shows a recession on a global scale, with a reduction in these numbers estimated at around 10% from one quarter to another, between December 2019 and March 2020 (WTO, 2020).

In this sense, the globalization described so far, as an essentially economic phenomenon, has generated political consequences at the global level, such as the relative reduction of sovereignty of States (Bauman and Bordoni, 2016), the promotion of non-State legal scenarios, or autonomous global legal regimes of a private nature (Teubner, 2010; Held and Mc Grew, 2003), the promotion of the capitalist economic system worldwide and some other elements of liberal ideology, such as Human Rights (Mazower, 2012). All of the above concepts will be explained a little more in detail later in this work.

3. Some political consequences of globalization

*The future does not belong to globalists.
The future belongs to patriots.*

Donald Trump. 2019.

Globalization transformed the political system worldwide, based on the following historical facts that are considered as fundamental to determine what globalization consists of, and how this phenomenon influenced the reconfiguration of the political system:

- a) The industrial revolution.
- b) The international system after the Second World War.
- c) The abandonment of the gold standard by the United States.
- d) The rise of the neoclassical capitalist economic model in liberal countries between the 70's and 90's of the 20th century.
- e) The fall of the Berlin wall, and with it, the end of the Cold War and the relative victory of the Western bloc.

These five relatively recent historical events configured a world economic system governed by the rise of financial capital, in which the dependency relationship between the productive apparatus of national economies and the amount of money that circulates in each national market, i.e. what people actually get, is no

longer necessary. For this reason, there are companies and individuals that accumulate more capital than some States.

In the comparison between the GDP of a country and the fortune of a person, people richer than countries can be found. For example, in 2019, according to Fortune magazine, Walmart accumulated revenues for a total of 514,405 million dollars (Fortune, 2020), while, in the same year, the Gross Domestic Product (GDP) of at least 154 states was lower than this figure (World Bank, 2020), and only 26 states achieved a GDP higher than Walmart's revenue during the same year, also based on World Bank data. No particular change occurred later, for example in 2022, when Walmart accumulated revenues for a total of 572,754 million dollars (Fortune, 2022),

This comparison is objectionable from many perspectives, especially due to the type of measures used, such as GDP (Coyle, 2017); however, the idea is to highlight the possibility that companies or people may accumulate as much or more capital than States (as both can accumulate capital). This implies a relationship between States, companies and people, in terms of capital, to the extent that the three actors need to produce and accumulate. Therefore, there is a relationship of codependency between them, in order to generate the conditions they need to reproduce capital.

Although interests may be different, these three actors are related based on their needs and the opportunities that may be generated in pursuit of their interests. Therefore, as previously described, economic globalization created a kind of market of opportunities for companies to segment their production chain and locate some processes in certain States that favor their interests (Stiglitz, 2018, p. 105). Likewise, some States compete in this market through their exchange and tax policies, to achieve greater foreign investments.

Likewise, people who seek to reduce the tax costs of their capital can move it to States where regulations are more favorable to their interests. This generates financing and at the same time underfunding of States, creating wealth and poverty at the same time, depending on the States from which the capital comes and goes.

At the bottom of this, as mentioned above, are people's jobs (Stiglitz, 2018), public resources by virtue of taxes collected by States and, with them, the social objectives that they have for the sake of enforcing the rights of people. That is why research such as those by Piketty (2019), Bauman (1999) or Bourguignon (2017) speaks of increased inequality at the world level due to globalization. With this system, private individuals can get richer and richer, through the reduction of their tax costs, just as companies can reduce costs by relocating their production where they can get better prices (both for labor and taxes, for example), thus reducing their contributions in terms of taxes and jobs in the countries where they were originally located, and in turn generate new jobs and tax revenues in the

countries of destination. Ultimately, what is generated is a lack of financing in the public sector, and an upswing in private wealth.

In this way, the current circumstances of the States make some researchers of the matter speak of a crisis of the State, such as Zygmunt Bauman (1999), Carlo Bordoni (2016), Saskia Sassen (2007) and Ulrich Beck (2017). To describe this crisis, Bauman (2016) says the following:

the State has seen itself expropriated a considerable (and growing) part of its former genuine or presumed power (to do things), which has been appropriated by supra-state (global) forces operating in a << space of flows >> (Manuel Castells dixit) outside of all political control, while the effective reach of existing political agencies and bodies have failed to go beyond state borders. This means, plain and simple, that finance, investment capital, labor markets and the movement of goods are outside the remit and scope of the only political agencies currently available to carry out the work of supervision and regulation. It is that politics chronically afflicted with a deficit of power (and therefore also of coercive capacity) that faces the challenge of powers emancipated from political control (pp. 23-24).

In this context, there are political actors who compete for power with the former Sovereign entity of the Enlightenment, i.e. the State, and eventually with the People, as the primary constituent; these are the individuals and companies that manage to accumulate large sums of capital in the framework of globalization. In this sense, it is possible to ask ourselves: "Is the State still the Sovereign? Is the People sovereign in Globalization?" The above is quite doubtful, because Globalization is a complex phenomenon, which escapes the categories of social organization based on the State, so it is difficult to identify who are the People in Globalization. And what does it mean to be Sovereign in this context? Therefore, it is very difficult to try to answer the first questions in a political and economic scenario as distant from the historical moment of the Enlightenment, as it is today (Bauman, 1999, pp. 79-80).

In turn, the problems of globalization are increased by the way in which they arise, since they can originate in one place, but have repercussions in another very distant place, with different effects; thus, it is difficult to coordinate local solutions to global problems. Even the solutions proposed from the global perspective are problematic, because global problems are generally more complex to solve, due to the plurality of interests at stake in their solution.

Consider, for example, the global crisis due to climate change, whose causes and consequences spread globally, and the responses to it, both locally and globally, that have been very difficult to apply (Beck, 2017). On the other hand, global pandemics are a good example of these difficulties, as in the case of the global health crisis caused by the new coronavirus SARS-CoV-2 that emerged in China in 2019, and spread throughout the world in 2020 through commercial travel,

recalling the relationship between the spread of diseases and trade routes, as in the case of the Black Death in the 14th century (Frankopan, 2016, pp. 219 - 220).

The very fact that a person was originally infected in a Chinese market and then the virus spread to the furthest corners of the world shows how complex and interconnected the world is today, through a world trading system that connects people and places so far apart. This crisis demonstrated various ways in which the political actors described here, individuals, companies and States, act. For example, some States strengthened their collaboration ties to overcome the crisis, such as the Europeans, while others acted locally and affected global solutions with their decisions. This was the case of the United States, which decided to withdraw from the World Health Organization while this institution was fighting the pandemic at a global level and, as a consequence, they stopped financing an important part of this international organization.

On the other hand, some companies rushed to restructure their production, and relocated or changed their global chains, or their supply of goods and services, to survive the serious global economic crisis resulting from the pandemic. Likewise, instead of cooperating, some companies decided to undertake an individual race for the development of a vaccine, in a scenario of economic opportunity created by the global need, just as some States also rushed to invest in these companies to ensure production for their population, leaving others with limited possibilities to react.

This serious global crisis has not yet been resolved, but what is evident is a general lack of coordination at political, economic, social and cultural levels, globally, on the most appropriate ways to overcome the situation, with only a few exceptions. The foregoing was done almost without recognizing how interconnected the world is today, so that local solutions to global problems are insufficient, and, global proposals without a conducive environment for cooperation are ineffective to face such a serious situation such as SARS-CoV-2.

In turn, the pandemic of this new coronavirus represents a challenge to globalization as described so far, since it has unequivocally demonstrated the need for the State to be capable of solving the problems, for which it must be properly managed and financed. The competition for sovereignty with the State on the part of some companies and individuals, by virtue of their economic interests, must be called off to be reevaluated, due to the urgent need of citizens, workers or not, to demand the fulfillment of their rights before a legal-political entity that should be fully compliant, regardless of other considerations.

A worker from company X who asks his employer to guarantee his/her right to health is not in the same situation as a citizen making the same request to his State, since the interests of the companies may go beyond those of the workers, and perhaps the employer could find it cheaper to replace a worker than to ensure his/her rights, while the very purpose of the State, according to the tradition of

liberal constitutionalism, is precisely to guarantee the rights of citizens and control the Sovereign (Dippel, 2009).

In this context, it is not clear if Globalization, as it has been known until now, will change after this pandemic. The truth is that it should, in order to make it more consistent with social needs in the face of global problems that warrant solutions of this same level.

Finally, we should to analyse some of the changes that Globalization has produced in Law.

4. Some changes in the Law under Globalization

But history does not stop, and the task of each generation is to do what it can with the cards that are played.

Joseph Stiglitz. 2018.

Just as the State has changed due to Globalization, so has the Law. This is because the latter has traditionally been conceived as linked or dependent on the State, and since it has been modified by Globalization, the Law has also undergone changes. Perhaps the most notable aspect of this process has been the emergence of: i) contemporary descriptions of Law not linked to the State, and ii) non-State legal scenarios.

The former occurred specifically in the second half of the 20th century, although perhaps it is possible to speak of a tradition of studies on Law that did not link the latter as a product of the State, and it may be the case of the genealogies of Soft Law by Anna di Robilant (2006). But especially, Niklas Luhmann's Theory of Law as an autopoietic social system has had a great relevance in the studies that have been carried out on Law in the last 50 years. Likewise, his theory is important for this research, since it considers a description of the Law without conceptually linking it as dependent on the State, as mentioned by Luhmann (2014):

Law is an autonomous functional system of society that determines by itself what it regulates and submits all the factual assumptions on which it communicates to the binary code in accordance with Law or contrary to Law (Recht / Unrecht) (p. 38).

This description of Law as a social system, based on a language, does not mention the State as an essential feature on which it depends, but rather, this is a product of the complexity of social interaction, and not of a bureaucratic-administrative apparatus (Weber, 1964). This consideration allows one of Luhmann's students,

Günter Teubner, to theorize about the existence of new legal fields where the State does not operate, what the German sociologist also calls “*private legal regimes of an autonomous nature*” (Teubner, 2005, p. 121). This theorization about non-state law allows the consideration of it, as a social phenomenon beyond the state in the context of globalization, as described by Teubner (2010):

Ultimately, in Globalization, the creation of rules that predominate is shifting from the centers of Law that had been politically institutionalized in the nation-state (...) towards the periphery of Law, that is, towards the limits between Law and other sectors globalized social networks. The new world law is primarily peripheral, spontaneous and social law. Private government, regulation, and justice are becoming fundamental sources of law: they are intrinsically legal phenomena (p. 74).

Researchers outside the Law also agree on this, such as David Held and Anthony McGrew (2003), who described some of the changes that Globalization has produced in Law:

Many new centers of legislative and normative decision have emerged, creating a multitude of << decentralized legal decision-making processes >> in various sectors of the global order (...). Many of them have been born through self-validation processes in relation to technical standardization, the production of professional rules and the transnational regulation of multinational corporations, and through business contracting, arbitration and other elements of the *lex mercatoria* (the global framework of the commercial law) (...). Global networks of public political action that involved public and private actors are reshaping the bases on which national and international rules were made and regulatory systems operate; and the results do not easily fit into the traditional distinction between national and international law (...). There is no longer a strict separation between public and private, domestic and international legal procedures and mechanisms; Legislative decision and execution models no longer fit clearly into the logic of States (pp. 32 – 33).

This is also experienced in the supra-State political scene of grouping of countries, such as the European Union, the OAS, among others, in which instances of international public law have been created that imply a modification of the legal sovereignty of the countries (Peters, 2010, p. 209), even the national constitutions themselves (CIDH, 2001, p. 39). In fact, theoretical proposals have been launched to promote a common constitutionalism among countries, with supra-State regulations and institutions, through a process of normative integration, such as the *Ius Constitutionale Commune*, a project specially led by the Max Planck Institute for Comparative Public Law and International Law, from the University of Heidelberg in Germany, or global constitutionalism (Peters, 2018), after the identification of the crisis that this theory is going through, facing the challenges that Globalization imposes, both on the State and to the Law. In the words of Peters (2010):

Globalization places the state and state constitutions under pressure: global problems force states to cooperate within international organizations, as well as through bilateral and multilateral treaties. Previously, typical government functions such as ensuring human security, liberty and equality have been partially transferred to 'higher' levels. Furthermore, non-state actors (acting within the state or transnationally) are increasingly being charged with the exercise of traditional state functions, including tasks as essential as military or police activity. The result of this varied phenomenon is that 'governance' (understood as the general process of regulating and exercising matters of public interest) is exercised beyond the constitutional borders of the States. This means that state constitutions can no longer regulate the totality of governance in a comprehensive way; and that the initial demand of the state constitutions to create a complete basic order is thereby discarded. The vacuum of state constitutions affects not only the constitutional democratic principle but also the rule of law and collective security. In general, state constitutions are no longer 'total constitutions' (p. 209).

On the other hand, examples such as the technical standards issued by the International Organization for Standardization (ISO), which have as much or more relevance in some scenarios of globalization (such as global value chains) than the standards issued by national political entities or international courts (Frydman, 2018), may be recalled; or the arbitration courts themselves, in which civil individuals decide on a legal conflict, in which they can even condemn a State, as in the case of the International Center for Settlement of Investment Disputes (ICSID) supported by the World Bank (Donaubauer, Neumayer and Nunnenkamp, 2018, p. 892), where the parties can choose the individuals who will resolve their conflict, and even the rules with which they can do so (Esis, 2019, p. 38), presenting this modality of conflict resolution as one that is faster than national justice (Fiss, 2007, p. 130), "*in favor of peace and the promotion of trade and investment version*" (Esis, 2019, p. 38).

All this in the context of Globalization, in which companies are the ones that acquire a leading role in the redesign of social life worldwide (Stiglitz, 2018, p. 120), while States lose political power (Bauman and Bordoni, 2016; Bauman, 1999), as well as the majority of individuals, who see in companies the new sovereigns in a new Social Pact. This is due to the weakening of the Social Contract in which the State had to ensure rights, since now its capacity to guarantee them is limited in the face of the loss of financing, as well as of relevance, within the framework of the Western globalization model.

Meanwhile, the Chinese model of Globalization, which is developing from projects such as 'the belt and the route' (Frankopan, 2019, p. 93), implies a reorientation of the traditional role that the State has played in the liberal world, as that shows a form of capitalism in which it has a great responsibility (Chun, 2013), through active participation, and relative political control of the people (Frankopan, 2019, p. 103), as well as a new relationship with foreign actors, such as States,

individuals and companies (p. 92). The curious fact is that this model, in terms of Law, also resorts to the transformation of this phenomenon as detached from the State, through tools such as international arbitration (p. 97), to implement globalization.

For all the above, it is pertinent to analyze the context of this independence of the Law from the State (Teubner, 1997), from its theoretical description, to its materialization in non-State legal instances and norms, according to the historical development that is taking place facing the future of Globalization, especially due to the challenges that it brings to the assurance of fundamental rights of individuals, such as human rights, a task traditionally linked to the State, but which in this context must be thought beyond this conceptual framework, and therefore beyond national constitutionalism. The above, under the understanding that the Law operates as a stabilizer of historical developments, rather than as a 'revolutionary' of History (Teubner, 2017, p. 188).

5. Conclusions

Although the Law has traditionally been conceptualized as a product and exclusive attribution of the State (Weber, 1964), in contemporary Globalization this has ceased to be the case. Through this historical phenomenon, the Law has begun to be described as a social system independent of the State, more linked to social interactions between individuals and groups of individuals, such as companies or States, without being a product or exclusive attribution of any of these entities; even, as an autonomous social system, derived from intra-systemic communications (Luhmann, 2014; Teubner, 2017).

In this sense, private capital has reconfigured contemporary Law, modeling legal systems through the establishment of new instances and regulations in favor of its interests, such as international arbitration and the various scenarios and tools for the solution of international conflicts, beyond the regulation of States, or even within them, through mechanisms such as Free Trade Agreements, or multilateral or supra-State organizations, such as the World Trade Organization or the International Center for Settlement of Investment Disputes.

Therefore, Globalization also represents a challenge for citizens, States, and their legal systems, because it implies competition against their sovereignty, that is, their political power, since it reconfigures the causes for which this political system was established at the time of the Enlightenment and, with it, its effectiveness, i.e. the function of guaranteeing the rights and control of the Sovereign, through a constitutional legal-political system.

Taking into account what has been said so far, it is necessary to recognize that constitutionalism is in crisis, and that it is essential to make an effort to analyze what alternatives this theory should explore to continue being effective, in a global political context such as the contemporary one, especially in the future, facing the possibility that non-State legal instances turn out to be more welcomed and extended worldwide, and become the new legitimate sources for the resolution of legal conflicts on fundamental rights, in the context of Globalization.

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Successful industrial policies without state capacities? The "impossible" case of the province of San Luis in Argentina

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Abstract

This article shows how a state without a qualified bureaucracy or embeddedness in the private sector can achieve the transformation of its productive structure by means of a bureaucratic bypass. This consists of the informal delegation of bureaucratic competencies to a non-institutionalized agent in order to perform tasks that the state apparatus does not have the capacity to carry out and, in this way, promote the arrival of investments in its territory. Since tax relief policies and tax advantages for the relocation of companies are a constant throughout the world, the use of these extra-bureaucratic tools can be used as a way to promote economic development in disadvantaged territories. In the case of Argentina, these policies were channeled through a regional industrial promotion regime that granted subsidies to relocate firms in economically depressed provinces. To test the argument, we show, by means of process tracing, how the government of a peripheral province transformed its productive structure in a period of ten years (1982-1992), by locating a huge number of industries in its territory bypassing its public administration.

keywords: Subnational public policy- Territorial development- Subnational political economy.

1. Introduction

In a region characterized by multiple inequalities, Argentina -a federal country-¹ stands out for one particular aspect: it has the highest inequality among provinces of the five largest countries in Latin America. Such is the difference that the province with the lowest product in the country has a GDP per capita almost ten times smaller than that of the richest². As a result of different agreements between

¹ The Argentine Republic is a Federal State made up of 23 Provinces and the Autonomous City of Buenos Aires, which fulfills the constitutional function of being the Capital of the Republic. Each Province constitutes an autonomous state that exercises all the power not expressly delegated to the nation and has legislative powers in the terms established in their respective constitutions in which they expressly state their adherence to the Republic, has its own constitution, laws, authorities, forms of government, although this must first conform to the laws and the national constitution.

² Retrieved February 2020, Cash supplement, available at: <https://www.pagina12.com.ar/191629-al-amigo-todo>.

provincial and national governments, over the years and with different emphasis, tariff, financial and tax incentives were granted to at least lessen these ostensible territorial imbalances. This was channeled through a regional industrial promotion regime, through which capital subsidies were granted, under the assumption that the establishment of new productive enterprises in the less developed provinces would be achieved by increasing the internal rates of return-on-investment projects.

Thus, through the regional industrial promotion regime, a productive decentralization policy was implemented to help economically underdeveloped provinces in order to improve employment and reduce concentration tendencies. This general system of fiscal incentives was extended from the early 1980s in the Argentine provinces of Catamarca, La Rioja, San Luis and San Juan. Although industrial promotion had important effects in all provinces, in San Luis the changes were of such magnitude that the province managed to transform its productive structure. Between 1983 and 1991, the province's economy grew by 227%, at an average annual rate of close to 30%, and the industrial sector still represents more than 50% of its Gross Geographic Product (GGP). This increased three times its participation in the national economy and surpassed the national average of per capita product³.

The classic political economy literature has highlighted two important conditions for effectiveness in the implementation of public policies for economic development. First, bureaucracies with highly selective meritocratic hiring and long-term career rewards have been shown to create commitment and a sense of corporate coherence that decisively influence the economic growth of states (Johnson (1982), Nordlinger (1987), Amsden (1989), Schneider (1999), and Kholi (2004)). Second, the idea of embeddedness (Evans, 2012) points out that formal and informal links between the bureaucracy and the private sector facilitate the flow of information between the two and allow the establishment of credible mutual commitments. Thus, the idea of embedded autonomy synthesizes the need for the state's ability to set goals and mobilize resources with the role of the private sector in the organization of the productive process.

None of the numerous studies carried out to investigate the general effects of the industrial promotion program have reported the existence of concrete application of the ideal type of a rational Weberian bureaucracy in the beneficiary provinces⁴.

³ (ECLAC, 2003).

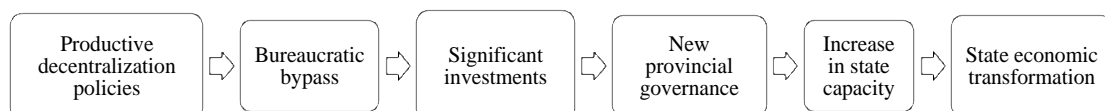
⁴ Azpiazu, 1989; ECLAC, 1989; Consejo Empresario Mendocino, 1999; Eaton 2003; Gutman, G., Yoguel, G., Gatto, F., Quintar, A., & Bezchinsky, G. 1988; Borello, 1989; Sawers and Massacane, 2001; Schvarzer 1987); Borello, 1989; Sawers and Massacane, 2001; Schvarzer 1987), and of the San Luis case in particular (Behrend, 2011; Bianchi, 2016; Chávez, 2003; Gervasoni, 2009; Giraudy, 2010; Guiñazú, 2003; Mera, 2016; Niedwiezcki, 2016; Karamaneff and Salvia, 2019; Samper, 2006; Trocello 2008).

On the contrary, it is pointed out that control of the state organization was concentrated in a small group of personally related individuals and there were no meritocratic hiring patterns or predictable professional careers for bureaucratic personnel. Based on this, this research tries to answer: how does a province that lacks qualified bureaucratic resources and embeddedness with the private sector manage to transform its productive structure?

This is based on the hypothesis that both bureaucratic capacity and embeddedness with the private sector can be substituted - in the first stage of the development process - by means of a bypass to the public administration. The concept of bureaucratic bypass refers to the informal delegation of competencies to a non-institutionalized agent for the purpose of performing tasks that the state apparatus has no intention or capacity to carry out. This is because in the absence of a coherent and self-oriented type of administrative structure, the personal ties of non-bureaucratic agents constitute a source of cohesion that makes it possible to reduce information and transaction costs in the fulfillment of certain objectives. The centrality of external links suggests that bypass efficiency arises not only from the technical capacity of informal networks, but also from the complexity and stability of their interactions with market agents.

This implies that states without a rooted autonomy can implement investment attraction strategies that do not require a Weberian bureaucracy -in a first stage- but a combination of political decision and the pragmatic use of extra-bureaucratic resources. This is because, given their close links with the business world, the private agents of the network provide the process with reliability, predictability, minimum guarantees of competence and commitment, making relocations look less risky for the business community. In this sense, the articulation derived from the use of the bureaucratic bypass favors the fluidity in the link between the governing elite, the management personnel of the established companies, the state contractors and the entrepreneurial class that emerges under the stimulus of new investments. In view of this, the need to comply with the demands of this new governance increases the capacities of the state - through administrative reorganization and the creation of specialized bureaucracy - to streamline procedures and provide the necessary infrastructure for the process of productive transformation.

Figure 1: Causal mechanism



Using the "*process tracing*" technique, the first stage of industrial promotion in San Luis (1982-1992) is traced in order to show how the implementation of the bureaucratic bypass explains the differential in the number of industrial establishments in this province. For this purpose, after this introduction, the theoretical framework is presented in the next section. In the third section, the concept of bureaucratic bypass is developed. In the fourth, the industrial promotion regime is characterized and, in the fifth, the case of San Luis is presented. Finally, the sixth section contains the preliminary conclusions of the research

2. Theoretical framework

This research starts from the assumption of the existence of an area of intersection between economic and political elites, specialized in connecting the spheres of the state world and the business world. This assumption is linked to the concept of public-private circulation (Adolph, 2013; Hecló 1988; Maillet, González Bustamante and Olivares, 2017), which implies that certain groups of individuals develop their working careers between the state and the private sector. Generally, the literature (González-Bustamante, Maillet and Olivares, 2016; Canelo, Castellani and Gentile, 2018) analyzes the benefits for the private sector of access to the government, but does not usually consider the use that some governments may make of the same phenomenon. Therefore, the idea of public-private circulation is a starting point to analyze the various possibilities of interaction between the two spheres, establish hypotheses that explain it, incorporate the temporal dimension of the different processes and empirically address, through the reconstruction of the link, the scope and magnitude of the phenomenon.

Following this theory, public-private circulation can help mobilize economic capital since the actors involved move naturally and safely in several worlds simultaneously, while thanks to the control they exercise over the knowledge of these worlds they have the ability to mediate between them and maximize their position. Given that knowledge as a power resource is not neutral and is used as one of the most important inputs for the production of society itself (Savage and Williams, 2008), these are expert professionals who can mobilize knowledge and normalize visions.

On the one hand, these individuals have the experience, i.e. they have inside knowledge of the operations of private companies and can better guide the strategic action of governments that must be governed by their actions. On the other hand, they have the know-how, the accumulated knowledge of processes,

criteria and standards that are key when thinking about the possible relocation of an industry. Finally, these individuals bring with them a set of contacts or social capital, i.e., other individuals to contact, consult or hire in the future to receive timely and efficient advice on how to guide the government's actions towards the business community

In this sense, it is the access to the business elite, the sense of common belonging, the ability to conform to the canons, which configures a zone of interaction that, in turn, is codified and sold as a service. It is therefore useful to take a look at how certain individuals constitute key pieces of the map of power in a society.

To this end, the aim is to find the relevant criteria to distinguish, within the elites, those groups that are in charge of connecting the spheres and, in this way, increase the probabilities of obtaining concrete benefits from these connections.

This circulation and its potential exchanges were always analyzed from a business perspective, in the sense of how the private sector sought to influence the decision-making processes of the public administration. Probably the most recognized case is the so-called "revolving door" phenomenon, which refers to the passage of some people through high positions in the public and private sector at different times in their careers. Canelo and Castellani (2016) point out that it can occur in these directions: a) senior managers in the private sector who access relevant positions in the public sector (entry revolving door); b) civil servants who, upon leaving their public position, are hired by the private sector to occupy managerial positions (exit revolving door); or c) individuals who occupy senior positions in the private and public sectors alternately (recurrent revolving door).

Is it possible for a similar phenomenon to occur, but guided not by business or by the interests of groups of private individuals, but by state authorities? Is it possible for governments to resort to a similar strategy and use these services to oil the link with businessmen? Is it possible that, in the absence of a competent bureaucracy rooted in the private sector, the link with businessmen could be promoted through alternative channels? Based on these questions, the concept of bureaucratic bypass is developed in order to respond to these concerns.

3. *Bureaucratic bypass*

A bypass is an informal delegation of bureaucratic competencies to a non-institutionalized agent for the purpose of performing tasks that the state apparatus does not have the capacity to carry out (Karamaneff, 2021). This is because in the absence of a coherent and self-oriented type of administrative

structure, the personal ties of such agents constitute a source of cohesion that makes it possible to reduce information and transaction costs in the fulfillment of certain objectives. In economic development, in the absence of a bureaucratic structure that establishes regular links with the private sector, the informal interaction of these agents with the business community is encouraged through particular channels.

Given that some governments do not always have the optimal resources to implement an effective policy for economic development (qualified bureaucracy rooted in the business sector), the governing elite finds an alternative for the implementation of a policy of their interest in these private sector intermediaries. Government leaders turn to these individuals or organizations with the objective of articulating resources (information, contacts), influencing business action and facilitating agreements between the two sectors. These intermediaries have higher levels of training, -generally consulting, legal, accounting and/or financial firms- and maintain close links among themselves and with the political leadership (coming from the same elites and professional networks), which allows them greater levels of fluidity in the coordination of actions.

These intermediary structures are, at the same time, political and operational because they can influence the decisions of the entrepreneurs on the location of their companies, the decisions of the government on the sectors and/or entrepreneurs to be encouraged and, at the same time, provide material support and information on the economic, political and/or productive conditions of the province or the sector involved.

In addition, these individuals or organizations are not usually paid directly by governments, but their economic incentives are provided by the sale of their specific services - accounting, legal and/or financial - to the business sector when they relocate or by non-legal funds. On the other hand, in material terms, these retributions are usually higher than the potential income of a public administration salary, so that the interest in formally joining the bureaucracy is not an incentive (at least not in the first instance). Thus, the incentives for their involvement lie in the (private) economic interest of these groups of intermediaries and the profits they obtain from the relocation processes.

On the other hand, given that they require the subsequent approval of political leaders for administrative procedures or to continue operating with new relocations, the concern of each intermediary for what officials think of him leads to greater adherence to behavioral norms. In this sense, the mobilization of investments allows the formation of stronger links with the business community, improving communication and, therefore, government effectiveness. This generates a sense of commitment to the goal of attracting more investments and an "esprit de corps" that promotes and reinforces the good performance of this network.

Therefore, this investment attraction policy does not require -in its first stage- a Weberian bureaucracy but a combination of political decision and the pragmatic use of extra- bureaucratic resources. This is produced by the formation of an informal network of professionals who, in the first instance, function as connectors between a small group of senior officials and the owners and managers of companies. In this sense, given their close links with the business world, the network operators provide the process with reliability, predictability, minimum guarantees of competence and commitment so that relocations appear less risky.

The use of the bypass makes up not only for the lack of a Weberian bureaucracy but especially for the embeddedness that is lacking in a state apparatus without any tradition or closeness to the private sector. In this way, the use of informal networks allows it to condense bureaucracy and embeddedness while autonomy is preserved by the government by reserving the general orientation of the process. In this sense, the centrality of external linkages suggests that the effectiveness of the bypass arises not only from the technical capacity of informal networks, but also from the complexity and stability of their interactions with market agents.

However, this does not imply that the state does not require the formation of a Weberian bureaucracy, but rather that some specific functions are temporarily substituted in the absence of certain bureaucratic capacities. At this point, the key factor in determining the correct functioning of the bypass is given by its temporariness: once established, the dense networks of connection without a solid internal structure would leave the state incapable of solving collective action problems, of transcending individual problems and the individual interests of its private counterparts.

Therefore, the bypass cannot be extended in time, but functions as an efficient instrument for the search and attraction of industrial capital accumulation and then transforms itself to address the problems and opportunities generated by the success of its operation. The arrival of investments can function as an engine that puts the state into operation, creating or streamlining public structures capable of providing the goods and services necessary for the development of the new economic matrix.

At this point, the use of the bureaucratic bypass promotes the creation of an alternative route in which coordination is facilitated between the local governing elite, potential investors and -once settled- the management personnel of the companies, state contractors and the entrepreneurial class that emerges under the stimulus of public and private investment. In other words, on a temporary basis and with the political direction of an autonomous government, a bureaucratic bypass can facilitate the formation of a network of collective actors with the political, social and economic sustainability necessary for the productive transformation of a state without Weberian bureaucracy and embeddedness with the business community.

4. The industrial promotion regime

The regional industrial promotion regime was a productive decentralization policy in Argentina by which assistance was provided to economically underdeveloped provinces with the purpose of improving employment and shortening concentration trends. Despite successive regulations and modifications⁵, the general system of tax incentives was extended from the early 1980s until the end of 2012 in the provinces of La Rioja (Law No. 22,021/79), San Luis, Catamarca (Law No. 22,702/82) and San Juan (Law No. 22,973/83). Among the main promotional benefits provided for in the regime and its amendments are:

1. Income tax deduction and/or exemption;
2. The exemption from tax on corporate capital and assets incorporated in the patrimony;
3. The release (on a sliding scale) of value added tax (VAT) on sales to the domestic market;
4. The release (on a decreasing scale) of VAT for companies supplying raw materials, inputs or goods for use to companies benefiting from the regime on sales made by them to the latter
5. Exemption from payment of duties or other taxes on imports for the purchase of capital goods, tools and components of such goods;
6. The possibility of deducting the taxable amount from income tax or deferring the payment of taxes by investors in beneficiary companies (a benefit that was later discontinued).

By virtue of the fact that they received the full benefit of investment incentives, but the cost was spread over the rest of the country, industrial promotion opened a real window of opportunity for the economic development of the promoted provinces⁶. At this point, the bureaucratic bypass was the possible alternative in provinces without qualified public administrations or embeddedness with the private sector since -in the absence of a coherent and self-oriented bureaucracy- the personal ties of the private operators constituted a source of cohesion that allowed reducing the information and transaction costs in the fulfillment of the objectives established by the political leadership of the provincial government.

⁵ The legal framework that supported the industrial promotion regime was the "Historical Reparation Act". Then, through Decree 1125/96 it was established that the benefits for deferred implementation projects would expire in 2005 but a year later, Decree 69/97 extended this time limit until the end of 2012.

⁶ Under the federal co-participation regime in force in the country, the province acting as enforcement authority granted federal tax benefits -reducing the income available to the National Treasury and that of the rest of the provinces- while favoring the location of investments in its own territory. In this way, the promoted provinces received the full benefit of the investment incentives, but the cost was spread over all the provinces.

5. The case of San Luis

Although the four provinces experienced important changes derived from the implementation of the industrial promotion regime⁷, the data on the fiscal cost of the promotion show that the four promoted provinces concentrated 98.0% of the regional incentives granted in the country and that, among the four, San Luis managed to capture almost 70% of those benefits (see Table 1). Prior to the tax incentive regime, the economy of San Luis was characterized by the clear predominance of primary activities (agriculture and livestock) and, within them, of cattle raising in particular. Industry, on the other hand, showed very little diversification in terms of the branches that accounted for the bulk of employment and production. Before the implementation of the promotion regime, the manufacturing industry represented less than 15% of the province's GGP and, within it, the production of food, beverages, tobacco and non-metallic minerals accounted for 50% of the establishments, 70% of employment and 85% of the production value. The rest of the branches had a very small weight and completed a provincial industrial structure that appeared rigid and scarcely diversified (see Table 2).

In this sense, the transformation of San Luis was of such a magnitude that the province changed in more than one aspect. In the first place, it modified its economic structure to the point that the industry in San Luis today shows a considerable degree of diversification, ranging from the processing of agricultural products to industrial manufacturing with a higher technological content and levels of industrial wage employment well above those of the main urban centers of the country (Karamaneff and Salvia, 2019). Secondly, industrial promotion gave the provincial government control of material and symbolic resources to expand its power base, be reelected for five consecutive terms and project itself nationally (Behrend, 2011). Based on this, the literature reduces the explanation for the success of San Luis in attracting the bulk of investments to two options: the conditions derived from its geographical location and the political and institutional framework of the province.

Those who support the geographical argument (Bianchi, 2013) argue that, although promotional incentives played a key role in the localization of industrial activity, the fact that the province has received a greater number of productive projects -and most of those with an export orientation- was determined by its strategic location. This is due to the fact that San Luis is located in the geographical center of the Bioceanic Corridor that links the port of Buenos Aires with the port

⁷ On average, in Catamarca, La Rioja and San Juan between one hundred and three hundred projects were represented, while in San Luis more than one thousand were presented (National Ministry of the Interior, 1996). Between 1983 and 1991, the province's Gross Geographic Product (GGP) grew by 227%, at an average annual rate of close to 30%, and by the end of the 1990s it was still receiving -on average- three.

of Valparaíso (Chile) and, at the same time, it is closer to the main centers of domestic market consumption in the country. These same studies (Bianchi, 2013; Sawers and Massacane, 2001) also assured that the sole purpose of the installed companies was to collect tax benefits and that, once the subsidies ended, the factories would move again⁸.

The alternative argument is that the fluidity of the link between local authorities and the business community that settled in the province was the explanatory variable of the productive transformation of San Luis. This is because industrialization from above favored the articulation between the local ruling elite and the management of established companies, state contractors and the entrepreneurial class that emerged under the stimulus of public and private investment (Guiñazú, 2003). Unlike the other provinces, the government of San Luis Potosí carried out an administrative reorganization - which included the creation of a specialized bureaucracy - aimed at streamlining procedures and facilitating the access of businessmen to local authorities⁹.

However, none of the arguments can fully explain the success of San Luis in attracting most of the investments because they leave aside a key actor in the process: the business community. The decision to move assets and relocate to another province is not a reflex action in response to a fiscal stimulus, but requires a planned action. If the criterion for relocation was proximity to consumption centers, the geographical explanation does not consider why, given the existence of multiple industrial promotion regimes throughout the country -even in areas and provinces closer to major consumption centers-, San Luis has been more successful in attracting industries. Why not use other industrial promotion benefits and continue where they were located or relocate to closer places? If the answer is that the benefits were greater in the four promoted provinces, it is understood that the installation costs, the training of new workers and, fundamentally, the freight costs would have compensated for this.

⁸ In previous studies (Karamaneff and Salvia, 2019; Karamaneff, 2019; Karamaneff, 2021) this argument was tested and the results of such research show that, once the industrial promotion in San Luis ended, there was an increase in the number of industrial wage earners in the order of 13% and that in addition -five years after the end of the regime- there was a 30% higher probability of being an industrial wage employee in San Luis than in the rest of the country. This was due to the fact that, in addition to the advantages of a strategic location and the benefits of a local government that responded to its interests, the costs of moving and locating factories that had already been installed for some years reduced the incentives for businessmen to leave the province of San Luis. Thus, it is evident that the promotional mechanisms allowed not only the decentralization of productive activities to areas of lesser relative development, but also that, once the benefits were over, the companies reached a level of competitiveness that allowed them to remain in the province.

⁹ The paradigmatic example was the Ministry of Industry -created by Law No. 4524/83-, which played a key role in the promotion of industrial investment and the reorganization of the Public Administration personnel -decree No. 1085/94- which, among other modifications, established the competitive entry to the administrative career.

On the other hand, the thesis that success was the formation of a coalition between the local ruling elite, the management of the established companies, state contractors and the business class makes sense for a later stage, when the settlement had already taken place. This approach does not explain why most of the investors located their industries in St. Louis, but what happened after they had settled. Given that the construction of this coalition first required the attraction and establishment of investments, this argument could explain the sustainability of the model, but not its origin.

Since they received the full benefit of investment incentives, but the cost was spread over the rest of the country, industrial promotion opened a real window of opportunity for the economic development of the promoted provinces. The government of San Luis took advantage of this opportunity by implementing a strategy different from that of the other provinces: it *bypassed its own* bureaucracy and outsourced, in an informal manner, the search for investment to a group of private actors. In a generalized framework of institutional weakness and policy instability (Levitsky and Murillo, 2009), which was accentuated by the democratic transition, the strategy of attracting companies required haste because the duration of the delegation of the enforcement authority was uncertain. In this context, the province did not have a highly qualified bureaucracy or a sufficient level of rooting with the private sector to promote the arrival of companies¹⁰.

Faced with this situation, the government decided to informally outsource the search for investments to private actors -usually law/accounting firms- that constituted real non-institutionalized networks of intermediation with businessmen. These operators offered the quick management of the settlement decrees and showed the benefits that, in addition, they would bring by locating in a province with a strategic location, namely: the possibility of hiring workers with lower levels of unionization, the direct link with the provincial authorities, the low or null imposition of local taxes and the provision of the services and infrastructure necessary for the installation of their factories. This outsourcing of the search for investors was done both to make up for the scarce technical capacity of the local bureaucracy and to take advantage of the close link that -due to the characteristics of their activities- these operators had with the business community. Operating outside the bureaucracy also offered other incentives, such as the sale of the establishment decrees¹¹, speeding up the arrival times of

¹⁰ On the bureaucracy in San Luis, see Samper (2006).

¹¹ Accusations that were never proven in court were brought against the alleged illegal practices supported by the provincial government. Government officials and operators were continuously accused of selling decrees, which meant soliciting money for the legal approval of industrial projects. In other words, selling what should not be sold and granting legal authorization to industrial projects without proper inspection (Guiñazú, 2003).

industries and not expanding the state's administrative staff in times of budgetary restrictions.

At this point, the alternative of *bypassing* the bureaucracy and outsourcing the search for investments became feasible. Given that the operators of the informal networks were service providers for the businessmen (through their law and accounting firms), outsourcing also functioned as a sort of insurance -for the industrialists- of the fulfillment of the commitments assumed by the government: infrastructure, non-predation with local taxes, assistance and administrative facilities in the establishment. This outsourcing implied that a group of private actors -generally lawyers and accountants from firms linked to the new government- would carry out the search for investments and the subsequent coordination with the provincial authorities in order to obtain the settlement decrees and the tax benefits granted by them. In this sense, the articulation with the intermediaries enabled a game in which the businessmen obtained the settlement decrees and the commitment of the authorities to comply with the necessary demands for their installation in the province, the provincial government obtained -at a very low cost- new investments in its territory and the legal-accounting firms obtained new services to sell to the companies with the elaboration of the projects.

On the other hand, the use of the bypass made up not only for the lack of a Weberian bureaucracy, but especially for the embeddedness that was lacking in a state apparatus without any kind of tradition or closeness to the private sector. San Luis was a province characterized by a clear predominance of primary activities (agriculture and livestock) and industry was practically non-existent (Morina, 1989, Guiñazú, 2003). Thus, the use of informal networks allowed it to condense bureaucracy and rooting, while autonomy was preserved by the government, which reserved the orientation of the process and the final decision on the approval of settlement projects. In this sense, the centrality of external links suggests that the effectiveness of the bypass arose not only from the technical capacity of the informal networks, but also from the complexity and stability of their interactions with market agents.

Successful industrial policies without state capacities?

Table 1: Share of the provinces in the total "notional fiscal cost" of the regional tax incentive system, 1980 - 1988 (%)

Province	1980	1981	1982	1983	1984	1985	1986	1987	1988
Catamarca				0,2	2,0	6,5	7,3	6,7	8,7
La Rioja	1,0	3,9	12,0	10,1	15,6	11,7	9,4	7,7	10,0
San Juan					0,4	4,3	7,5	5,8	9,9
St. Louis				0,6	12,0	36,0	39,4	59,3	69,4
Four provinces	1,0	3,9	12,0	10,9	30,0	58,5	63,6	79,5	98,0
Remaining provinces	99,0	96,1	88,0	89,1	70,0	41,5	36,4	20,5	2,0
Total	100	100	100	100	100	100	100	100	100

Source: Secretarías de Industria y de Hacienda, reproduced in Diario de Sesiones de la Honorable Cámara de Diputados de la Nación, May 17, 1988, p. 272.

Table 2: Evolution of the geographic gross product in San Luis, 1980-1990 (%)

Sectors	GGP by sector (%)	
	1980	1990
Agriculture and livestock	25,1	4,4
Mining	11,2	2,1
Industry	14,7	63,7
Utilities (water, gas and electricity)	1,6	0,9
Construction	11,1	3,5
Trade	13,4	4,5
Transportation and communication	3,2	2,4
Financial	0,2	9,4
Public Administration	19,5	9,2
Total	100	100

Source: Federal Investment Council. Directorate of Statistics and Census of the Province of San Luis. Statistical information notebook N 9, 1995.

6. Investment raising and investment placement

In December 1982, although the de facto government of San Luis already had the authority to apply for the projects, the military authorities of the province adopted a conservative strategy in which they hoped that the tax benefits would be enough for the industrialists to decide to settle in the province. The process for the approval of the projects included an evaluation committee that, in the words of its members, replicated the criteria of the Secretariat of Industry of the Nation "making everything much slower" and delayed the delivery of the settlement decrees¹². This situation would only change in December 1983, with the transition to democracy and the decision of the newly elected governor, Adolfo Rodríguez Saá¹³, to informally outsource the search for investors and centralize the political authority for the approval of projects.

This situation was quickly reflected in the number of new projects: 54 new industries during the last year of the military government (1983) and 266 in the first year of the Rodríguez Saá government (1984) (Morina, 1989). The number of projects authorized in 1984 represents one per working day throughout the year, which shows both the entrepreneurial interest in the regime and the ease of approval by the provincial authorities. This was due, as mentioned before, to the fact that the enforcement authority granted the provincial governments the level of autonomy to negotiate directly with the entrepreneurs, promote bonds of trust and assume the necessary commitments to achieve the establishment of the industries in their territories. For this task, the government of San Luis resorted to the extra bureaucratic services of private operators as a way of taking advantage of its links with the business sector.

From a series of interviews carried out in the framework of this research, the idea that the government was seeking to locate as many companies as possible, regardless of their origin, activity or the value added they generated, frequently emerged. In the words of the then governor of the province, "promotion was like seeing Manna fall from the sky and we had to take advantage of it"¹⁴. A sample of what was happening can be seen in the account of the members of the evaluation committee of the Ministry of Industry when they point out situations in which "there were things that, technically, did not fit, but in a week they had to be given the decree of location". When they themselves questioned the political authority about the convenience of approving such a quick settlement due to the fear that they would leave when the tax benefits were over, the answer from the

¹² Interview with a member of the Evaluation Committee during the de facto government and, later, an official of the Ministry of Industry in democracy.

¹³ He served five consecutive terms as governor of San Luis between 1983 and 2001, a position herelinqhished when he was elected by the Legislative Assembly as interim president of the Republic.

¹⁴ Adolfo Rodríguez Saá in an interview with the author (2019).

government was: "first we have to settle the companies and then we will decide how to retain them".

7. New governance

In order to obtain tax benefits, large companies did not relocate the entire production process, but rather fragmented it and moved production phases to the promoted provinces (Kosacoff, 2007). In addition to reducing costs, this allowed industrialists to settle permanently in these new destinations not only themselves, but also some managers and other lower-ranking executives. These representatives of the industrialists -once the province granted them the settlement decrees- acted as the "adelantados"¹⁵ who were in charge of setting up the factories. Together with provincial officials, state contractors, union leaders, survey operators, merchants and local service providers, they would form the industrializing coalition that would lead the province during the following decades.

CEOs based there at that time often repeat their stories about arriving at a "wasteland" where they became the pioneers, so later, other industrialists, convinced by the veracity and effective operation of the promotion regime, would follow them in their relocations. In this sense, they expressed the idea that they played a role similar to that of the "adelantados" but, as captains of industry with a mandate: it was not only a question of obtaining the tax benefits granted by the industrial promotion but also of bringing "development to the desert". Thus, in their speeches, they usually speak of the success of San Luis as the result of an exogenous development, in which "eighty factories -twenty of them owned by illustrious surnames- generated a new culture. They were worlds in themselves". Worlds that, in San Luis, did not exist¹⁶.

It was these pioneers who founded the business chambers that would later become the privileged interlocutors with the government authorities when it

¹⁵ This denomination of the XVI century was used to refer to a high Spanish dignitary who carried out or advanced a public enterprise by mandate of service, account and under royal design. The title of "adelantado" was usually granted to individuals distinguished or appreciated for their military qualities and, above all, for their loyalty, and the royal commission was accompanied by the inherent coverage of material powers to "advance" the proposed enterprise.

¹⁶ Interview with former manager of Glucovil SA and former president of the Industrial Chamber of Villa Mercedes. Eng. Martín André (2020).

came to making demands, particularly in the area of infrastructure. Since there were two different poles of settlement -the city of San Luis and Villa Mercedes-, in 1983 the Chamber of Industrialists of Villa Mercedes was created and, in 1984, the Chamber of Industry of San Luis. Both would later form the Industrial Union of San Luis, which acts as a provincial link with the Argentine Industrial Union (UIA). In the words of one of the founders of the Chamber "...what was available was the minimum for a small town, and we all lacked the same things: water, telephone, electricity". Therefore, for them, "setting up the chamber was a necessity" that would serve both to channel their demands and to demand that the provincial government effectively fulfill its commitments.

Many of the investments came from large companies that did not relocate the totality of the industrial processes in the province, but transferred certain phases of their production. Successive technological advances had allowed the deconcentration of establishments according to the needs of each stage and, in this way, many entrepreneurs developed multi-plant and multi-location strategies to achieve the greatest benefits from the promotion regimes. This was due to the fact that since projects up to a certain amount¹⁷ were evaluated exclusively by the provincial government, bypass intermediaries advised entrepreneurs to fragment the projects to ensure their approval by the provincial government in the shortest possible time.

This fragmented location would act as a catalyst for the relocation of industries in certain sectors, as a result of the agglomeration effects¹⁸. This occurred not only because production costs declined significantly by locating some companies in the vicinity of others, but also because the magnitude of the tax benefits was such that it allowed those who relocated to set more competitive prices¹⁹. This forced companies in the same sector to consider relocation as an alternative to be able to compete with industries located in the promoted provinces. At this point, the speed of the bureaucratic bypass strategy allowed the government of San Luis, due to the effects of economic agglomeration, to attract leading industries in sectors that ended up acting as decoys for many other smaller companies.

¹⁷ Approximately one million dollars.

¹⁸ Agglomeration economies" refer to the benefits obtained by firms from locating in the vicinity of other firms. The more firms in related fields establish themselves in contiguous areas, the more significantly their production costs can decline (firms have to compete for multiple suppliers; one result of agglomeration would be a greater division and specialization of labor).

¹⁹ This was the case, for example, of the paint industry, where the main manufacturer in the country (Sintoplast SA) argues that "the benefits that companies were of such magnitude that those who did not relocate ran the risk of being left out of the market because they could not compete with your prices." Interview with Eduardo Mirengo (2019).

8. State capacity

The use of the bureaucratic bypass did not mean that the state did not require the development of state capacities to promote the economic development of the province, but rather that some specific functions were temporarily supplied in the absence of certain bureaucratic conditions. At this point, the key factor in determining the proper functioning of the bypass was given by its temporariness: the dense networks of connection without a solid and robust internal structure would have left the state incapable of solving collective action problems, of transcending individual problems and overcoming the individual interests of its private counterparts. Therefore, the bypass could not extend over time but functioned as an efficient instrument to drive industrial capital accumulation and then transform itself to address the problems and opportunities generated by the success of its operation.

Therefore, in addition to the tax benefits, businessmen were interested in some key issues for the relocation of their industries, which, to a large extent, depended directly or indirectly on the provincial government: the infrastructure available for installation and production, the level of workers' qualifications and salaries, the degree of union conflicts and the local tax burden. The linkage mediated by consultants and studies that enjoyed the confidence of the businessmen gave them greater certainty regarding the commitment of the provincial authorities.

In that instance, in order to achieve a greater number of factory relocations, it was necessary that, once the businessman decided to relocate, the state agencies in charge of the approval of the relocation decrees were set in motion. For this purpose, as soon as the government of Rodríguez Saá took office in 1983, the Ministry of Industry was created, in charge of the approval of the procedures for relocation²⁰. Simultaneously, in the public administration, an aggressive strategy was deployed to balance the workforce, which included actions ranging from mandatory and voluntary retirements to the creation of commissions to hinder the reinstatement of employees dismissed during the dictatorship (Samper, 2003). By 1991, the number of public sector employees in the province had been reduced by more than 33% while the number of workers in the private sector increased by 17.2%, domestic service by 3.6%, self-employed workers by 9.5% and those who had become employers by 47.4% (see Table 3).

²⁰ Alberto Rodríguez Saá -at that time national senator and current governor of the province- stated: "The reform of the State partly explains the success of industrial promotion. As soon as we took office, we created the Ministry of Industry, something that other provinces did not do. In the ministry, businessmen negotiated with the government, thus avoiding bureaucratic delays in the project approval process" Former national senator, brother and main advisor to the then governor Adolfo Rodríguez Saá. He is the current governor of San Luis. In an interview with Guiñazú (2003).

Table 3: Employed population in San Luis. Variation by sector 1980- 1991 (%).

Sector	1980		Variation
In a dependent relationship	73,5	68,6	-6,7
Public sector	33,2	22,1	-33,4
Private sector	34,8	40,8	17,2
Domestic service	5,5	5,7	3,6
Account Ownership	18,9	20,7	9,5
Employer/Employer	3,8	5,1	34,2
Unpaid family work	3,8	5,6	47,4

Source: INDEC, San Luis. 1991 Census

9. Conclusions

The four provinces that benefited from the industrial promotion regime had the same powers of application, the possibility of granting the same benefits and, although they underwent important changes in their productive structure, they obtained different results in the implementation of such policy. The data on the fiscal cost of the regime show that the four promoted provinces concentrated 98.0% of the incentives granted but that, among them, San Luis captured almost 70% of those benefits. This would result in a radical transformation of the provincial economy when the secondary sector went from representing 27.4% of the GGP in 1980 to 68.1% in 1990. Thus, the industry of San Luis today shows a considerable degree of diversification, ranging from the processing of agricultural products to industrial manufacturing with a higher technological content and levels of industrial salaried employment well above those of the main urban centers of the country.

This research shows how the difference obtained by the province of San Luis is explained by the bypass to the public administration that allowed the provincial government, in addition to obtaining greater investments, to form a new governance to sustain itself over time and project itself at the national level. This is due to the fact that the provincial government encouraged a group of private operators to search for investments and to articulate the granting of the

settlement decrees. This implied taking advantage of the expertise of the intermediaries (generally accountants and lawyers specialized in tax matters) to prepare the location projects at no greater cost than the fees paid by the companies and to accelerate the time required for the location without increasing the administrative staff of the state.

This strategy was based both on the need to make up for the low technical capacity of the provincial bureaucracy and to take advantage of the interactions with market agents provided by the network of professionals. The link was channeled through this informal network in such a way that the government obtained greater investments in the territory at no greater cost for the intermediation work, the businessmen obtained the rapid approval of tax benefits and the consultants received payment -from the companies- for the preparation of the projects for their establishment. In addition, given their close ties with the business world, the network operators provided the process with reliability, predictability, minimum guarantees of competence and commitment so that relocations in the province seemed less risky. In this way, this informal network of professionals functioned - in a first stage- as a bridge between a small group of high-level provincial officials and the owners and managers of atomized industrial companies.

In this sense, given that the regional industrial promotion policy was a dispute over the relocation of existing industries in the country, the aim was to convince businessmen of the possibility of settling in a new territory. To this end, the government of San Luis decided to use a strategy that involved bypassing its bureaucracy and using a group of intermediaries to offer the province as the best possible option for relocating an industry. Without having an industrial trajectory, nor strategic plans that went in that direction, the industrial promotion constituted a real window of opportunity that the government of the recently recovered democracy knew how to take advantage of. An opportunity that, unlike the conventional idea of economic development, was not based on the increase of productivity through technological progress, or on the training of workers, but was organized around the government's capacity to attract and manage the relocation of industries in its territory.

In conclusion, while the idea that capitalist growth required a state with rooted autonomy became common, in Argentina, a peripheral province was able to attract investments, establish industries and even transform its productive structure. In other words, the need for a qualified bureaucracy was pointed out, but what developed was the economy of a province with relative compliance with formal rules, a public administration that did not distinguish between personnel and position, and a low level of professional training of its civil servants. This contrast is of interest because a potential deviation of strategies for attracting investment (or other policies that require public-private articulation) could point to more efficient alternatives in the implementation of public policies not only at the subnational but also at the national level.

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Conciliation in resolving collective labor dispute resolution: legal practices and limitations in Vietnam

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Abstract

Labor Conciliation is a recommended measure to settle collective labor disputes by the International Labor Organization (ILO) after the failure of collective bargaining. Based on the ILO's principles, each country develops its own legal regulations on conciliation process in line with the country situation and conditions. This paper discusses the Vietnam's legal regulations on labor conciliation as a method of collective labor dispute resolution, their limitations and some recommendations for the improvement of conciliation activities.

keywords: Collective labor disputes, conciliation, labor conciliator.

1. Context and objectives

The terms "Conciliation" and "Mediation" are defined, interpreted and practiced differently in some countries, whereas in other cases no distinction is made between those two concepts. The International Labor Organization (ILO), Vietnam and some other countries use "*conciliation*" and "*mediation*" interchangeably.

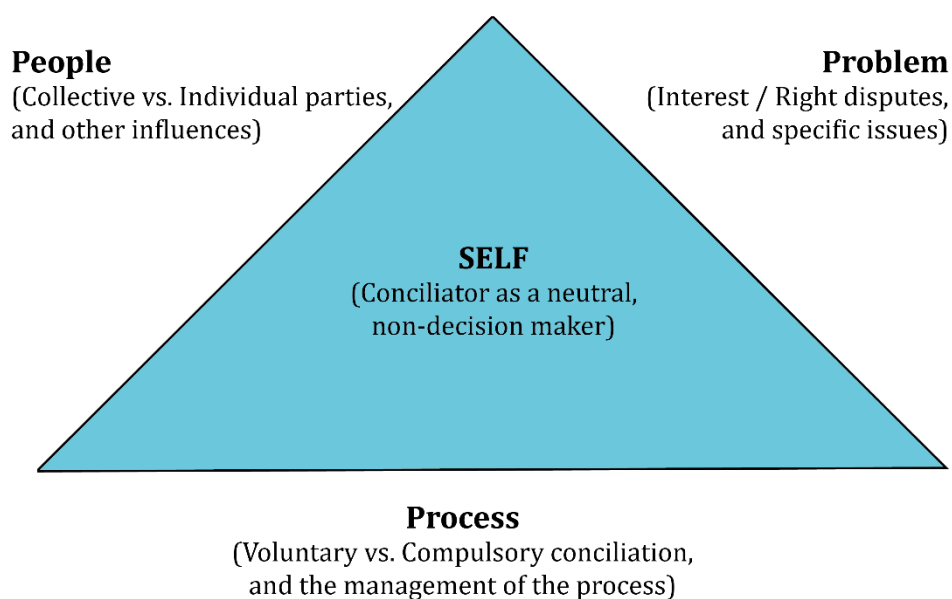
According to the ILO, conciliation is "*a process in which an independent and impartial third party assists the disputing parties to reach a mutually acceptable agreement to resolve their dispute*" ¹.

Conciliation is a flexible and effective measure to help disputing parties find unified solutions to remove conflicts and disagreements, which can be considered a "disputing party-centered" process because it mainly focuses on the needs, rights and interests of employers and labor collective. Conciliation has the presence of an intermediary, whereby the conciliator will intervene to facilitate and support employer and labor collective in reaching an acceptable agreement for both parties. A labor conciliator is not a judge, an arbitrator or a person imposing a decision or agreement between the parties. When conciliating a labor dispute, the most important task of the conciliator is to help the parties understand and come together to negotiate for a solution. He/she provides support to the parties in reaching consensus, being fully aware that the final

¹ International Labor Organization (2013), p. 223.

decision should be made by the parties themselves. A labor conciliator must be someone who does not have related interests to the dispute and must be completely neutral. His/her neutrality creates the trust for disputing parties when requesting for help. The result of a successful conciliation process is an agreement reached by both parties and its execution entirely depends on the willingness of the parties without any legally guaranteed decision. The ILO has adapted the following model of Conciliation:

Figure 1: ILO's adapted model of Conciliation.



Source: The Conciliator's Handbook, J.E. Beer and E. Stief, © 1997 Friends Conflict Resolution Program.

The model shows three main components involved in the dispute resolution including PEOPLE, PROBLEM and PROCESS. "PEOPLE" here refers to the disputing parties and other influences; "PROBLEM" contains the disputed issues and things that either party is not satisfied with, while "PROCESS" describes conciliation activities in both voluntary and mandatory manner. The fourth component stated in the model is the conciliator who facilitates the whole conciliation process with the neutral role of a non-decision maker. The conciliator uses a variety of techniques to guide, build and help parties communicate openly, create favorable conditions for finding optimal solutions to resolve Collective Labor Disputes (CLDs). Based on the ILO's classification and depending on national policies on

industrial relations and sizes of the dispute, conciliation may be voluntary or compulsory.

- *Voluntary conciliation* under the ILO's definition is a situation in which conciliation is set in motion only with the agreement of the disputing parties².

Voluntary conciliation is often applied in countries where the goal of national labor relations policy is to promote the development of collective bargaining. This conciliation mechanism includes countries such as Italy, Japan, Austria, Belgium, the United States, Kenya, Sri Lanka, Philippines, Ireland, Egypt, India, England, Ghana and Colombia.

- *Compulsory conciliation*: Collective labor disputes must be resolved by conciliation before the parties can use other methods. As defined by the ILO, this is a situation where the conciliation service is requested by law to be used by disputing parties. Their attendance at a mediation meeting is mandatory but reaching a resolution is not³.

Compulsory conciliation is usually applied in countries with a less developed collective bargaining system that may lead to a deadlock and recourse to strikes. Under this method, the competent subject will accept to settle a collective labor dispute when receiving request from either disputing party. Conciliation is defined as a mandatory method to resolve collective labor disputes when countries want to create opportunities for resolving the dispute peacefully before either party applies industrial actions. Many countries such as Denmark, Canada, Finland, New Zealand, France, Australia and Sweden stipulate conciliation as a compulsory procedure before the disputing parties can resort to industrial actions. Under the Finnish law, mediation is mandatory though disputing parties have no obligation to firmly reach a solution. Elsewhere, such as in the case of Malta, conciliation is mandatory but only when the parties' negotiations have failed. A similar approach is adopted in Lithuania and Estonia, where unsolved disputes must be sent to relevant public authorities and handled by a public mediator or committee⁴. Most countries in Southeast Asia, including Vietnam, stipulate the resolution of CLDs by conciliation as compulsory⁵. This paper discusses the Vietnamese legal regulations on labor conciliation as a measure for collective labor dispute resolution, their limitations and some recommendations for the improvement of the conciliation effectiveness.

² Ibidem, p235.

³ Ibidem, p222.

⁴ International Labor Organization (2007); E. Daya (1995), *Conciliation and Arbitration Procedures in Labor Disputes: A Comparative study*, International Labor Office.

⁵ Campuchia (1997), Art. 304; Laws of Malaysia (1967), Art. 18-19; Laws of Singapore (1960), Artt. 21 & 22; Laws of Thailand (1975), Art. 21.

2. Vietnamese legal regulations on labor conciliation

2.1. General procedures

According to Vietnam Labor Code 2012 and Revised Labor Code 2019, conciliation is a mandatory procedure applied for both right and interest CLDs⁶. To enable the conciliation process, one of the disputing parties needs to submit the request to district-level Department of Labor Invalids and Social Affairs (DOLISA) in the area where the dispute occurs. The requester has the right to select a labor conciliator and require the district-level DOLISA to appoint that conciliator to handle the dispute⁷. Within one working day from the date of receiving the report of district DOLISA, the chairperson of District People's Committees (DPC) will issue the decision appointing the conciliator for the dispute settlement. This regulation respects the self-determination rights of parties during the dispute settlement. However, it may create the other party's distrust in the conciliation work done by the only labor conciliator selected by the requester, and consequently affect the conciliation results. In addition, though the vacancy announcement is publicly posted, labor conciliators are mainly appointed among the staff of district DOLISA and Trade Union; thus, the local labor conciliators are not diversified and the representatives of employers are not included.

According to the existing legal regulations, before taking the conciliation measure, the labor conciliator needs to guide disputing parties to negotiate themselves with the aim of achieving a common agreement. If they themselves can find solutions for the dispute, the conciliator will record it as successful mediation. Where the solutions are not reached by the two parties, the conciliator will suggest an option for their consideration. If they both accept, the conciliator will record it as successful mediation. If they are both not satisfied with the suggested solution or one of the parties is not present for the second summoning without an adequate reason, the conciliator will record it as unsuccessful mediation. The mediation minutes will be recorded with the signatures of the present party and mediator, copied and sent to both parties within one working day from issuance date. The law does not establish sanctions in cases where either party does not comply with the conciliated results, which may make the mediation attempt totally meaningless. In cases where the conciliation has failed, or one of the parties refuses to comply with the results of the successful conciliation, as described in the written record, or does it after the deadline, the appointed conciliator shall not pursue the mediation meeting further; the disputing parties have the right to

⁶ Quốc hội (2012), Artt. 201 & 204; Quốc hội (2019), Art. 191 & 195.

⁷ Bộ Lao động, Thương binh và Xã hội (2013), Art.7.

either request the Labor Arbitration Council or appeal the People's Court for solutions if it is a right-related CLD⁸. If it is an interest-related CLD, the parties can either choose to appeal the Labor Arbitration Council for the dispute settlement or go on a strike under the leadership of the workers' representative organization⁹, as regulated in the Articles 200, 201 & 202 of the Revised Labor Code 2019.

2.2. Competent subject for labor conciliation

Under the provisions of Article 184, Labor Code 2019 and Clause 1, Article 3 of the Government Decree No. 46/2013/ND-CP dated May 10, 2013 detailing the enforcement of several articles of the Labor Code 2012 concerning labor disputes, labor conciliator is stipulated as one of the competent subjects to settle labor disputes. The conciliator is appointed for a five-year term by, and subject to the management of, the chairperson of Provincial People's Committee (PPC), who may exempt or remove him/her from office in accordance with the law. Under the Labor Code 2012, the authority to appoint and manage labor conciliators belonged to the DPC's chairperson. In fact, the revised provision, which stipulates that conciliators should be appointed and managed by PPC chairpersons, provides them a higher social status, thereby encouraging qualified candidates for the position. In addition, the management of labor conciliators at the provincial level enables them to coordinate with relevant provincial agencies during their work, and facilitates the mobilization of labor conciliators among districts, as and when required. In the past, when labor conciliators were managed by the chairpersons of DPCs, they were allowed to resolve only the labor disputes which occurred within their district areas. This led to the situation that some conciliators were overloaded, while those serving in other districts were idle and were not given the opportunity to improve their professional knowledge and skills through practice.

Circular No. 08/2013/TT-BLDTBXH stipulates the procedures for appointing and dismissing labor conciliators. It includes the following steps:

- i) determine the number of labor conciliators;
- ii) publicize the vacancy announcement;
- iii) appoint the labor conciliator.

The number of labor conciliators in each district will be determined by the chairperson of DPC based on the number of enterprises and status of labor disputes in the area. This number can be increased annually depending on the

⁸ Quốc hội (2012), Art.192.

⁹ Ibidem, Art.196.

capacity of labor dispute resolution, number of enterprises located in the areas and existing number of conciliators¹⁰. Usually, three conciliators are appointed in districts with a limited number of labor disputes and ten in those with a high quantity of disputes. A few districts have only one or two conciliators, which is not really optimal in cases where disputing parties request for a replacement of conciliators because they have reason not to trust the appointed one. Concerning the procedure for dismissing a conciliator, the chairperson of PPC will consider and sign the decision on dismissal of the labor conciliator upon receipt of the relevant request from the DPC's chairperson. In general, the procedures for appointment and dismissal of labor conciliators are fairly clear, quick and suitable to the functions and tasks of the competent authority and the relevant parties have sufficient time to handle the necessary work.

Concerning the competence, conciliator is the only subject with authorization to conduct the resolution of CLDs at the conciliation stage. This is the main new point of the Labor code 2012, which remained unchanged in the revised Labor Code 2019 in terms of competent individual/organizations to settle labor disputes. From the issuance of the Labor code in 1994 till 2013, there existed two competent entities for CLD resolution, including the grassroots labor conciliation council and the conciliator. The grassroots labor conciliation council was established in the enterprises with the existence of trade union and would be responsible for solving all CLDs arisen within such enterprises¹¹. Conciliator had authorization to resolve disputes in the enterprises where the grassroots labor conciliation council did not exist, or where a council did actually exist but the disputing parties chose to invite a conciliator for their dispute settlement¹².

According to the prevailing laws, the conciliator's competence to conciliate CLDs is limited to disputes that arise in the enterprises where strikes are allowed. For the enterprises where strikes are prohibited or those operating in essential branches and domains of the national economy, the competence to conciliate labor disputes shall belong to the labor arbitration council¹³. In the first case, labor conciliators can only resolve the disputes when there is a request for conciliation from either disputing party and, before that, the dispute has been managed through collective bargaining but failed to reach a result, as one party refused to negotiate, or collective bargaining happened but failed, or it was successful but one party didn't comply with the results.

¹⁰ Bộ Lao động, Thương binh và Xã hội (2013), Art.4.

¹¹ Chính phủ (2007), Art.4.

¹² Chính phủ (2007), Art.7.

¹³ Chính phủ (2013), Art.4.

2.3. Duration of conciliation

The maximum duration to settle a collective labor dispute by conciliation as regulated is five working days counting from the date of receiving the request for conciliation. After this period, if the labor conciliator does not conduct the mediation, the disputing parties have rights to bring the case to the Labor Arbitration Council or appeal the People's Court (for the right-related CLDs) and go on a strike (for interest-related CLDs) for solutions. Although the law regulates five working days as the duration for the labor conciliator to finish a dispute mediation work, the conciliator in fact does not have full five days to do it. As stipulated, within one working day after receiving the letter of request from disputing party, district DOLISA must report to the chairperson of DPC for appointing a conciliator to resolve the dispute; within one working day after receiving the report from district DOLISA, the decision of conciliator appointment can be issued by the chairperson of DPC¹⁴. Thus, the actual time available to the conciliator for all the work required to resolve the dispute is reduced to three days only, which is a too short timeframe for him/her to identify and collect relevant data and evidences, develop a plan of action and complete the mediation process at the same time.

3. Legal limitations and recommendations for the improvement of conciliation effectiveness

3.1. Legal limitations

3.1.1. Low compliance with the conciliation international standards

According to the ILO, the resolution of labor disputes by conciliation is common and particularly important because it can better ensure the will of disputing parties than a trial in the Court. Specifically, this issue was noted by the ILO in its Recommendation No.92 of 1951 on voluntary mediation and arbitration, whereby the ILO recommends that States establish voluntary mediation agencies in accordance with their own conditions, set up free and quick procedures for

¹⁴ Bộ Lao động, Thương binh và Xã hội (2013), Art.4.

resolving disputes either on initiative of any of the disputing parties or by the voluntary mediation agency, as regulated¹⁵. Thus, the mandatory mediation procedures regulated in the Labor Code of Vietnam need to be considered for revision, since they are contrary to the ILO labor standards.

3.1.2. Tight duration and lack of regulations on the conciliator's authority and obligations in requesting for data provision and technical assistance during the conciliation process

Despite the large amount of preparatory work needed prior to the mediation meeting, the conciliator is required to inform the disputing parties of the date, venue and agenda of the meeting within one working day from the date of receipt of the notification of his/her assignment to resolve the dispute, as regulated at the Article 7, Circular No. 08/2013/TT – BLĐTBXH. This means that the labor conciliator should inform the disputing parties of the schedule of the conciliation meeting even when the substance of dispute has not been clearly understood, or the availability of the necessary information is uncertain, which may substantially affect the effectiveness of the session. Moreover, the existing law does not regulate the responsibilities of the labor conciliator, such as his/her duty to keep secret the confidential data got during the settlement process, as well as the sanctions if the conciliator violates such terms. This may affect the positive outcome of the mediation, as the disputing parties, and especially the employers, may hesitate to provide to the labor conciliator sensitive information related to their business know-how.

In addition, prior to the conciliation meeting, the appointed conciliator has to do an extensive preparatory work to promote the quality and effectiveness of the conciliation, which may include: review of legal document, collective agreements and internal statute of enterprise; identification and collection of relevant data and evidences to acquire a comprehensive knowledge of the disputed contents and the actual status of the industrial relations between the two parties; collection of information concerning their business situation, effectiveness, obstacles, advantages and priorities among the recommendations put forward by each party, as well as the development direction of the enterprise, the income of employees and other data to be compared with those of other enterprises working in the same industry in the same region. This would enable the conciliator to gather sufficient information to develop an appropriate method and maximize the effectiveness of the conciliation work. In order to get those data and information,

¹⁵ International Labor Organization (1951), Para. 3.

apart from the documents provided by the disputing parties, the labor conciliator should have the right to conduct activities to identify and collect data and information related to the enterprise and employees; he/she should also have the right to require technical assistance from other agencies or experts such as finance, accounting and auditing. However, the existing law does not specifically regulate these rights of the labor conciliator during the fact-finding phase but generally regulate the rights for all subjects that have competence to resolve labor disputes instead.

Although it is regulated at the point a, clause 2, Article 182, Revised Labor Code 2019 that the disputing parties have obligations to *“sufficiently and timely provide the documents and evidences as proof for their request”*, the law does not regulate the sanctions, should these parties or the relevant agencies refuse to provide the required documentation or evidence to the labor conciliator.

Hence, when one of the two parties or relevant agencies doesn't want to cooperate, the labor conciliator will not be able to access important data to resolve the dispute.

3.1.3. Lack of regulations on the enforcement of conciliation results

In Section 5, Part I, Recommendation No. 92, 1951 on voluntary mediation and arbitration, the ILO encourages countries to ensure that: *“All agreements which the parties may reach during conciliation procedure or as a result thereof should be drawn up in writing and be regarded as equivalent to agreements concluded in the usual manner”*¹⁶. Thus, the record of successful mediation should be recognized as a written agreement between employees and employers. In other words, it has the same legal value as a collective agreement. However, in practice, the minutes of mediation conducted by labor conciliator only record the successful or unsuccessful mediation results, while the implementation of the agreements reached depends on the will of disputing parties. The record of successful mediation has no binding legal value on disputing parties, as the law only generally stipulates that disputing parties must *“abide by the agreement reached, the arbitrator's judgment or decision”*¹⁷. Apart from this sentence, no sanctions shall be imposed when the obliged party fails to abide by the agreement recorded in the minutes of a successful mediation, as established by the conciliator, while the other party has neither the right to request the Court to recognize the mediation results¹⁸ nor to have it executed by the civilian enforcement team, as stipulated in

¹⁶ Ibidem, Part I.

¹⁷ Vietnam Revised Labor Code 2019, Point b, Clause 2, Article 182.

¹⁸ Vietnam Civil Code 2015, Article 33.

the Law on civil enforcement, because this matter is not governed by such law¹⁹. The implementation of conciliation results depends on the voluntary execution of the disputing parties, but it is not guaranteed by the coercive power of the government. This can be regarded as a weakness of the conciliation process, as the unwilling disputing party may take advantage of the conciliation procedure to delay the fulfilment of its obligations, leading to the case where the infringed party loses the right to initiate a lawsuit at the court due to expiration of the time limits and resort to an illegal strike.

In addition, for the practice of the conciliation meeting, Clause 3, article 188, Revised Labor Code 2019 regulates that the meeting can be held only with the presence of either the disputing parties or the persons authorized. The law does not regulate the solution for the cases where the disputing parties or their representatives are not present at the first conciliation meeting. It only regulates the case where one disputing party is summoned for the second time but is still not present without providing an adequate reason; this would be the basis for the labor conciliator to record it as an “*unsuccessful mediation*”. Therefore, should one of the disputing parties not be present at the first meeting, regardless of having provided an adequate or inadequate reason, the labor conciliator will postpone the meeting and call for the second one. If one of the disputing parties is summoned for the second time but is still absent without an adequate reason, the labor conciliator will record it as an unsuccessful mediation. Then, if an adequate reason for the second absence is put forward by any of the disputing parties, the labor conciliator has to postpone the meeting again and call for a third one. However, as the existing law does not regulate what should be considered as an “*adequate reason*” for absence of either party, the employers may take advantage of this gap to delay their presence at the mediation meeting.

3.1.4. Lack of regulations on evaluating the efficiency of conciliation process

No instrument for the evaluation of the conciliation system’s efficiency has been developed so far. No guidance does exist either to measure the success rate of mediation or to evaluate the level of satisfaction of the service users. In addition, as of today the effectiveness of the conciliation procedure is mainly depending on the field of experience and the personal ability of the conciliators to communicate with the disputing parties, but is not relying on professionally trained staff.

¹⁹ Vietnam Civil enforcement Law 2008 (revised in 2014), Article 2.

3.2. Recommendations for the improvement of conciliation effectiveness

3.2.1. Enhance the application of voluntary conciliation procedures to meet the international labor standards

Vietnam needs to study and apply voluntary conciliation instead of the mandatory procedures in the resolution of collective labor disputes, as well as promote dialogues and collective bargaining activities at enterprises and industry levels to meet the international labor standards.

3.2.2. Develop the cooperative mechanism between labor conciliators and relevant agencies/individuals during the mediation process

There should be specific regulations which clarify the rights of conciliators to access the data/information and request for technical assistance (accounting/finance/auditing, etc.) from relevant organizations and individuals. Those regulations should at the same time include the applicable sanctions for those who supposedly refuse to provide the related information and/or constrain the mediation work.

3.2.3. Supplement the regulations to ensure the enforcement of mediation results and amend the related regulations for consistency

Those additional rules should allow one disputing party to appeal the Court to recognize the record of a successful conciliation, in compliance with the Civil Procedure Code, if the other party does not implement the agreement reached in the mediation meeting. Accordingly, in order to ensure the consistency of the legal system, it is necessary to amend the provisions of Vietnam revised Civil Enforcement Law 2014 with a view to incorporating the provisions on enforcement of mediation results and labor arbitrator's awards into Article 2 (in addition to those on commercial arbitrator's awards). Furthermore, penalties

should be applied to the party that refuses to implement the conciliation results to improve the enforceability and the effectiveness of mediation, which will encourage the disputing parties to choose these solutions instead of resorting to unlawful wildcat strikes. Apart from that, it is also necessary to amend the current mechanism for handling unlawful spontaneous strikes by the inter-sectorial Task Force through its State administrative intervention, whereby labor relation institutions should be more often used instead to harmonize the interests of parties, minimize the number of disputes and strikes.

3.2.4. Develop a measurement and evaluation system of conciliation activities

An effective assessment and measurement system of conciliation activities should be developed, which can provide detailed forms and indicators showing the quality, the satisfaction level of mediation results and the achievement rate of conciliation agreements, so as to know where and how the conciliation activities should be improved for identification of adequate solutions. In addition, it's also necessary to provide labor conciliators with professional training on mediation to build their capacity and improve the quality of mediation process.

4. Conclusion

Conciliation is mandatory in resolving CLDs in Vietnam, the labor conciliator can be full-time or concurrently appointed by the chairperson of the PPC with specific functions, duties and position allowance. However, in most of the cases, workers do not choose conciliation or collective bargaining but go on spontaneous strikes as the first solution to the disputes. Therefore, it is necessary to review the appropriateness, the current practice and the effectiveness of Vietnam's mediation regulations, as well as the representative role of trade unions and labor representative organizations in CLD resolution to improve the efficiency of conciliation activities and promote the country compliance with the international labor standards.

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The president's strategies in fiscal negotiation: nesting of arenas and division of governors. The case of the Argentinian president Mauricio Macri (2015-2019)

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Abstract

How do the presidents of Latin American federations succeed in increasing the discretionary resources of the central government, centralising fiscal resources and/or delegating administrative expenses to sub-national governments? Why do some presidents succeed and others fail? The legal framework that regulates how tax revenues are distributed and how much goes to each district is the result of negotiations between the president (central government) and the governors (intermediate or local sub-national governments).

In Argentina, president Mauricio Macri (2015-2019) managed to secure the governors' cooperation on various policy initiatives despite belonging to a different political party than most of the governors. This paper explores the reasons that allowed Macri to achieve this agreement: how did he manage to impose his conditions on the governors during the fiscal negotiations, what strategies did he use, how did he manage to neutralise the power of the Peronist governors? The hypothesis suggests that the chances of success in imposing the president's preferences over those of the governors increase when two strategies are combined: 1) nesting the negotiations with other arenas (judicial, legislative, electoral, partisan, etc.) and 2) dividing the governors.

keywords: Presidentialism, intergovernmental relations, fiscal negotiations, Argentina.

1. Introduction

How do the presidents of Latin American federations succeed in increasing the discretionary resources of the central government, centralizing fiscal resources and/or delegating administrative expenses to sub-national governments? Why do some presidents succeed and others fail? The legal framework that regulates how tax revenues are distributed and how much goes to each district is the result of negotiations between the president (central government) and the governors (intermediate or local sub-national governments). In Latin American federal democracies there are different legal systems: in Argentina there is the Federal Tax Sharing Agreement (*Coparticipación Federal de Impuestos*); in Brazil there is the Participation Funds of the States or Municipalities; in Mexico there is the

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Federal Participations; in Colombia there is the General Participation System² (González, 2014).

This research provides evidence from the Argentinean case on the causal weight of the presidential agency in the outcome of fiscal negotiations and the distribution of resources in a federal democracy. The selection of the Argentine case is due to three reasons.

First, federalism in Argentina is considered an "executive federalism" (Tommasi, 2002) because fiscal negotiations take place between the president and provincial governors, with little or no participation by the national congress. In this situation, the president's negotiating strategies can be more clearly distinguished.

Secondly, Argentina has recorded the highest number of changes in fiscal rules in the region in recent years. Since the recovery of democracy in 1983, Argentina has been governed by six presidents. All of them have gone through fiscal negotiations with provincial governors and have modified the fiscal rules with different results.

Finally, the last Argentinian president, Mauricio Macri (2015-2019), managed to secure the cooperation of governors despite he did not belong to the same party of the vast majority of them (Peronism). This fact rules out the hypothesis that the success of fiscal negotiations is due to a mere mechanical effect of party affiliation: Peronist presidents are more successful in negotiating with their Peronist peers and non-Peronist presidents have more difficulties to do so.

Macri's experience as a businessman, his pro-market ideas, and the composition of his cabinet with officials from the private sector led to expectations that the government would obtain good results in the economic sphere, but would have difficulties in the political sphere. However, the reality proved otherwise. Politically, Macri managed to appoint judges to the Supreme Court of Justice, pass laws in congress as the first minority, sign a fiscal pact with the Peronist governors, triumph in the 2017 legislative elections and complete his four-year term in office.

This paper explores the reasons that allowed Macri to achieve one of the political successes during his presidency: the signing of the Fiscal Pact in 2017 and its addendum in 2018. The questions that guide this research are: how did he manage to impose his conditions on the governors in the fiscal negotiation? what strategies did he use? how did he manage to neutralise the power of the Peronist governors?

The hypothesis suggests that the outcome of the struggle over the distribution of funds depends on presidential agency, specifically on the political strategies developed by presidents. In other words, the likelihood of success in imposing the president's preferences over those of the governors increases when two strategies

² Colombia is constitutionally a unitary state but with high levels of administrative, political and fiscal decentralisation that make its functioning similar to that of a federation.

are combined: 1) nesting negotiations with other arenas (judicial, legislative, electoral, partisan, etc.) and 2) dividing the governors.

To demonstrate this hypothesis, we trace the negotiations that culminated in the 2017 fiscal pact and the 2018 addendum. In these negotiations, it is shown that Macri managed to:

- 1) *tie the negotiations in the judicial arena*, by putting pressure on Buenos Aires' demand for the Conurbano Fund, and
- 2) *deepen the differences between "ultra- Kirchnerists" and moderates* (generating tensions between the new governors who needed funds from the Nation for the sustainability of the province - e.g. San Juan, Chaco, Entre Ríos and Tucumán - and their former political bosses linked to Kirchnerism).

The remainder of this article is organised into four sections. First, the theoretical and methodological discussion is presented. Then, it contextualises the president's term in office and the power resources at his disposal, and empirically describes the strategies that Macri executed in negotiations with the governors. Finally, some concluding reflections are brought together.

2. Theoretical-methodological discussion

The academic literature has studied changes in the distribution of funds between the central government and sub-national units as cycles of fiscal decentralisation and recentralisation. In Latin America, different causes for these processes have been identified (Eaton, 2004; González, 2008). These can be (a) institutional (Gibson and Calvo, 2000; Gibson, Calvo and Faletti, 2004); (b) pressures from international organisations (Escobar-Lemmon, 2001); (c) fiscal crises (García Delgado, 1997); (d) the economic context (Benton, 2008) and (e) political (González, 2014; Faletti, 2010; Montero, 2001).

González (2008) has tested all these explanations and statistically imputed a greater causal weight to the "political" explanations, particularly the processes of negotiation and political struggle. It has also been explored how public funds are distributed (Cox and McCubbins, 1986; McCarty, 2000; Larcinese et al., 2006)³, but no progress has been made on how this struggle is carried out and what

³ For the Argentinean case, the results are mixed. Some papers find that higher transfers increase votes for the governor (Remmer and Gelineau, 2003) while others find no statistically significant relationship, although they argue that out of all transfers only discretionary transfers seem to have a positive impact (Bonvecchi and Lodola, 2013).

strategies the actors follow to impose themselves in the political dispute. Thus, the political struggle over the distribution of funds is presented to us as a "black box" that needs to be opened. As a by-product of this set of political explanations, this research incorporates a variable related to actors' agency, specifically the role of presidential leadership (operationalised through the strategies used by the president during negotiations).

Following the specialised literature, in the political negotiations and disputes around fiscal issues we assume that presidents prefer a) to increase their discretionary resources for political coalition building, b) to centralise revenue collection and c) to decentralise expenditures to governors or increase the fiscal dependence of the provinces. At the same time, governors have fixed preferences: decentralisation of secure and unframed discretionary resources (Bonvecchi and Lodola, 2011; González, 2008). We further assume, on the one hand, that presidents have the political initiative and governors react to their decisions and, on the other hand, that the president has an advantage in being a unitary actor while governors must face the challenges of collective action.

This interpretation implies that the negotiations are zero-sum. What the nation gains, the provinces lose, and viceversa. Therefore, negotiations can impose either (a) *the presidents' preferences* or (b) *the governors' preferences*.

However, by the nature of these negotiations there are transactions or exchanges that lead to less clear-cut outcomes: "ties" or outcomes that are partially favourable to one side or the other. We thus complete the variation in bargaining outcomes with two other categories: (c) *cooperation*, when the outcome is partially favourable to the president and the governors go along, and (d) *neutralisation*, when the governors manage to increase their share of resources, but the president continues to have discretionary resources at his disposal.

In Argentina, the legal system that regulates how tax revenues are distributed and how much each district is entitled to is the co-participation regime⁴. However, there are funds reserved for discretionary use by the president (Bonvecchi and Lodola 2013). These include the National Treasury Contribution (included in the legal framework, representing 1% of the co-participation), non-co-participable export duties (mainly soybean withholding taxes), funds for public works, revenues from privatisation of state companies, etc.

Most studies on intergovernmental relations characterise the Argentinean case as one of "executive federalism", i.e. the president and governors play a predominant role (Tommasi 2002; Cetrangolo and Jiménez 2004)⁵. They also point out that the

⁴ In Brazil it is the participation funds of the states or municipalities; in Mexico it is the participations; in Colombia it is the *situado fiscal* (González, 2014).

⁵ Parliament plays a secondary role in intergovernmental negotiations because of the control exercised by governors over elected legislators in their provinces (Jones et. al., 2002), making it more of a bargaining chip than a relevant actor (Tommasi, 2002).

federal game is governed by a short-term, zero-sum logic (Tommasi et. al., 2001; Tommasi, 2002). However, Olmeda (2013) opposes the latter characterisation and proposes adding to the vertical axis (between president and governors), a horizontal axis that contemplates the possibility of relations between governors, coordinating strategies to obtain collective benefits (a sort of league of governors like the one that emerged in 2000).

The president's bargaining strategies are understood, following the rational choice literature, as making decisions or choices among limited options (by the context, the available resources or the institutional constraints) taking into consideration (or anticipating) the actions or moves of other actors. To observe the ability of presidents to develop strategies, this research looks at (1) institutional/constitutional resources (partial/full veto, legislative initiative, decrees, cabinet appointments, federal intervention, discretion in intergovernmental transfers); (2) influence over State and party institutions (parliamentary, judicial, bureaucratic, partisan, etc. resources); (3) their allies (parliamentary, judicial, bureaucratic, partisan and other types of resources), etc. resources); and (4) and their allies in the political process.); (3) their allies in the governing coalition (trade unions, businessmen, media, etc.); and (4) the context in which they operate (economy, popularity and electoral results) (Ollier, 2008 and 2015; Mainwaring and Shugart, 2002).

The question is not only which and how many resources the president has, but also how he or she uses them. This is where presidential agency comes in. In the social sciences, agency is understood as the capacity to exercise some control over social relations and the ability to transform them. Agents are endowed by structures with the power to act with and against others (Sewell, 1992). Agency arises from the actor's control of resources, which means the ability to reintroduce or mobilise a set of resources in terms of other schemes than those that constituted that same set of resources (Sewell, 1992: 165).

From the resources listed above, the president exercises his agency by devising different types of strategies⁶ to negotiate with governors. These strategies can be proactive or reactive. Some of the president's strategies are: 1) nesting the negotiations, 2) dividing the governors, 3) taking unilateral actions, and 4) blocking the governors. In this research, we will focus on the first two. These strategies are the causal mechanism.

⁶ Since the debate about the dangers of presidentialism for democratic stability (Linz 1990), scholars have focused their attention on the president's strategies to avoid situations of horizontally divided government between the executive body and the legislature (Cox and Morgenstern, 2002; Mainwaring and Shugart, 2002). However, there are no studies that systematise the strategies carried out by the president to discipline governors from his party, co-opt or obtain the support of governors from other party backgrounds, neutralise the political game of governors who rival his leadership, and so on. Such actions by the president's leadership will be understood as part of his "federal strategies".

The **nesting strategy** involves linking fiscal negotiations with simultaneous negotiations in different arenas. Following Tsebelis (1990), nested games occur when political actors make decisions by calculating (actual or potential) payoffs in two or more overlapping policy arenas. This way, one can explain seemingly suboptimal decisions that make sense when looking at the payoffs received in another one of the overlapping games. The main assumption is that the games are "variable payoffs", where payoffs in the main arena are influenced by situations in another arena (Tsebelis, 1990: 52-79). Thus, fiscal negotiations with governors can take place at different levels and do not occur in a vacuum. Other levels of negotiation include the judicial, legislative, electoral, and partisan levels.

Secondly, in order to avoid confronting coordinated governors, the president generates manoeuvres **to segment sub-national governors**. The particularisation of benefits is mainly economic, i.e. bilateral payments. These include contributions from the national treasury, advances in co-participation, authorisation to take on debt, allocation of public works, etc. Adapting Olmeda's (2013) model for governors, we argue that the president's order of preference is to hold negotiations a) *bilaterally*, i.e. with each governor separately; b) with all governors, but without common positions (*global*) and, finally, c) with all or some governors with common positions (*coordinated*). When governors take the initiative and coordinate on the type of negotiation, the president reacts with defensive strategies.

In our methodological proposal, it is argued that the outcome of fiscal bargaining (Y) depends on presidential strategies (X) could be represented as follows:

Cause → [Event₁→CM₁→Event₂→CM₂→Event_n→CM_n] → Effect

CAUSE [Presidential strategies in the political dispute] → nest the negotiations → divide the governors → EFFECT [Outcome Favourable to the president, Cooperation, Neutralisation, Favourable to the governors].

The following section will empirically describe the sequence of strategies developed by President Macri during the 2017 Fiscal Pact negotiations.

3. Macri's presidential agency: context, resources and strategies in fiscal negotiations

In the 2015 elections, Mauricio Macri, head of government of the City of Buenos Aires, was elected president in the second round. The new president led a coalition (Cambiamos) between his party (PRO), the UCR⁷ and the Civic Coalition (CC). The coalition had been coordinated in the primaries from an internal battle for the presidential candidacy between Macri, Ernesto Sanz (UCR) and Elisa Carrió (CC).

The other peculiarity of the 2015 presidential elections was the split of Peronism into two forces: (1) the ruling party (FPV), whose candidate was the Buenos Aires governor Daniel Scioli, and (2) the Frente Renovador (FR), split in 2013 and led by Cristina Kirchner's former Chief of Staff and mayor of Tigre, Sergio Massa.

In parliament, an inter bloc was formed between the three ruling forces, which had 89 deputies in the first two years of government and was the first minority. In the Senate, historically Peronist, the ruling party had only 14 senators. The traditional social supporters (trade unions and social organisations), also linked to Peronism, remained in the opposition.

Macri had in his favour the legitimacy of having obtained 51.34% of the votes in the run-off, more than 50% of positive image in public opinion during the first months of government, and the electoral victory in 2017 over Cristina Kirchner in the province of Buenos Aires. Additionally, Macri was the undisputed leader of PRO and the main leader of the CAMBIEMOS coalition.

The judiciary and the media maintained an "elective affinity" with the president's agenda. Macri enabled the judiciary (a sector that had resisted Kirchnerist policies) to investigate businessmen and former high-ranking officials from the previous government. He also benefited some media business groups with a DNU 267/15 which left without effect the regulatory body of the Audiovisual Media Law of 2009 and enabled them to carry out various businesses banned during Kirchnerism (football television, mergers with media companies, etc.)⁸.

At the federal level, Macri was supported by five governors (Autonomous City of Buenos Aires, Buenos Aires, Mendoza, Corrientes, and Jujuy) while the other 19 were divided between the PJ- FPV and provincial parties⁹. Despite this situation of

⁷ At the party convention in Gualeguaychú on 14 March 2015, the UCR presented two coalition proposals: with Macri or with Massa. In the end, the former, supported by party leaders, triumphed. The party structure of radicalism allowed the PRO greater national deployment.

⁸ La Nación. 04/01/2016. "Oficial: el DNU de Macri que modifica aspectos centrales de la ley de medios y elimina la Afsca".

⁹ The PRO's government in Buenos Aires, Autonomous City of Buenos Aires and its excellent electoral results during the ballot in Córdoba, together with the UCR's control in Mendoza and its participation in the governing coalition in Santa Fé, characterised the electoral coalition as metropolitan or central provinces.

a vertically divided government, one of his first acts of government was to bring together and call for dialogue with all the governors in an act that was widely publicised by the national media¹⁰. After the electoral triumph in the 2017 legislative elections, he managed to sign a fiscal agreement with all the governors (except for San Luis and, later, La Pampa).

In the following, we will look at the presidential strategies that took place during the negotiations that led to the Pact. Fiscal negotiations do not take place in a vacuum, but rather in a given context and simultaneously with other negotiation arenas in which the president can make side payments. In this case, President Macri, forced by a Supreme Court ruling shortly before taking office, chose to tie fiscal negotiations with the governors to the judicial arena. But he also tried to divide the governors.

3.1 Nesting of negotiations

Judicial Arena

The president's first round of negotiations with the governors was around the return of 15% to the provinces of the co-participation tax mass that since 2006 had been destined for the National Social Security Administration (ANSES). In November 2015, days after Macri was elected president, the Supreme Court of Justice declared unconstitutional articles 1(a) and 4 of Decree 1399/01, signed by De La Rúa. These articles enabled the Nation to withhold 15% of the co-participable resources to be destined to the ANSES and removed from the co-participable resources an amount close to 1.9% destined to the AFIP. The ruling was the result of a claim by Córdoba, Santa Fé and San Luis, which was to stop suffering the withholding immediately and agree with the Nation on the retroactive payment of the corresponding amount since 2006, the date on which the lawsuits were initiated. On December 1st, Cristina Kirchner complied with the ruling and decided to extend the return of the money to the remaining 21 provinces in order to condition the government that would take office in 9 days (DNU N°2635/2015).

In this context, Macri decided to link fiscal negotiations with judicial negotiations. In this way, he steered the discussions into a more favourable terrain for the president. As he recounts in his memoirs, Macri interpreted the Court's ruling as

¹⁰ In particular, the presence of the governor of Santa Cruz, Alicia Kirchner, sister of former president Kirchner and sister-in-law of former president Cristina Fernández.

breaking a political balance between the nation and the provinces where the fiscal deficit was large but shared, and that as in subsequent agreements, the nation put in a lot and the provinces rather a little (Macri, 2021).

Macri's first move, four days after taking office, was to include by Decree of Necessity and Urgency (DNU) 83/2015 (in committee, pending Senate approval) two Supreme Court judges for the vacant posts. He did not achieve this by decree, something that was unconstitutional and provoked criticism from the opposition, but the nomination papers were approved in the Senate a few months later.

Macri's second move was to repeal (through DNU N°73/2016) Cristina Kirchner's decree extending the 15% refund to all provinces and to issue DNU N°194/2016, which increased the share of the Autonomous City of Buenos Aires in the co-participation from 1.4% to 3.75%¹¹. The two movements invited the governors to sit down at the negotiating table.

The third move, in February 2016, was the signing of a Decree of Necessity and Urgency (406/2016), with the backing of former presidential candidate Sergio Massa. The DNU created the Agreement for New Federalism Programme, under the Ministry of Interior, Public Works and Housing. The objective was to reach a staggered and progressive proposal for the return of 15% of the co-participable tax mass to the provinces between 2016 and 2021¹². This opening placed Rogerio Frigerio, from the cabinet's political staff and with Peronist roots, as the main interlocutor between the provinces and the nation.

The fourth move was to authorise the provinces that requested it (throughout 2016 and part of 2017) to place debt abroad after several years in which their access was forbidden due to the default and the restrictions during Kirchnerism. External financing allowed the provinces to reduce their financial dependence on the nation¹³.

Finally, the president encouraged María Eugenia Vidal, governor of the province of Buenos Aires and PRO leader, to file a claim before the Federal Court for the out-of-date nature of the Conurbano Fund. Law 24.621 on the Historical Reparation of the Conurbano Bonaerense imposed a ceiling of 650 billion pesos (at the time of its enactment equivalent to dollars under the Convertibility Law) and the rest of the revenue would be distributed among the other provinces. As a result, Buenos Aires currently receives less than 2% of the amount collected (see Graph N°2). On August 1st 2016, the Buenos Aires government initiated a formal claim

¹¹ Article 8 of the co-participation law establishes that the national state must deliver, of its share, to the Autonomous City of Buenos Aires and Tierra del Fuego (federal territories that became autonomous in 1995 and 1991 respectively) a share that is not less than the amount transferred in 1987. Decree N°705/2003 set the Autonomous City of Buenos Aires's share at 1.40% of the total amount collected.

¹² La Nación. 25/02/2016. "Macri made official the restitution of 15% to the provinces in five years and got Massa's endorsement for a key DNU".

¹³ La Nación. 12/03/2017. "The plan of the provinces to finance themselves".

for the Court to declare the 650 million pesos cap unconstitutional and for retroactive compensation dating back from 2011. A favourable ruling by the Supreme Court would make the other provinces cede resources. The national government negotiated with the rest of the provinces as its own political capital the withdrawal of Buenos Aires' demand for the Conurbano Fund.

The governors responded with a meeting in the Casa de San Juan where 18 governors and three deputy ministers asked the Court "not to adopt any resolutions until all jurisdictions have been heard and the corresponding debate between the Nation, the provinces and Congress has taken place" (Document signed on 6/09/2017). On the other hand, they sought to remove the discussion from the judicial arena to move it to a political arena more favourable to their objectives, the legislative arena: "being an issue that involves the Nation-Provinces relationship, its treatment must unfailingly take place through the debate between the Nation, the provinces, and the Congress of the Nation" (Document signed on 6/09/2017).

Finally, the national government agreed that Buenos Aires would withdraw the claim, which took resources away from the rest of the provinces, and would be compensated with 20 billion pesos. At the press conference where they announced the Fiscal Pact, Rogelio Frigerio (Minister of the Interior), confirmed that "the province of Buenos Aires is committed to drop the claim of the Buenos Aires Conurbation Fund and, in return, to reach a gradual path until reaching what the law says, that the province receives 10 percent of the income tax" (La Nación, 16/11/2017)¹⁴.

In the 2017 Fiscal Pact, the national government committed:

- (a) to repeal article 104 of the Income Tax (which indicated that 36% of the tax would be allocated to the Nation), which would increase the co-participation base to 230 billion. However, by co-participating the total amount collected by this tax ANSES funds would also be lost, which would be compensated by allocating 100% of the Cheque Tax to it - until now it has received 70%;
- (b) to compensate the provinces that received less income with the modification of these taxes (Earnings and Cheque) and to finance the deficits of the pension funds not transferred to the Nation;
- (c) to co-participate the total amount collected by the tax revaluation.

On the other hand, the pact committed the governors:

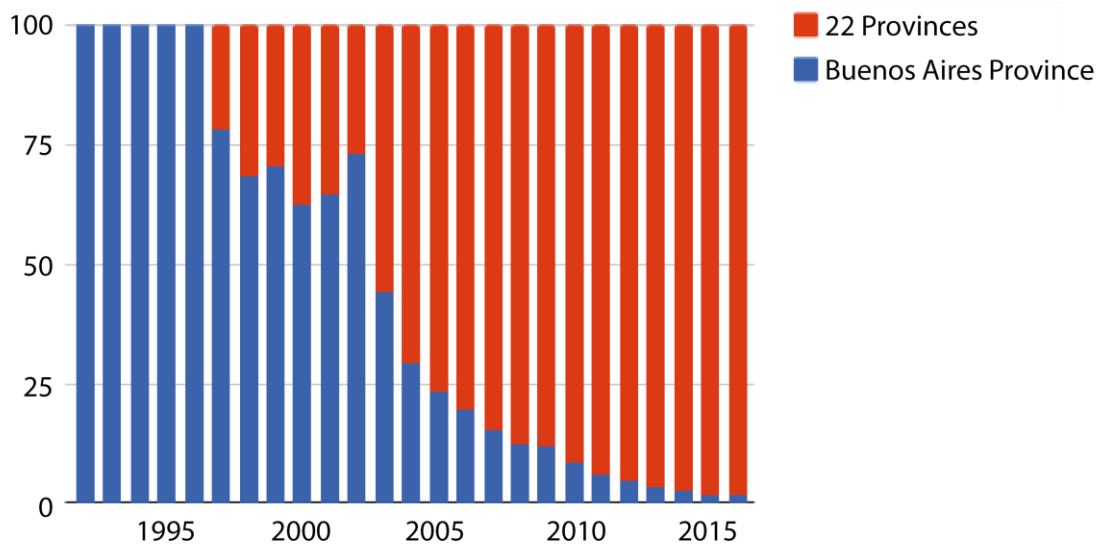
- (a) to reduce spending in their administrations, that is, not to increase real current spending for the next few years (urging them not to increase public employment);

¹⁴ La Nación. 16/11/2017. "Mauricio Macri agreed a fiscal pact with all provinces except San Luis".

- (b) to discuss a new fiscal responsibility law;
- (c) to lower provincial taxes, mainly gross income, stamps and some taxes associated with service tariffs;
- (d) to cancel the lawsuits filed against the nation to claim funds (56 lawsuits for a total amount of approximately 340 billion pesos).

However, as will be seen below, the president tied the fulfilment of the negotiated conditions that favoured the governors (above all, the withdrawal of the demand for the Fund for the Buenos Aires conurbation) to the legislators of their respective provinces supporting the adjustment in the pension system and the approval of the budget (reviewing privileged pensions and adjusting the formula for updating the pension amounts).

Fig. 1 Percentage of distribution of the Conurbano Fund.



Source: CIPPEC and Ministry of Finance

Legislative arena

After the ruling party's good performance in the 2017 legislative elections, the president took the political initiative to accelerate his reform programme. After these elections, the CAMBIEMOS interbloc consolidated its position as the first minority in the Chamber of Deputies with 108 members (out of 257) and as the second force in the Senate with 25 seats (out of 72). In the Senate, Peronism continued to be the leading force, but without its own quorum (see Table 1 and 2).

Among the laws of interest to the government were the fiscal responsibility bills, tax reform, the cheque tax modification, the revaluation of corporate income tax, pension reform and labour reform.

In December 2017, the modification of the formula for updating pensions began to be discussed as part of the pension reform. The measure was rejected by the opposition and public opinion because it implied a reduction in the income of retirees¹⁵. Faced with this scenario, some governors hesitated to comply with the support they had pledged¹⁶. Others, those who did not transfer their pension funds and depended on national government funding, were together with their legislators on the day of the vote¹⁷.

The president maintained that without a pension reform there would be no fiscal pact and his collaborators pressured the governors with:

- 1) a Court ruling or precautionary measure in favour of Buenos Aires over the Conurbano Fund;
- 2) no assistance to the provinces that did not transfer their pension funds and depended on the Nation to finance their deficits;
- 3) negotiated public works and assistance for eventualities¹⁸.

As will be seen in the next section, based on the compromise shown in this vote, where they shared the political cost of an anti-popular measure, the president reconfigured his list of allied, negotiating and non-collaborationist governors.

¹⁵ The equation that was modified involved an automatic half-yearly update that combined collection with the increase in the cost of living. The new formula was based on inflation and wage variations, which resulted in a lower increase than under the previous system.

¹⁶ Clarín. 20/12/2017. "Mauricio Macri's anger with governors and the four he is targeting". Sergio Uñac (San Juan), Gerardo Zamora (Santiago del Estero), Sergio Casas (La Rioja) and Miguel Lifschitz (Santa Fe).

¹⁷ Clarín. 18/12/2017. "Pension reform: 12 governors came together to support the bill". Larreta (Autonomous City of Buenos Aires), Vidal (Bs As), Morales (Jujuy), Eduardo Valdés (Corrientes), Juan Manuel Urtubey (Salta), Gustavo Bordet (Entre Ríos), Hugo Passalacqua (Misiones), Sergio Casas (La Rioja), Juan Manzur (Tucumán), Domingo Peppo (Chaco), Rosana Bertone (Tierra del Fuego), Omar Gutiérrez (Neuquén), Alfredo Cornejo (Mendoza), Alberto Weretilneck (Río Negro) and Mariano Arcioni (Chubut).

¹⁸ Clarín, 17/12/2017. "In exchange for support for the pension reform, the government negotiated more funds and works for the provinces".

Tab. 1 Deputies of Cambiemos and other forces

	CAMBIEMOS	PJ K	PJ NO K	UNA (Massa)	Other	Total
2015-17	89	81	17 ¹⁹	36	34	257
2017-19	108	65	31	20	33	257

Source: own elaboration based on data from <https://www.hcdn.gob.ar>

Tab. 2 Senators of Cambiemos and other forces

	CAMBIEMOS	PJ K	PJ NO K	Other	Total
2015-17	17	36	14	5	72
2017-19	25	8	28 ²⁰	11	72

Source: own elaboration based on data from <https://www.hcdn.gob.ar>

3.2 Division of governors

After the electoral defeat of 2015, Peronism lost its national leadership built from the top of the State²¹. From December 2015 onwards, the dispute for the succession of party leadership began in its provincial power spaces (governors, mayors and legislators). President Macri and his collaborators skillfully intervened in the Peronist party dynamic to maintain its divisions: they generated splits in the legislative bloc, took advantage of the fact that different lists were presented in the 2017 legislative elections, and isolated the hardest sector of Kirchnerism.

The first division that favoured the president was in the parliament. During the first years of government (2015-2017), the bloc of Massista deputies allowed the government to achieve a quorum and pass several of its policies. Moreover, as a result of negotiations between the president's legislative operator, Emilio Monzó,

¹⁹ A sector of the PJ distances itself from Kirchnerism in March 2016.

²⁰ A sector of the PJ distances itself from Kirchnerism in December 2017.

²¹ On leadership and Peronism, see Ollier (2015).

and the Interior minister with the new PJ governors, a group of 16 Kirchnerist deputies formed the Justicialist bloc at the beginning of 2016. The dissident deputies of Kirchnerism aligned themselves with the PJ governors and justified their decision to leave the FPV because they had to "accompany all the Justicialist governors and guarantee the governability of each of the provinces governed by the PJ"²².

In the formation of the chamber after 2017, new deputies were added through the agreement of several governors. The "Argentina Federal" interbloc was formed, which contained the Justicialist bloc and added legislators from Córdoba, Misiones and Tucumán. The head of the inter-bloc was Pablo Kosiner, a close collaborator of Salta governor Urtubey. In this way, the interbloc reached 33 seats and displaced Massismo (20 deputies) as the main negotiator with the government²³. In his memoirs, Macri lamented the creation of this bloc by his legislative operator Emilio Monzó, as its support was short-lived (Macri 2021).

In the Senate, the division was later and corresponded to the fracture at the electoral level. In the 2017 legislative elections, the former president formed her own party (Unidad Ciudadana) to avoid internal elections in the Buenos Aires PJ. Buenos Aires Peronism presented three candidates on different lists for the senate (Cristina Kirchner, Massa and Randazzo), with the sum of their votes totalling 53.91% (37.31%, 11.31% and 5.29%, respectively), while the ruling party obtained 41.35%. At the time of assuming her minority seat, Cristina Kirchner formed her own bloc in the Senate. The Unidad Ciudadana bloc had 8 seats while the PJ bloc "Argentina Federal", headed by Pichetto, had around 28 senators.

As noted above, the party distribution of governors did not benefit the ruling coalition. Broadly speaking, Cambiemos controlled 5 districts; the FPV/PJ with all its variations governed 15 provinces; provincial parties managed 3 provinces; and the remaining district (Santa Fe) was governed by the Frente Progresista Cívico y Social, an alliance between the PS and the UCR (see Table 3).

Faced with this distribution, the president:

- 1) supported the governors of his coalition,
- 2) negotiated and appeared publicly with the "moderate" PJ governors (e.g. Urtubey, Schiaretti, Bordet, Bertone),
- 3) isolated the most critical governors (including not only Kirchnerists, such as Alicia K, but also some more parochial ones with their own political game, such as Saá, Verna and Insfrán)²⁴.

²² Author interview with a member of the dissident bloc (June 2018).

²³ Clarín, 03/12/2017. "Diputados: el PJ no kirchnerista y los gobernadores definen a su nuevo bloque sin el massismo".

²⁴ La Nación. 14/03/2018. "Macri excluded Insfrán from his "black list" and they crossed gestures of harmony".

Another measure to support the governors of his coalition and the negotiating sector of the PJ was the mechanism of the co-participation advances. The advances are discretionary and the national government can collect them whenever it chooses, interrupting the daily flow of co-participation²⁵.

Among the cases of isolation, that of Santa Cruz stands out. The province, dependent on national resources and governed by pure Kirchnerism, stopped receiving financial aid from the nation in May 2017. This unleashed an economic and social crisis in the province due to the non-payment of salaries. The national government obtained its political advantage by:

- 1) presenting the situation in national media as the failure of the K model or the chaos to which Kirchnerist policies were leading, in the context of an electoral campaign in which it sought to polarise with Cristina Fernández;
- 2) disciplining a fractious government by making it feel dependent on the nation: the governor herself travelled to Buenos Aires to meet with Minister Frigerio;
- 3) sending a message to the rest of the critical provinces that depended heavily on national transfers²⁶.

Finally, after the signing of the Pact, the president repealed by means of a DNU (756/18) the Federal Solidarity Fund (Fondo Sojero). The Fund, created by a DNU (206/09) in March 2009, was made up of 30% of the amounts collected in export duties on soybeans. The fund was distributed by the nation among all provinces and municipalities (even if they were not producers) and was intended to finance infrastructure works²⁷. The government justified the removal of this fund with the increase in provincial resources due to the return of 15 per cent of the co-participation mass. After this decision, the president blocked joint actions by the governors (and in this case, several mayors) by signing a compensatory decree for the provinces and municipalities of the non-K Peronist party that were affected by the abrupt elimination of the Sojero Fund. The decree created the Financial Assistance Programme for Provinces and Municipalities and transferred nearly 4 billion pesos until the end of 2018 (if the Sojero Fund were to continue, this figure would rise to 6.5 billion). On the one hand, the measure avoided a new legislative scenario with all of Peronism united: an extraordinary session had been called in which Federal Peronism, Massism and Kirchnerism would vote to annul the previous decree. On the other hand, its management was left under the orbit of the Ministry of the Interior (Frigerio), which benefited the sectors of federal Peronism

²⁵ La Nación. 13/05/2017. "Disponen adelantos financieros por casi US\$ 12.000 millones".

²⁶ Clarín, 05/07/2017. "Tras recibir fondos, Alicia Kirchner se alinea con un pedido de Mauricio Macri". Clarín, 09/07/2017. "With the province in crisis and a ministry taken over, Alicia Kirchner says: "I am not the bad guy in the film".

²⁷ La Nación. 15/08/2018. "Discomfort and surprise among governors over the elimination of the Sojero Fund".

and made it explicit that no money would be transferred to the provinces that did not accept the Fiscal Pact in 2017 (San Luis and La Pampa)²⁸.

Tab. 3 Political party of the governors

Province	Governor	Party
Autonomous City of Buenos Aires	Horacio Rodríguez Larreta	CAMBIEMOS (Pro)
Buenos Aires	María Eugenia Vidal	CAMBIEMOS (Pro)
Catamaran	Lucia Corpacci	PJ (FPV)
Chaco	Domingo Peppo	PJ (Fr. Chaco Deserves More)
Chubut	Mariano Arcioni	PJ (Chubut Somos Todos)
Cordoba	Juan Schiaretti	PJ (Union for Cordoba)
Currents	Gustavo Valdés	CAMBIEMOS (UCR)
Entre Rios	Gustavo Bordet	PJ (Frente Somos ER)
Formosa	Gildo Insfrán	PJ (FPV)
Jujuy	Gerardo Morales	CAMBIEMOS (UCR)
La Pampa	Carlos Verna	PJ
La Rioja	Sergio Casas	PJ (FPV)
Mendoza	Alfredo Cornejo	CAMBIEMOS (UCR)
Missions	Hugo Passalacqua	FR de la Concordia (prov.)
Neuquén	Omar Gutiérrez	MPN (prov.)
Rio Negro	Alberto Weretilneck	Juntos Somos Río Negro (prov.)
Salta	Juan Manuel Urtubey	PJ
San Juan	Sergio Uñac	PJ (FPV)
San Luis	Alberto Rodríguez Saá	PJ (Federal Commitment)
Santa Cruz	Alicia Kirchner	PJ (FPV)
Santa Fe	Miguel Lifschitz	FPCyS (PS)
Santiago del Estero	Gerardo Zamora	PJ (FCpS)
Tierra del Fuego	Rosana Bertone	PJ
Tucumán	Juan Luis Manzur	PJ (FPV)

Source: Own elaboration.

²⁸ La Nación. 18/09/2018. "The Government gave in to the provinces over the Sojero Fund and Peronism adjourned the special session".

Tab. 4 Sequence of strategies

	Sequence	Result
M. Macri	1) nesting with the judicial arena → 2) nesting with the legislative arena → 3) division of governors between pro-government and opposition → 4) division of opposition governors between pro-dialogue and hardliners	Neutralisation of governors

Source: Own elaboration.

4. Conclusion

Macri, forced by a Supreme Court ruling shortly before taking office, chose to tie fiscal negotiations with the governors in the judicial arena. At the same time, he tied the negotiated conditions that favoured the governors (above all, the withdrawal of the demand for the Buenos Aires Urban Fund) to the legislators of their respective provinces supporting some of the national government's policies, such as the agreement with the holdouts, the annual budgets, and the pension reform.

On the one hand, president Macri skilfully intervened in the partisan arena to obtain benefits in fiscal negotiations and improve his political positioning. As might be expected, he supported the Cambiemos governors politically and economically. The cooperative relationship with Vidal allowed the president to use the demand for the Buenos Aires conurbation fund as his own card to play with the national government. On the other hand, he indirectly intervened in the internal affairs of a PJ without national leadership by isolating the most hardline Kirchnerists and negotiating with 'moderate Peronism'. This led to two positive political results: 1) fractures in the parliamentary bloc that benefited the ruling party, and 2) tensions between the new governors who needed national funds for the sustainability of their provinces (e.g. San Juan, Chaco, Entre Ríos and Tucumán) and their former political bosses linked to Kirchnerism (Ollier, 2018).

After successfully knotting negotiations and keeping the governors divided, the president neutralised the power of the majority of Peronist governors. The contribution of the research was to describe the intervening mechanism in the political struggle that leads to a specific outcome in the distribution of fiscal resources based on the case of Macri. Second, it approaches the problem from a

qualitative perspective, which is more sensitive to the causal weight of agency (the actions of the president and governors), time (timing in which strategies are applied), and context²⁹. Finally, it suggests that the outcome of fiscal bargaining depends on presidential agency and thus brings together the research agenda on fiscal federalism and intergovernmental relations with that of presidentialism.

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²⁹ The literature on the subject is mostly quantitative.

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Innovative mechanisms to engage citizens in public policy-making. A comparative study of leftist governments in Uruguay

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Abstract

The expansion of institutionalized participation for the elaboration of public policy was a central pillar in the government programs of the Frente Amplio (FA) for the eight elections in which it competed (1971-2014); however, once in power, the innovation of the institutional mechanisms of participation in the different state arenas presented disparate characteristics.

It is proposed to make a comparative study of the areas of participation promoted by state institutions during the different governments of the FA of Tabaré Vázquez (2005-2010/2015-2019) and José Mujica (2010-2015). In this context, a key question is identified: Why for the elaboration of postmaterialist public policies (environment, water policy) did governments innovate with some participatory formats such as citizen juries, councils, dialogues and deliberative workshops, while in labor and redistributive policies (salary, social security and tax) they maintained a traditional Uruguayan design of the XX century?

keywords: institutionalized participation, distributive public policy, environmental, Uruguay.

1. Introduction

The Uruguayan political system since its first polyarchy (1918) presented the singularity of being qualified as a partisanship: political parties are the central actors (Caetano, Rilla and Pérez 1987, Chasquetti and Buquet, 2004) coexisting in the state arena with corporate actors of societal stamp (Lanzaro, 1986, 2004). In 2005, the left-wing Frente Amplio (FA) party acceded to the national government for the first time in Uruguay's history. The assumption of the FA in government management broke the bipartisan tradition that prevailed throughout the twentieth century in addition to relocating the State in its intervening role – after the liberal policies of the traditional governments of the decade of the 90s and the economic crisis of 2002-2003 – within a matrix of social protection. Unlike previous governments, the general institutional characteristics of the Uruguayan party system and the formats of the organized social actors allowed the FA to consolidate common arenas of work for the process of drafting its public policies.

The FA was founded in 1971 with the purpose of overcoming the serious political crisis that Uruguay was going through at the time, but also to promote structural reforms in the State, the economy and society. Under these objectives, its founding guidelines maintain that "*the fundamental axis is the continuous popular participation in the process of necessary economic, political and social transformations*" (FA, 1971:1). As can be seen, given the fact that among its founding axes the participatory vision of government management has been central to the proposal of the FA, it is necessary to ask ourselves what has happened since it began to have the opportunity to put into practice its participatory ideals in the political-social agenda for the definition of public issues. In addition, the importance of the intervention of citizens in public activities is maintained in all the programs of the FA for the eight elections in which it competed (1971-2014). For example, in the electoral proposal of 2004 it is argued that in the Uruguayan political system: "*it is necessary to raise the construction of state tools aimed at strengthening horizontal control and broad and genuine citizen participation in decisions and control of what is done*" (FA, 2004:7).

Although historically the FA raised the relevance of citizen participation as the central axis of its way of conceiving government management, once in power, the opening of institutional participation mechanisms in the different state arenas for the elaboration of public policy did not always respond to programmatic principles.

It is proposed to make a comparative study of the areas of participation promoted by state institutions during the different governments of the FA of Tabaré Vázquez (2005-2010/2015-2019) and José Mujica (2010-2015). In this context, a key question is identified: Why for the elaboration of postmaterialist public policies (environment, water policy) did governments innovate with some participatory formats such as citizen juries, councils, dialogues and deliberative workshops, while in labor and redistributive policies (salary, social security and tax) they maintained a traditional design of Uruguay of the XX century?

Based on a normative, institutional and pragmatic analysis of the participatory institutions carried out by the FA governments and a fieldwork with in-depth interviews with qualified sources from the political, technical and social spheres, innovation - or the lack of it - in participatory designs is explained. The present work is structured as follows: a first part raises the theoretical tension regarding representative, direct and participatory democracy; secondly, both the innovation or non-innovation of the selected public policies are analyzed: tax, salary, social security and water, together with their respective regulatory frameworks that design participatory mechanisms, including the preferences and interests of the social actors involved. Finally, the conclusions of the work are detailed.

2. Theoretical tension: The labels of democracy? Representative, direct and participatory

In the discussion on how to sustain the stability and legitimacy of democratic regimes, political parties play a central role in their turn. It is understood that they grant on the one hand to citizens the opportunity to participate through the vote in the election of representatives who will be responsible for government leadership and, on the other hand, they grant institutional resources to ensure that public policy decisions are consistent with government programs (Stokes, 1999). It is understood that political parties are an important driver in the complex relationship between representation and democracy; however, at present the debate around representative democracy shows that electoral competition as a mechanism of political representation does not correspond to the central ideals of democratic politics. The academic literature presents a "certain consensus" regarding the relevance of participation to state institutions as an essential component of democratic regimes and a possible response to the crisis of legitimacy of representative democracy (Dahl, 1971; Cunill Grau, 1991, 1997; Fung, and Wright, 2003; Gurza and Isunza, 2003; Schnapper, 2004; Wampler, 2004; Subirats, 2005; Fung, 2006; Rossanvallon, 2007, 2008; Lang and Warren, 2008; Peruzzotti, 2008; Annunziata 2009, 2011 and Blondiaux, 2013). Despite this, in recent decades, various reasons have been put forward to explain why governments decide to open different types of institutionalized participation.

In the first place, and focusing on the theories around democracy, one can locate the Schumpeterian vision that maintains that the important thing for democracy is not that all citizens participate in public decision-making but that "only citizens with certain competences" through electoral competition represent the demos, therefore, participation is not a necessary and valid instance for democracy, in the words of Schumpeter (1942) "*voters must understand that, once they elect an individual, political action is his business, not theirs. This means that they should refrain from instructing him about what should be done.*" At the other extreme, Habermas' thinking considered that the centrality of the democratic process was deliberative politics for collective decision-making. "*Participation is a common practice only through the exercise of which citizens can become what they themselves wish to be: politically responsible subjects of a community of free and equal people*" (Habermas, 1999: 234).

A second argument concerns the fact that governments cannot avoid the incorporation and activation of mechanisms of citizen participation. In fact, the problems of representative democracy derived from the election-representation nexus, both as a mandate and as control, are essential to determine what are the procedures of aggregation and decision-making, but confirm important shortcomings, both at the level of institutions and in the sphere of the actors, as

they are endowed with scarce powers (Máiz, 2003). Therefore, citizen involvement beyond the ballot box is fundamental to strengthen the capacity to respond to the demands of the population and, consequently, the legitimacy of political systems (Welp, 2016).

A third argument focuses on the contributions represented by direct democracy (MDD) mechanisms for participation (Lissidini, Welp and Zovatto: 2008; 2014; Altman, 2010, Lissidini, 2012). A study by Lissidini (2008) on the MDD processes in Bolivia, Ecuador and Venezuela shows that they were opened to "the voice" of actors traditionally excluded from the political sphere such as indigenous people, women and peasants. In turn, Altman et al (2014), find that MDDs in the Chilean local context show that context matters and that there are no rules or variables that automatically promote participatory scenarios. In the Chilean experience, the authors highlight how the richest municipalities and those whose government has a majority in the council have most frequently promoted participatory processes. Therefore, the tendency to expand the mechanisms of direct democracy was "*in search of higher levels of citizen participation to correct the crisis of representation and address the problems of governance*" (Zovatto, 2008: 262).

Thus, although the contributions that have been developed on democracy over time are diverse and their components or attributes may differ, democracy as a government regime presents several fundamental demands and principles: legitimacy, representativeness, the participation of citizens in public affairs, the strengthening of the links between those represented and their representatives and trust in institutions. All this set of principles imposes problematizing democracy beyond electoral contests, because if one starts from the assumption that politics is a collective activity, democracy must be analyzed on the basis of its institutions, actors, ideas, decisions and policies. How power is distributed within the State's institutional arrangements, how social actors are or are not involved is key to understanding today's democracy. This work does not analyze participatory mechanisms beyond the logic of representative democracy. On the contrary, here we try to break this dichotomy representation-participation, since those who sit in the government and are elected by the citizens within the framework of the rules, recognizing the State as a central institution for public policy, always include in the game of politics the interests and the preferences of different actors, who exercise pressures, who may, or may not, have veto power; in any case, they play a central role in fostering certain policies. For this reason, the second section of this paper presents what governments normally do and how they involve or not social actors in decision-making, whether they are decisive or marginal, basically whether or not they have power in the political arena.

3. *Distributive policies and their openness to participation in FA governments*

In 2005, for the first time in Uruguay, a left-wing party – the Frente Amplio – came to the national government after winning the 2004 elections by an absolute majority. That victory was repeated in the 2009 and 2014 elections, although by a narrower difference. The triumph of the Broad Front (FA) in 2004 was a historic event that materialized the ideological alternation in the government, given the fact that, since the mid-nineteenth century, the Uruguayan Executive Power had been in the hands of the traditional parties, i.e. Colorado Party and National Party.

The FA is a left-wing party that has two unique characteristics of the Uruguayan party system. The first is that since its foundation it has integrated the trade union movement and social movements into its ranks, giving social participation a unique place, even in programmatic elaboration, where actors of various kinds participate: grassroots militants, organized civil society, trade union movement and even academics. The second is the internal structure of the FA: it presents a heterogeneity among its main fractions, ranging from the Communist Party to social-democratic fractions, which can be grouped between moderates and radicals, which arouses interest in studying a party of these characteristics for its ways of governing, in general, and for institutionalized participation, in particular.

The antecedents that the FA had in participatory matters at the level of government management cannot be ignored. To do this, it is necessary to refer to its conduct at the departmental level, precisely in Montevideo, capital of Uruguay. In 1989 the FA won for the first time the departmental elections with Tabaré Vázquez as Mayor and it was from there that it placed on its agenda from the beginning decentralization and participation as central nuclei. Thus, three local institutions were created with the aim of bringing local public policy closer to citizens:

1. Zonal community centers,
2. Neighborhood councils,
3. Local boards.

The latter were maintained until 2010, when the Law on Political Decentralization and Citizen Participation came into force, which created municipal governments as the third level of government along with the figure of mayor¹. This progress at the local level meant that the studies for the Uruguayan case focused on this level of government with the emphasis on participatory budgets or the election of Neighborhood Councils (Veneziano, 2009, 2011; Welp et al, 2013, Welp, 2017) without expanding the research at the national level; hence, the analytical interest of this work.

By focusing on primary purposes such as economic issues, specifically tax issues, the FA carried out a tax reform where the participation of social actors was not exercised through institutionalized channels of participation, but rather more informal specific dialogues were opened to listen to suggestions, proposals, but without any binding capacity and less to compromise the government proposal. The issue of how to record wealth and consumption was one of the priority themes of the FA at the historical level. It was not a new issue for the FA and it was clear how to execute it, in addition to the fact that according to the current Constitution (1996), the approval of tax laws at the national level is conferred to the Legislative Power, its regulation being the competence of the Executive Power. During the first semester of each period of government (five years), the Executive Branch submits to the approval of the Legislative Power the national budget of remunerations, expenses and investments and the corresponding sources of funding. This constitutional legal framework served to maintain its authority in the face of an issue as relevant as the prosecutor and not to open channels of participation.

On the ability to negotiate, when a leader of the Chamber of Industries was consulted, it was considered that there was no margin for it. *"The business community does not negotiate, there is a parliamentary majority, the negotiation is within the FA. The government votes what it wants"*.

This correlates with what a former government official said about the importance of rules and who ends up "cutting the cord." *"Businessmen played very little in tax*

¹ The Community Centers are decentralized units of the Municipality of Montevideo, responsible for administrative management, procedures, complaints, requests and services.

The Neighborhood Councils are private, autonomous, regulated and recognized by the Departmental Government, for voluntary integration of neighbors. They function as spokespersons for the needs, demands and proposals of the neighborhood before the national and municipal authorities. Their legally recognized competences are: right of initiative and capacity of proposals in plans; projects and programmes of local interest; advice to the Departmental Government and the Municipal Governments; collaboration in departmental and municipal management; organization, promotion and development of activities of local interest and participation in the evaluation of management. Neighborhood Councillors work honorarily, and in many cases are representatives of social, religious, cultural or sports organizations.

reform. The business sector resisted the reform. Of the whole business parade, each one who said my situation was special would go to prison; if they showed you that this could have such impacts and did not violate the principles of the reform, those suggestions were taken. Part of the beauty of the tax system is its rules and there is no discretion. Before, discretion passed". (Interview with the former president of the Central Bank and Vice Minister of Economy).

Online, the economic advice of the General Tax Directorate (DGI) also emphasized the rules *"One receives approach from companies of all kinds but this is neither bad nor good, it occurs naturally and the context is open for that to happen, how permeable you are to that, the important thing there is that you have a good institutional design"* (interview political advisor DGI). However, from the trade union movement it was considered that: *"There are no explicit vetoes, but there are mechanisms that play to avoid putting more taxes, such as investment, or the danger that capital leaves. Media pressure weighs more than lobbying politicians, who could have more lobbying opportunities in the past, with right-wing governments. Every time the business chamber goes to the press, they want their speech to be shareable with the whole society. The business chambers insist in their message that taxes are bad and if you increase investment they leave, and if you increase wages unemployment increases, and no one disputes the profits of entrepreneurs, that is the dominant message. The dominant ideology is that of the ruling class. It is the vision that is most transferred by the media."*

There is an implicit statement and that is that, although in the decision-making vetoes are not explicitly imposed, they affect which sectors are selected for investments, what stimuli are needed and what would happen if that was not there. *"The elites have less influence; that does not mean that the FA has not been influenced by pressure groups, and there have been no agreements. What is clear is that the Uruguayan left was not a stone in the shoe of the businessman. Economic power in Uruguay is more depersonalized than in the 80s. Economic power is more transnationalized and it is more difficult to identify that these are the families, the elites that dominate the Uruguayan economy"* (Union leader).

Article 206 of the Constitution stipulates that the law may provide for the creation of a National Economy Council (CEN), with an advisory and honorary status, composed of representatives of the economic and professional interests of the country. The law shall indicate the form of constitution and functions thereof. Never since this normative possibility was placed in the Constitution of 1934 had a government summoned it. It was thus the FA government in its first government that created it by law, at the initiative of the Executive Branch in March 2005, being regulated in December of that same year. In its legal intention, the CEN aims to become the *institutional sphere of relationship between civil society and the State* to address the economic and social aspects of public policies, defining it as an *instance of representation* of civil society. However, in practice it met a few times

in the first government administration and was never reconvened. This is how one union leader puts it:

"It has never been applied well. It would be nice to have an area, for capital to say what it wants, us - the trade union movement - and the government. There were a few calls at the beginning, but it has not worked well. The space is defined so wide that they end up laughing, listen to everyone or do not listen to anyone, and this was." (trade union leader).

And this is stated from the confederation of business chambers:

"Those things don't work. Because it is very difficult for an arbitrator to be impartial enough to draw the best conclusions. Uruguay is a country that has too much revanchism above and many accounts to collect from one side and the other, so it is difficult to move forward. It is difficult to make progress in this kind of thing" (president of the Confederation of Business Chambers).

In this way and with regard to the preferences and power of agents in tax issues, there is no doubt that they matter, the institutions and their incentives too, but the decision on how the collection and distribution should be carried out is in the hands of the Executive Power, as expressed by a high authority of the Ministry of Economy:

"This government has been characterized by talking to everyone. I do not see problems of dialogue, that does not mean that there are a huge number of agreements. The agenda is dynamic and leads you to take a line of work that is more ad hoc; it leads you to do it more at the moment, because the dynamism in this matter leads you to generate ad hoc spaces, and this has worked reasonably well. We do not notice the need for more spaces because we are fine with what we have and they have not told us that they need another space. Ultra-institutionalized areas, as in larger societies, may be necessary, as in Brazil, where you institutionalize getting together; but in a country like Uruguay, with other dimensions and proximity, if someone tells you "we have to get together", in 48 hours maximum you meet with businessmen or unions. You're having meetings based on monitoring that. It's a design that works, I don't know if it's the best. It is positive to have a back and forth with the social actors, but after the interactions, one must take decisions, and one decides. Sometimes there are certain fears of deciding, having all the respect of the separation of power, you have to exercise authority, which is not authoritarianism."

When analyzing the structure of the wage councils within labor policy, it maintains its historical format, without any innovation in its participatory mechanism. Since 1943, Uruguay has convened Wage Councils in a format of tripartite integration bodies, created by Law 10449, which through the mechanism of social dialogue establish minimum wages, categories and other benefits. Following what is established by regulations, in 1985, the Executive Power, by Decree 178/85,

convened the Wage Councils creating forty-eight groups of activity, which as a result of negotiations in the different economic branches, created, in turn, subgroups and chapters, all as collective bargaining units. At the beginning of the liberal government of President Lacalle the call was suspended and it was in 2005, through Decrees 138/05 and 139/05, that the aforementioned Councils were convened again. On this occasion, three areas of negotiation were distinguished: the classic one in the private sector and two new ones: the public and rural sectors. In the Third Round of 2008, Group 21 was added: Domestic workers or domestic servants. In addition, the Rural Groups were renumbered.

The Wage Councils are an instance of negotiation with a typical format to address this type of issues. In them, the recognition towards the FA has to do with their convocation, as well as the expansion by sector and by their operations. *"If I go back to the year 1943, when the wage councils were created, the area of negotiation covered nothing more or less than the salaries of private activities, although their means were cut, the public ones did not enter, the rural, domestic ones did not enter; but well, it was an area. Uruguay came with a tradition of important social participation"* (union leader).

It is interesting how it is marked that the wage council is not an instance with political leadership but is responsible for negotiating a wage pattern between workers and employers. *"The wage councils have decision-making power and have social representation, they are older than the FA, there is no political leadership there but the salary pattern has to be agreed"* (high government hierarchy).

Now, although this format of wage negotiation remains intact after 60 years, there is a recognition of the place the councils occupy as pressure groups of entrepreneurs and unions on issues such as their capacity, resources, mobilization and collective action. These become key factors for the government to recognize them and maintain classic management positions in prominent organizations, such as the Social Security Bank, an autonomous entity created in accordance with article 195 of the Constitution, whose central task is to coordinate state social security services and organize social security or the National Institute of Employment and Vocational Training, a non-State public entity whose main task is to implement policies for vocational training and strengthening the employment of workers in Uruguay².

²As for the conformation of the directory of the organism, it is composed of four members appointed by the Executive Power, one elected by the active affiliates, one elected by the passive affiliates and one elected by the contributing companies. It was only in 1992 when the Board of Directors was fully integrated for the first time and in 2006 when the constitutional provision was fully complied with the entry of the first social directors elected by direct vote of their representatives.

The current membership of the Board of Directors of INEFOP includes representatives from: Ministry of Labor and Social Security (MTSS), Ministry of Education and Culture (MEC), Office of

"How can we influence the economy in wages, in what way? With a correlation of forces, by negotiating. So, one way to influence the outcome is to negotiate, through salary and productivity. We do very well" (union leader).

"The employers are very clear in the defense of their legitimate interests, , and therefore historically have a link with the ruling government for the defense of those interests, corporate perhaps; their logic of expression is more conventional than that of the unions" (opposition legislator).

Concomitantly with what was presented, the FA did not incorporate changes in the institutional architecture of the spaces of participation on issues such as salary, security and taxation. So, it was proposed to focus on the water policy, an issue that is incorporated into the FA government agenda and where innovations were introduced.

4. The water resource in Uruguay: innovation in participation?

This section presents an analysis of the water policy and the mechanisms of citizen participation that have existed in different conjunctures. The issue of water resources in Uruguay is not a minor one, both at the level of public institutions and civil society in general. The precedent of the plebiscite in 2004 was a milestone that underlined the importance that water has for the population. This is a central concern as water policies affect the well-being, distribution, social inequalities and self-interests of political and economic elites, and the society as a whole.

An analysis of the water policy can demonstrate that water builds social and power relations around those who have access to it, and under what conditions. There is no doubt that social, political, economic processes affect the understanding of water as a disputed resource shared by multiple public and private actors. Thus, water becomes a strategic resource and therefore its control is a source of power and socioeconomic and environmental conflicts around several axes: demand, use, exploitation, irrigation and pollution. Thus, states face an environmental dilemma that has not been resolved and where the controversies around water resources have acquired a pivotal role. Environmental policies require a high degree of coordination and articulation with social and economic policies. Following Delamata (2013: 87) "*environmental*

Planning and Budget (OPP), by the most representative organizations of workers: Inter-Union Plenary of Workers (PIT - CNT), by the most representative organizations of employers: National Chamber of Commerce and Services of Uruguay, Chamber of Industries of Uruguay (CIU), and a representative of social economy companies, introduced by article 219 of Law 18996.

demands put in tension and are sometimes able to align the general antinomy that runs through states, between their dependence on investments and business and the construction of political power of government based on popularity". There is no doubt that water is a global issue. Hence, the challenges faced by these post-modern societies under geographical borders, as well as under the borders of the "individualization of politics", become obstacles to be overcome to untie the main critical knots that concern such a vital resource, when States are increasingly faced with the mobilization of citizens on their right to water. For this reason, Uruguay witnessed a citizen mobilization that managed to hold a plebiscite to reform the Constitution and recognize water as a human right, in addition to granting the State the exclusive distribution of water and sanitation.

Since 2002, but especially throughout 2004, after years of neoliberal policies and an acute economic crisis, with a state in decline, Uruguay marks a turning point in the resistance to the privatization of several public goods and services. Uruguayan society debated and politicized an issue that until then seemed unquestionable in a small country surrounded by water: the recognition of water as a political and social problem. This process resulted in the constitutional plebiscite of 2004, held by the National Commission in Defense of Water and Life (CoNDAV), which greened party politics and ended up representing the first major victory on a national scale in a popular initiative of an environmental nature (Renfrew, 2013). The mechanisms of direct democracy are an explicit recognition of popular sovereignty; hence, in the context of modern liberal democracies, the citizen has the possibility to decide and/or veto on matters of public interest carried out by government representatives through the extraordinary use of the vote. Errandonea (1994: 36) in its approach to the mechanisms of direct democracy and its functions with respect to the Uruguayan political system states that the normal mechanism of legitimization of the Uruguayan Constitution is the plebiscite. He affirms that *"Since the political actors felt the need to make corrections to the equation in which the political functioning is concretized according to the correlation of forces of the conjuncture, they promoted constitutional reforms."*

Thus, the plebiscite was a milestone for Uruguayan democracy, since in addition to enshrining water as a human right, the initiative of such a proposal did not have its "origin from above", it did not arise from the formal political powers – Executive Power or Legislative Power – but the origin was "from below", that is, citizenship, organized under the CoNDAV, playing a central, proactive, and informed role involved with public affairs. This case illustrates and breaks the myth of the "passive citizen" following Rossanvallon (2007), where society generated a concrete change in the order of priorities of government actions and modified the usual frameworks of the discussion around the process of elaboration of political decisions. The resistance to the privatization of water in Uruguay is led by an emerging social movement that has integrated different perspectives in the defense of a public, participatory and sustainable management

of this common good. The CoNDAV, obtained the support of 64.7% of the citizens to approve a Constitutional reform where these principles were enshrined. The rejection of the commodification of water was the touchstone that facilitated a metamorphosis in several social actors: popular organizations became ecologists and environmental groups became social movements (Navarro, 2006). This prominence led Uruguay to become a country that explicitly recognizes the right to water in its Constitution, and the State is obliged to protect the rights of its citizens³.

This normative advancement and the social mobilization led to the promulgation in 2009 of Law No. 18610, which establishes the guiding principles of the National Water Policy. This law, which, in addition to raising several points such as state action for access to drinking water, sanitation and both surface and groundwater, weighs citizen participation in articles 18 and 19, defining it as "*the democratic process through which users and civil society become fundamental actors in terms of planning, management and control of water resources, environment and territory*" thus granting users and civil society "*the right to participate effectively and efficiently in the formulation, implementation and evaluation of plans and policies established*". In this way, the place of the state apparatus and civil society with respect to the political process in the field of water management is established normatively. By law, an intersection in the society-State link for the formulation of public policy is proposed, where spaces for participation should be reflected to maintain that bidirectional relationship between both players: state and social actors, with a character that is not merely informative but binding, with decision-making capacity in Uruguay's water policies.

A clear example is the creation, in the orbit of the Ministry of Housing, Territorial Planning and Environment (MVOTMA), of the National Council of Water, Environment and Territory, composed of representatives of the government, users and civil society, each of them having equal representation for the elaboration of national guidelines on water, environment and territory. This type

³ Article 47 of the Constitution states: "The protection of the environment is in the general interest. Persons shall refrain from any act which causes serious predation, destruction or pollution of the environment. (...). Water is an essential natural resource for life. Access to safe drinking water and access to sanitation are fundamental human rights. The national Water and Sanitation policy will be based on:

- a) The planning of the territory, conservation and protection of the environment and the restoration of nature.
- b) The sustainable management, in solidarity with future generations, of water resources and the preservation of the hydrological cycle, which constitute matters of general interest. Users and civil society will participate in all instances of planning, management and control of water resources; establishing the hydrographic basins as basic units.
- c) The establishment of priorities for the use of water by regions, basins or parts thereof, the first priority being the supply of drinking water to populations.
- d) The principle by which the provision of drinking water and sanitation service must be done by putting social reasons before those of an economic nature (...).

of intersectoral and interinstitutional spaces is a faithful reflection of the Uruguayan political system: a case of intermediation of interests fundamentally pluralistic, with partisan protagonists, but in which corporate arenas of societal stamp have also coexisted. Therefore, when analyzing the process of elaboration of public policies during the government's management of the Frente Amplio, different types of participatory mechanisms are observed. On the water issue, the government promoted institutionalized participation spaces such as the National Council of Water, Environment and Territory and the Regional Councils of Water Resources and Basin Commissions, as well as non-institutionalized mechanisms that transcend the technical-bureaucratic dimension in state management, such as spaces for consultation with citizens.

Now, the way of instrumentation of these participatory spaces and how they are inserted into the process of public policy, whether through inputs for the design, implementation, monitoring or evaluation, cannot be conceived equally; consultation is not the same as co-management, citizens control in a phase of monitoring of the policy or are simply informed of what is being carried out by the government. In this line, it is important to establish how the link occurs both from the government and from the actors, and what type of participation is desired from both sides. To problematize this, the following is the elaboration of the National Water Plan during the years 2016 and 2017, of which there are no precedents in Uruguay. It is the first time that the Uruguayan State has addressed the issue of water in a comprehensive, innovative way and with a long-term strategic view; hence, its relevance for this work.

5. National Water Plan and citizen deliberation

The National Water Plan (*Plan Nacional de Aguas*, PNA) is the result of an exchange process, initiated in 2010 by the National Water Directorate (DINAGUA), with the Ministries of Livestock, Agriculture and Fisheries (MGAP), Industry, Energy and Mining (MIEM), the company Obras Sanitarias del Estado (OSE), with the Regional Councils of Water Resources and the Basin and Aquifer Commissions. After six years of design of the PNA and instances of deliberation in August 2017, the Executive Branch decrees this first PNA. Concerning its functions, the interest of this work is focused on the spaces submitted by DINAGUA for the public discussion of the PNA.

The DINAGUA direction within the MVOTMA, that has the main function of the administration, use and control of water resources, in July 2016 presented the proposal of the PNA as a "*technical and political instrument that establishes the*

general guidelines for the management of water resources throughout the Uruguayan territory" (DINAGUA, 2016) and from its coordination it expressed "*a firm political conviction that the population has contributions to make and that the sustainability of the NAP requires basic agreements among all actors.*" In this way, the main guidelines for this NAP stressed the importance of considering the proposals that arise from areas of participation to the relevant decisions through a deliberative instrument that socially validates this public policy. Thus, DINAGUA coordinated the exchanges on the NAP within the framework of the Regional Councils of Water Resources and the Basin Commissions, institutionalized areas that operate in different regions of the country. Moreover, in order to expand the discussion to a general public, it asked an interdisciplinary team of the University of the Republic (UdelaR) to carry out a non-institutionalized process of "Citizen Deliberation on Water" (Deci Agua), to foster dialogue and contributions to the NAP. This mechanism of citizen deliberation is an adaptation of the Citizen Juries, but it shares with them the same deliberative ideals⁴.

The Deci Agua project was funded by the Sectoral Commission for Scientific Research (CSIC) of UdelaR and DINAGUA. This process lasted between August and December 2016 and organized the discussions around five main axes: 1. the PNA; 2. the management of water resources; 3. the models and conceptual frameworks of the management of these resources and the role of citizenship; 4. education, culture and citizenship, and 5. ethical dimension. Deci Agua was based on the formation of a Panel made up of fifteen citizens, not specialized in the subject matter, that following its documents "*represents a voice of civil society: the one not directly involved with particular interests*". The participating citizens will analyze the proposal of the National Water Plan for two months. To this end, they will read informative material, analyze and exchange opinions in work sessions, contact experts and those involved in the subject and debug a series of questions that will be processed through an Advisory Group (DECI AGUA, 2016: 2).

⁴ For the case study of this work, it is considered important to detail what the citizens' jury is about. This participatory model aims to associate, during the time of a formal consultation, a group of supposedly profane citizens to the formulation of a collective decision, in a situation marked by real uncertainties. The originality of this model comes from the central role played in it by the emerging political figure of the "profane". This citizen without qualities is supposed, first and foremost and against all the theses that denounce his incompetence or his irrationality, to be capable of pronouncing on problems in which experts and politicians had until now the monopoly. It is, in turn, to organize the confrontation of experts, politicians and citizens within the framework of "hybrid forums" capable of producing political judgments worthy of being taken into consideration by the convening authority, which remains solely responsible for the final decision. However, a trait in common to all remains: to think that the inclusion of citizens without qualities in the process of elaboration of the political decision produces effects of democratization of the existing regimes. (Blondiaux, 2013: 77-79).

This advisory group was made up of specialists and people linked to the subject who were not part of the organization. One of its main tasks was to ensure that the information process of the Citizen Panel would be balanced in relation to different positions and that diverse approaches would be contemplated on the proposal of Plan. Accordingly, Deci Agua represented a voice of civil society, not directly involved in particular interests. The selection of this Citizen Panel had as criteria the representation of a variety of ages, work occupations, origins and motivations. The only requirements were: to be over 18 years old, not to be a specialist or someone directly involved in the subject of water, and to be available to participate in work meetings that were held during three weekends between the months of October and November 2016. In this way, the work Deci Agua lasted only two months, i.e. the amount of time that was granted to the participating citizens to analyze and exchange the proposal of the PNA, based on the information provided by DINAGUA, UdelaR and the exchange with the advisory group. Time that, as the protagonists of this citizen panel affirm, was not enough and this was a problem for the objectives to which they were summoned:

"It is necessary to consider that the study of the information provided to us had to be carried out in a short time, which prevents a deepening in very broad areas of knowledge. The variety of disciplines that are involved in water management (we read reports of a socioeconomic, cultural, environmental, toxicological, biological, chemical, geological and geographical nature, legal framework, monitoring, etc.) prevented us from taking the time to give the appropriate value to each information received. One of the main problems that the group encountered in terms of the deliberation process was the little time available to reach a final report. We believe that with only 60 face-to-face hours it was impossible for us to analyze in detail the National Water Plan" (DECI AGUA, 2016: 3-4)

In the document that synthesizes the main contributions of Deci Agua, the importance of citizen participation and involvement is emphasized. They reflect that the PNA proposal recognizes that there are no capacities in relation to human and economic resources to meet the demands of the participants of the Regional Water Resources Councils and the Basin and Aquifer Commissions, to process them and provide an adequate response in a timely manner according to the importance of the issue. Given this, Deci Agua considers that it is an impediment to effectively comply with the mandate of Article 47 of the Constitution of the Republic, which determines that "users and civil society will participate in all instances of planning, management and control of water resources", raising a concrete claim to consolidate citizen participation in spaces for discussion and generation of policies such as the Basin and Aquifer Commissions, so that these mechanisms and Areas are effectively channels that bring citizens closer together in decision-making.

"Promote participation based on the premise of 'governing with the people, not for the people'. This is essential to regain citizen confidence in management. It is necessary to institute procedures for evaluating the management of the Basin Commissions. Analyze the problem of the representativeness of civil society in the commissions, considering their diversity. There are neighbors and other actors who do not participate in already established organizations. Modalities of inclusion of unrepresented persons should be considered. Other spaces for citizen participation should be created in support of the work of the Basin Commissions, through deliberative methodologies where local citizens are convened to analyze the issues that the commissions are working on and to make proposals linked to the reality of the area" (DECI AGUA, 2016: 7-8).

"Decí agua" showed on the one hand, that citizen participation matters to the government, generated a citizen panel – "jury of citizens" following Blondiaux (2013) – that responds to the legal framework that supports it, i.e. article 8 of the National Water Policy (2009), that provides for "the participation of users and civil society in all planning instances, management and control", and the Constitution itself. However, on the other hand, these mechanisms implemented by the government do not bring with them the expected results and even generate discontent among the actors involved. There is no doubt that giving substantive contributions to a national water plan is unfeasible in two months, even more so when those who participate do not have specific knowledge of the subject; therefore, the process of capacity-building and involvement requires that panels of this type be prolonged in time and be maintained not only for the design of the NAP but also for the following stages, that is, monitoring and evaluation of the policy.

Given the scope of this innovative mechanism, its impact on the Uruguayan tradition and the fact that it failed to generate the expected enthusiasm in the social actors involved, on the basis of the interviews conducted the analysis found out that the issue of the civil society representation in environmental matters is a relevant factor. There is the need of a greater incidence, and the responsibility on issues of general interest must be given by the governmental authorities.

"Participation in all areas is important. Yes, you have to strike a balance, there are several executive and decision-making areas; the government is legitimized because there is a democratic process behind, you should see that in the social actors. In short, it is also the responsibility of those who were awarded this function. If you look at it from another point of view, the excessive participation can remove the responsibility from above, from those who were voted to do things. Then, it is very good to have to consult, but there comes a certain moment that you have to decide. There's a balance there." (High hierarch of the Presidency of the Republic).

"I believe that we must always open spaces for participation, but we must consider that the social movements or social organizations will put forward proposals closely

linked to their issues, those that involve them, while the legislator must have a more general vision. The role played by each one is different: the role of the movement or organization is to defend a certain specific issue, and the role of the parliamentarian is to ensure a general good. So, a more general, broader and open vision has to be adopted. For example, I may implement a certain measure, but I would be affecting a lot of other issues; so, I have to take a decision that contemplates some of the issues that are told to me, but also all these externalities that I would generate in other areas and that the organization would not raise. I can decide to place a factory somewhere, and an environmental organization may come up that is totally against placing that factory, because it considers that it would cut down a certain number of trees, and it would be harmful to the environment; however, I have to find a balance there with the fact that such factory would generate jobs, that is something very positive. Then, I have to find a mechanism by which I would listen to the proposal of the environmental organization and maybe take some measures, such as requesting the company that for each tree they cut down they replant another one; in this way I think that you would put together a policy listening to different voices, and that is why it is important to listen. The issue is that you probably would not concede 100% to any of the participants, because your project contemplates different visions" (official legislator).

Thus, the government recognizes the lack of institutionalized spaces available to environmental movements. It was possible to innovate some areas such as dialogue, forums, councils of Cuenca, citizen juries, but all of them in their consultative, informative capacity, which did not grant the incentive for social actors to feel motivated and part of the process. This is recognized from the ranks of the government as well as from the social actors themselves, who also add the economic issue as a variable that is prioritized by the government.

"With environmental movements in particular, the social movement gains more from "Voice" than from "Loyalty". Loyalty does not work at all in the case of environmental movements, differently from trade union movement. Environmental movement do not attempt to change things from inside, because it is very difficult to deal with the government. But it does not mean that there are no spaces for participation, they have opted for a strategy of joining forces outside, defending their causes, the politics of the street, the politics of the networks, but not the politics within the formal State institutions." (pro-government legislator).

6. Conclusions

From the elaboration of a normative, institutional and pragmatic mapping of the participatory institutions carried out by the governments of the FA and a field work with in-depth interviews with qualified sources from the political, technical and social spheres, it is concluded that innovation, or the lack of it, in participatory mechanisms depends on the following factors.

Firstly, the role of the participation space: it was possible to innovate only in consultative/informative formats; secondly, the type of social actor with which the government is linked: the representativeness and legitimacy of social movements and civil society organizations influenced what kind of innovation could be introduced in the public policy process. A third factor is the institutional architecture in which the space for participation is anchored: the dependencies of the Executive Power innovated in participatory formats and the autonomous bodies maintained their traditional designs. Fourth, the ideological and historical prioritization of the capital/labor conflict in the Uruguayan left: there is a clear consensus on the part of the FA government that the spaces to resolve redistributive issues have to provide for participation of union and business communities, ensuring the representation of both actors with binding capacity in decision-making, without the need to innovate their format while ensuring the representation of the interests involved.

In short, consultative social-governmental linkage spaces with innovative formats do not translate into a greater impact on decision-making. The "Decí Agua" Jury represented an ad hoc, conjunctural, non-binding mechanism that is not institutionalized to ensure its permanence within the framework of Uruguayan water policy. Unlike several Latin American countries – such as Brazil – that present regulatory frameworks that institutionalize citizen participation, such as this type of citizen panels or public conferences, in Uruguay there is no established regulatory framework for participation that commits the State to create participatory mechanisms of a binding nature, guaranteeing transparency and independent and autonomous citizen control in decision-making processes. Given this, the concern arises to problematize why there is no institutionalized framework to account for deliberative instances where the main actors are involved before the matter is submitted for the legislative discussion. One possible question could be: does Uruguayan democracy show more levels of trust that don't make necessary such an institutional framework? The response has to be found in future research.

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Determinants of outreach of microfinance institutions in Myanmar

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Abstract

Poverty alleviation programs are being implemented by microfinance institutions (MFIs) with a view to lifting the poor out of poverty in Myanmar, but some of them are unwilling to lend to the very poor. Therefore, this paper tries to find out what kind of organizations lend money to the poor. The purpose of the study was to determine the extent of the penetration of microfinance institutions in Myanmar. This paper uses a quantitative approach using secondary data with multiple regression analysis for the year between 2015-2020. Among the three independent variables, the regression coefficient association between the dependent variable “outreach of MFIs in Myanmar” and “total assets” is positive and it is also statistically significant, whereas the other independent variables are not significant.

keywords: Microfinance institutions, number of borrowers, key determinants, multiple regression.

1. Introduction

Myanmar is a country rich in natural resources. It is also famous for its rich cultural heritage and many places of interest for foreigners to visit. However, it is still a low-income country. To-date, large numbers of people remain below the poverty line. The poverty rate in Myanmar is steadily rising. The poor can get loans and start small businesses to escape poverty. Although lending to the poor is possible for small businesses, the formal sector imposes many restrictions on lending to them. The poor have no access to financial services from the formal sector because they do not have their own business; lack of regular income and lack of collateral also reduce access to formal sector loans. Among the various methods used to fight poverty, the most common is lending to the poor who are unable to get a loan from the formal sector through microfinance institutions, in order to allow them to run a business to earn a regular income. It is one of the most common methods found in almost every country.

The reality of microfinance has become well known since the Grameen Bank was founded by Professor Mohammed Yunus in the 1970s. Microfinance is considered a potential tool to reduce poverty while serving the world's poorest people (Ugur, 2006). It includes cooperatives, rural banks and other cooperatives, Thrift and

Credit Cooperatives (TCCSs), Samurthi Banking Associations (SBSs), Non-Government Organizations (NGOs), MFIs (microfinance institutions) and commercial banks, other financial institutions, including registered financial companies.

Based on the regulatory and accountability aspects, it is assumed that the microfinance sector in Myanmar is more productive if MFIs operate in a lucrative manner in alleviating poverty. So, MFIs must be well designed to be widening outreach numbers and to accomplish a moral obligation in alleviating poverty through implementing effective microfinance programs. Eventually, a win-win situation will also be attained for both parties (Sharma, 2020).

It is true that in a country like Myanmar with a large majority of poor people, microfinance institutions are the only way to help reduce poverty. In such a situation, it is best if all microfinance institutions work together to alleviate poverty, but, in practice, not all organizations have the same aspirations. It is true that some credit unions focus on their own interests rather than eradicating poverty. Due to these circumstances, identifying what kind of institutions are lending to large numbers of the poor is a major issue in this paper. Although the main purpose of microfinance is to reduce poverty, in practice microfinance institutions are operating in many places, but poverty alleviation has not been achieved as successfully as expected. This is the main problem highlighted by this paper. Predominantly, this paper attempts to identify significant determinants of the outreach of microfinance institutions in Myanmar. From a regulatory and an accounting perspective, it is believed that MFIs in Myanmar can be more profitable if MFIs work in a more lucrative way. Therefore, MFIs must be designed to fulfill their ethical obligations to eradicate poverty through widening outreach numbers and the implementation of effective microfinance programs. Eventually, there will be a widening number of borrowers and a win-win situation for both parties (Sharma, 2020).

Currently, there are many microfinance institutions in both rural and urban Myanmar. However, due to the different objectives and standards applied by the lending organizations, the circumstances in which loans are used to alleviate poverty vary from place to place, according to different objectives and attitudes of the borrowers. These loans have been successful in alleviating poverty in some areas but not in others. Therefore, the main purpose of this paper is to focus on the question of what type of lending organizations are contributing to the poverty alleviation by reaching to a large number of borrowers, so that more loans can get into the hands of the poor to truly eradicate poverty. Another area to look at is how much the borrowers' lives have changed and whether or not they have taken out loans from the lending organizations.

Due to the current political, socioeconomic situation in Myanmar, it is difficult to conduct individual interviews and field research, so this is only a paper intended for further study. Mainly, this paper highlights the significant factors of the

breadth of outreach of microfinance institutions in Myanmar. Fifty-four microfinance institutions have been selected within the period of 2015-2020. Multiple regressions have been used to determine the significant predictor variables for the outreach of microfinance organizations.

This paper consists of a number of sections, starting from an introduction that outlines the notion of microfinance in Myanmar. Secondly, a comprehensive literature review illustrating the requisites and the desired variables of the study is included. The third section illustrates the techniques used to discuss the system and to highlight key factors in the outreach of microfinance institutions. The fourth part analyzes the results and the discussion is presented with a data quantitative assessment. The fifth part discusses the conclusions and the recommendations of the study.

1.1 Objective of the study

The main purpose of this paper is to find out what types of microfinance institutions are lending to large numbers of borrowers. Therefore, the objective of the study is to identify the key determinants of the breadth of outreach (number of active borrowers) of Microfinance Institutions in Myanmar.

1.2 Method of Study

This paper applies a quantitative approach using secondary data to find out the key determinants of the breadth of outreach in Microfinance Institutions in Myanmar, using multiple regression and secondary data collected from Financial Regulatory Department (FRD) in Nay Pyi Taw for the year from 2015 to 2020.

2. Literature Review

2.1 Concept of Microfinance

Microfinance is defined as providing financial services to the very poor self-employed. According to Ledgerwood (1999), these financial services generally include savings and loans, but may also include other financial services such as insurance and payment services. Schreiner and Colombet (2001, p.339) promote microfinance as an "effort" to improve access to microcredit and other financial services for poor households neglected by banks. Therefore, microfinance provides financial services such as savings, loans and insurance to the poor living in urban and rural areas who do not have access to these services from the formal financial sector.

(a) Microfinance and microcredit

Although the terms microfinance and microcredit are often used interchangeably in the literature, it is important to highlight their differences as they are often confusing. In Polanco (Polanco, 2001), "microcredit refers to microfinance; microfinance provides loans to NGOs and MFIs for other financial services (savings, insurance, etc.)". Therefore, microcredit is an integral part of microfinance in lending to the poor. However, in microfinance, savings and insurance also include non-loan financial services, such as pension and payment services.

(b) The History of Microfinance

According to Robinson (2001) and Otero (1999), microfinance first developed in the 70's, while from the 50's to the 70's the financial services of donors or governments were primarily funded through rural credit schemes. This was often due to the high fixed debt and loss of access to poor rural households (Polanco, 2001). Inaccessible to poor rural households (Polanco, 2001) until the 80's, MFIs like Grameen Bank and BRI2 represented a turning point in the history of microfinance, Robinson said. Services were highly profitable, although they did not receive continuous support. Economically and financially viable, and fully accessible to a wide range of clients (Robinson, 2001), the term "microfinance" is now more prominent in development (Polanco, 2001). Compared to the rural credit schemes of the 50's and the 60's, microcredit made the difference, as it insisted on repaying the debt by focusing on debt collection and on customers who

depend on the informal sector for debt. It has now been clarified that microfinance can benefit large breakthroughs.

The 1990s saw “an increase in the number of microfinance institutions and an increasing emphasis on scale”. Robinson, 2001, p.54). Dichter (1999, p. 12) refers to the 90’s as the “Decade of Microfinance. “According to Robinson (2001), microfinance has become an industry. With the growth of microfinance institutions, the focus has shifted from microcredit only to other financial services, such as savings and pensions and other services.

The importance of microfinance in the development sector was reinforced by the launch of the Microcredit Summit in 1997. The summit aimed to reach 175 million of the world's poorest families, and especially women from those families. More recently, the United Nations declared 2005 as the International Year of Microcredit.

2.2 Variable Explanation

(i) Breadth of Outreach

Breadth and depth of outreach are both desirable objectives, but there is a trade-off between them and microfinance institutions must choose their priority (Polanco, 2001). At the same time, sustainability is positively correlated to breadth, whereas there is a trade-off between depth and sustainability. The breadth of outreach is used as a dependent variable to study, i.e. which lenders are lending money to the active number of borrowers, that is people between the ages of 15 and 64 who can actively participate in business. Broadness and sustainability are positively related, and both are inextricably linked. Therefore, the smaller the number of customers, the greater the depth or amount of the loan. According to Polanco (Polanco, 2001), when an organization reaches "as many poor people as an organization that focuses on narrow and broad poverty" it reaches a wider depth.

(ii) Age of Microfinance Institution

Age of an MFI is measured in years since its inception. It can be an indicator of the experience and management skills of microfinance programs. The impact of age can double the effectiveness of technology. Some researchers (Nyamsogoro,

2010) point out that, as an MFI matures, its performance improves. Probably this factor explains why some MFIs are doing so poorly. This may be due to the high operating costs experienced by the MFIs as they first enter the market (Nyamsogoro, 2010), and to the ability of older companies to manage short-term losses compared to younger companies. On the other hand, other authors have proven that age has a negative correlation with technical effectiveness. This may be due to the fact that as companies age, they become less responsive to new challenges (Nyamsogoro, 2010).

From the previous literature review, the differences in the number of loans are due to the choice of strategy and maturity of the group; this could be due to a group of customers or a combination of these factors. In choosing a strategy, Christen said, "Larger loan sizes can only be the result of a deliberate strategy or choice. All of the older and more established microfinance institutions in Latin America (including their subsidiaries) started with the clear aim of creating jobs in the urban small business sector in Latin America. Christen described it as a choice of strategy to choose to operate as a non-regulatory entity. Significant differences (in this case, instead of the NGOs and financial institution assessed in the study) may reflect the two groups. Concerning mass maturity, Christen said: "What appears to be a mission spread is nothing more than the natural change in the average loan balance of NGOs that transform themselves into financial institutions. Short-term loans have risen sharply since they all rose well below the borrower's ability to repay the loan. Due to the age of the organization, therefore, years of operations are used to control the effects of time. In fact, Christen et al (1995) stated, when deciding whether to attend, the age of the program should be considered, making comparisons with the success of other organizations. The thing to consider in this case is that the older the organization, the larger the loan amount.

(iii) Type of Institutions

In the previous literature review, (M sai Mohinim Dr V Lavanya, 2019) found that the size of loans between Latin American regulators and non-regulatory microfinance institutions differed significantly between the two groups. Since regulatory MFIs are associated with increased commercialization, Dr V Lavanya questioned whether commercialization was wasting MFI's mission to reach the poor. In his conclusion, Dr V Lavanya ignored the mission spread and said that a large divergence in loans was a strategic choice. This could be due to factors such as the maturity of the portfolio or the customer group. Commercialization, characterized by profitability, competition and regulation, has no effect. To assess for the type-of-institution effect, "dummy variable" on whether the unit of analysis is an NGO (1) or not (0) was used.

(iv) Size of Microfinance Institutions

The organization's size reflects the competitiveness of other companies in the (M sai Mohinim Dr V Lavanya, 2019) and the company's market knowledge. In addition, the size of the organization depends on the technology, differences and other factors related to investment opportunities; size helps to calculate the impact of differences (Wijesiri, Mahinda and Yaron, Jacob and Meoli, Michele, 2015). Therefore, size was included as an exogenous variable to see if the size of the MFI was related to both of its estimates. According to the data, the size of MFIs is measured by their total assets.

(v) Profitability

The rule of law helps MFIs to reap the benefits of poor lenders. As we have previously proposed, commercial logic provides MFIs with the satisfaction of investors and high-quality lenders (Junyon Im ,Sunny Li Sun, 2014). However, in a country with a high rule of law, higher profits make it more attractive to competitors, and the rule of law reduces government interference and barriers to entry and exit. Therefore, economically, MFIs should try to find new ways to provide services to poor borrowers, but they should also expand their demand base. There will be an inverted U-shaped relationship between the profits of MFIs and the poor (Junyon Im ,Sunny Li Sun, 2014). In other words, as the probability of MFIs to provide services to the poor under social security considerations increases, profits increase as well. However, the business logic MFIs are less likely to provide services to the poor and lenders.

2.3 Empirical Literature Review

Microfinance has changed over time as many countries shape poverty alleviation over time. It is found that the researchers who wrote about microfinance performance adopted various measurements. These studies focus on what factors contribute to microfinance outreach. Therefore, it is important to note that outreach cannot be left out when studying microfinance performance. Many factors determine the outreach of microfinance, such as: the age of microfinance institution, profitability, business ownership, business type, business competition, and so on. Some academic papers selected for reading are the following:

Francisco Olivares-Polanco (2001) explains that commercialization, which is considered by profitability, competition, and regulations, does not have any effect

on differences in loan size between regulated and nonregulated MFIs. This paper used data from 28 Latin American MFIs to conduct a multiple regression analysis to test for the conclusions. The results indicate that dummy variable for the control of NGOs and other institutions has no effect on loan size but the age of the institution and competition turned out to have a statistically significant effect on loan size. This means that old age and more competition may lead to larger loan sizes.

Befekadu B. Kereta (2007) considers MFIs performance in Ethiopia from outreach and financial sustainability angles using primary and secondary data sources. The study found that the industry's outreach increased in the period from 2003 to 2007. From a financial sustainability perspective, MFIs are a measure of return on assets and share value. The profitability of the business is growing over time. Similarly, using dependency ratio and Non-performing Loan (NPLs) to loan outstanding ratio proxies, the study also found that MFIs are financial sustainable. Similarly, MFIs have been studied to determine the financial viability of NPLs using the dependency ratio. Finally, it turns out there is no compromise between outreach and financial stability.

KAI, Hisako (2009) examines the relationship between competition, Financial Self-Sustainability (FSS) and wide outreach in socially-motivated MFIs, using the panel data regression methodology by the reduced form of regression. This paper provides a detailed empirical analysis of 450 socially motivated MFIs in 71 countries, coping with the problem of endogeneity. The main results of the analysis in this paper indicate that competition does not have a significant impact on FSS; competition reduces wide outreach and the negative impact of competition on wide outreach declines as the experience of MFIs increases.

Sophyrum Heng (2015) examines the outreach and sustainability of microfinance institutions (MFIs) in Cambodia. This quantitative research uses descriptive statistics and linear regression to illustrate the outreach and sustainability levels of Cambodian MFIs. This paper suggested that to achieve long-term sustainability and penetration, MFIs target a wide range of clients as well as the poor. Increased cost efficiency and credit growth should be maintained at a stable rate and focus on the organizational experience and save more. The Operational self-sufficiency (OSS) variable is used as a proxy variable for sustainability as a dependent variable. Independent variables are the age of the organization, and the number of borrowers can be used as a proxy for the outreach variable. Proxy variables used for efficiency measurement are growth of gross loan portfolio, operation asset, deposit and portfolio at risk. The dummy variable is set to control the impact between the Cambodian and Indonesian microfinance institutions.

Debapratim Purkayastha, Trilochan Tripathy, and Biswajit Das (2018) investigate the impact of competition and regulation on the results of microfinance

institutions (MFIs). This paper uses Lerner's index as a competition proxy and introduces a regulatory intercept proxy as an introductory indicator to examine the specific benefits of MFIs and their impact on MFI results. Capacity building and mass credit decline and MFI profits are severely affected. Regulatory interference creates some convenient places for MFI lenders.

Maenuddin, P Sha'ari Abd Hamid, Annuar MD Nassir and Mohd Padzil Hashim (2020) show that the microfinance sector has seen a significant growth over the past decade, especially in developing countries around the world, but the number of poor people has not diminished. The purpose of this study was to investigate the financial viability of microfinance providers and to identify the different factors or issues that affect them. Suppliers focus on its efficiency/productivity and long-term profitability. Regression analysis is proposed to find the impact of different factors on financial resilience. Factors that undermine the financial sustainability of microfinance providers are: focusing on finance, focusing on profit-oriented programs; high competition; economic behavior of the people, high-interest rates; political instability; developmental obsession. This study suggested that focus on stability and short-term profitability, as well as focus on loan repayment, also represent challenging factors.

Abul Bashar Bhuiyan, Md Jafor Ali, Aza Azlina Md Kassim, Zuraini Alias, Abu Naaim Munir (2020) examine the mission drift and the systematic structure of sustainable research in MFIs. It is a methodological review to look at the research framework to systematically obtain research results for mission drift and MFI sustainability results. According to findings, appropriate research methods can be particularly effective, with researchers using the best approach to studying mission spread and sustainability of MFIs. While studying exploratory research, the average loan size is used as an independent variable in the research process.

3. Research Methodology

3.1 Research Method

(i) Panel Unit Root Test

Panel unit root tests are intended to test the formal concept of unit root for individual series in a panel and time series. Panel unit tests in the presence of segment independence analyze the properties of panel-based unit root tests under

the assumption that the data is distributed separately to individuals. The first unit root tests were Quah (1992, 1994); (Joakim Westerlund and Jörg Breitung, 2009).

In general, this type of panel unit root tests is based on the following univariate regression:

$$\Delta y_{it} = \rho_i y_{it-1} + z'_{it} \gamma + u_{it} \quad (1.1)$$

where $i = 1, 2, \dots, N$ stands for the individuals (cross-sectional units), for each individual $t = 1, 2, \dots, T$ time series observations are available, z_{it} is the deterministic component and u_{it} is a stationary process. Here z_{it} could be zero, one, the fixed effects u_i , or fixed effect as well as a time trend (t). The null hypothesis is:

$$\rho_i = 0 \forall i \quad (1.2)$$

The main difference between the proposed tests is the heterogeneity level considered under other assumptions (Joakim Westerlund and Jörg Breitung, 2009). Using random field methods *i. i. d.* and the asymptotic standard of the *DF* unit root t-static for a model is obtained. As both N and T grow as expected, there is no disruption between groups. In particular, N and T are assumed to be moving at the same rate since N / T is infinitely constant.

Unfortunately, the random approach can be used with more general criteria (i.e., to accept specific effects (or serial correlations in disturbances)) or multivariate analysis (i.e., integration testing). Breitung and Mayer (1994) obtained a large N as expected and a small fixed T that matched most of the microeconomic panel data. In this framework, forms of serial correlation can be included for each individual (this includes only a limited number) and time-specific random effects (N can be estimated as it grows as expected). The asymptotic dimensional assumptions of Breitung and Mayer are not suitable for panel data with the same or larger sequence in T and N . In addition, their approach can allow for different residual distributions, and the influence of individual effects can have a significant impact on the appropriate critical values for evaluating unit root t-statistic. The experiments proposed by Quah and Breitung and Meyer have not been discussed here since Levin and Lin (1992, 1993) went through the paper.

Methods of panel unit root tests are Levin, Lin and Chu (2002) test, Im, Pesaran and Shin (2003) tests, the Fisher's type test: Maddala and Wu (1999) and Choi (2001) test, Augmented Dicky-Fuller test (ADF) and Philips- Perron test (PP) tests. Among them Augmented Dicky-Fuller test (ADF) and Philips- Perron test (PP) tests are applied for the requirement of this paper.

(ii) Multiple Linear Regression Model

Multiple linear regression (MLR), also known as multiple regression, is a statistical method that uses multiple explanations to predict the outcome of a response. The goal of multiple linear regression is to model the linear relationship between explanatory (independent) variables and response (dependent) variables. In essence, multiple regression is an extension of the normal least squared (OLS) regression because it contains various explanatory variables.

Formula and Calculation of Multiple Linear Regression

$$y_i = \beta_0 + \beta_1 x_{i1} + \beta_2 x_{i2} + \dots + \beta_p x_{ip} + \epsilon$$

Where, for $i = n$ observations: y_i =dependent variable x_i =explanatory variables

β_0 =y-intercept (constant term) β_p =slope coefficient for each explanatory variable ϵ =the model 's error term (also known as residuals)

Simple linear regression is a function that allows an analyst to make predictions about the value of the dependent variable using the score of the independent variable. The multiple regression pattern extends the analysis to several explanatory variables to predict the outcome of the dependent variable. The multiple regression model is based on the following assumptions.

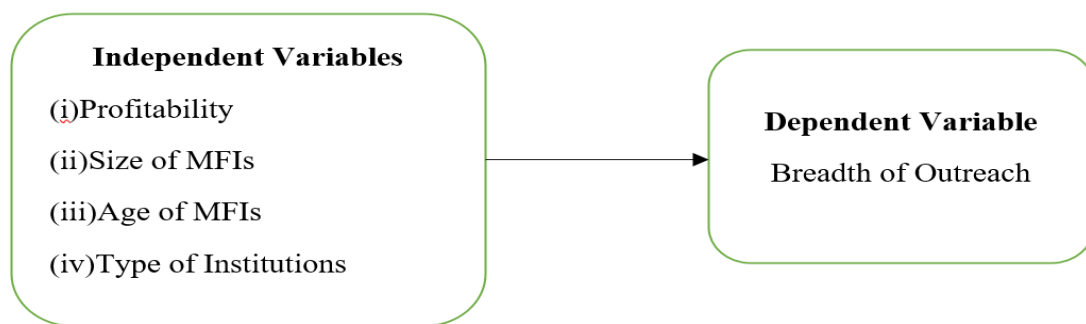
- (i) There must be a linear relationship between the dependent variable and the independent variables.
- (ii) Observations are selected independently and randomly from the population.
- (iii) The independent variables are not highly correlated with each other (no multicollinearity).
- (iv) The residuals have constant variance across the values of the independent variables (no heteroskedasticity).
- (v) The residuals are normally distributed with a mean of 0 and variance σ .
- (vi) The errors are uncorrelated in successive observations.

R-squared is a measure of the strength of the linear relationship between the independent variables and the dependent variable. When interpreting the results of multiple regression, beta coefficients represent the change in the dependent variable relative to a one-unit change in each independent variable, while holding all other variables constant.

3.2 Research Design and Conceptual Framework

Secondary data were obtained from 54 credit associations from 2015 to 2020 in Myanmar. The data were first tested on the panel unit root test on the Augmented Dickey-Fuller (ADF) test and the Philip-Peron (PP) test. Once the unit root test was completed, multiple regression analysis was used to identify the key factors influencing the breadth of outreach. The conceptual framework of the study is as follows.

Fig. 1 Conceptual Framework of the study



Source: Author's illustration

The Breadth of outreach is used as a dependent variable to study, i.e. which lenders are lending money to the active number of borrowers, that is people between the ages of 15 and 64 who can actively participate in the business. Independent variables are Profitability (in terms of net profit, measured by kyats (the currency of Myanmar), size of MFIs (in terms of total assets and measured by kyats), age (measured by years), and type of institutions (NGOs, for-profit Companies).

Tab. 1 Variables, Proxies and Data Sources

Variables Notation		Proxy/ Determinants	Units	Data Sources
NB (Number of Borrowers)	Y	Breadth of Outreach	Number	Financial Regulatory Department (FRD)
NP (Net Profit)	X	Profitability	Myanmar kyats (Million)	Financial Regulatory Department (FRD)
TA (Total Assets)	X	Size of MFIs	Myanmar kyats (Million)	Financial Regulatory Department (FRD)
AGE(Age)	X	Age of MFIs	Years	Financial Regulatory Department (FRD)
(NGOs, Companies)	X	Type of Institutions	(NGOs=1, Companies=0)	Financial Regulatory Department (FRD)

Source: Authors' illustration

4. Empirical Results and Discussions

4.1 Descriptive data

The basic statistics calculated for this research are presented in the following table.

Tab. 2 Descriptive Statistics (2015-2020)

Variables	Mean	Std. Dev.	Maximum	Minimum
NB	8856.99	46807.52	567733.8	0.0
NP	606.77	4236.606	57654.17	-402.4
TA	10872.71	55032.67	657268.9	13.32
AGE	8.02	2.58	13.0	6.0

Source: Author's Calculation

Table 2 shows the summary statistics of the variables used in this study for the period of 2015 to 2020. According to Table 2, the number of borrowers ranged from 0 to 567,734, averaging 8,857.

The average value of NP for net profit is 606.77 and the lowest and highest values are -402.4 and 57,654.2. The minimum and maximum values for total assets (TA) are 13.32 and 657,268.9, with an average of 10,872.7.

The average year is 8 and the minimum and maximum age of microfinance institutions are 6 years and 13 years, respectively.

4.2 Result of Panel Unit Root Test

The Augmented Dicky-Fuller (ADF) test, also known as the standard unit root test, and the PP ((Phillips-Perron) test were used to determine the degree of stationary of the variables used in the model.

A panel unit root test is needed to be tested as a requirement to use multiple regression analysis: multiple regression cannot be used unless all variables are stationary at the level and, in such a case, it needs to be switched to other models.

Table 3 shows the calculated results of the panel data.

Tab. 3 Results of panel unit root test

Variable	Level	ADF		PP		Result
		Statistics	Prob.	Statistics	Prob.	
		t= -7.501	-3.450***	t= -7.503	-3.450***	
NB	I(0)	-2.870**	0.0000	-2.870**	0.0000	Stationary
		-2.571*		-2.571*		
		t= -7.690	-3.450***	t= -11.479	-3.450***	
NP	I(0)	-2.870**	0.0000	-2.870**	0.0000	Stationary
		-2.571*		-2.571*		
		t=-7.527	-3.450***	t= -7.601	-3.450***	
TA	I(0)	-2.870**	0.0000	-2.870**	0.0000	Stationary
		-2.571*		-2.571*		
		t=-3.903	-3.450***	t= -5.161	-3.450***	
AGE	I(0)	-2.870**	0.0023	-2.870**	0.0000	Stationary
		-2.571*		-2.571*		

Note: *, **, *** presents 10%, 5% and 1% significant level respectively.

Source: Author's Calculation

Table 3 shows test statistics, the first four tests and results were performed in the first experiments to check p-values and stationary status. The panel unit root tests used in this research are ADF and PP tests to test all variables using Stata software. As a result, variables are used to ensure that they do not exist in I (1) and I (2). All variables are stationary at level I (0).

The null hypothesis and alternative hypothesis of panel unit root tests can be deliberated as: panel data have a unit root (non-stationary); and: panel data have no unit root (stationary). Acceptance or rejection of null hypothesis can be supposed by two ways: checking the test statistics with critical values from 1%, 5%, and 10% confidence levels and another way is checking with p-values. For the first method, the absolute value of the test statistics must be greater than the absolute value of the values criticized to reject the null hypothesis. For the second method, the p-value must be at least less than 10% significance level in accordance

with rejecting the null hypothesis of sustaining unit root. All variables are stationary at the level.

4.3 Results of Estimation of Multiple Regression Model

In this paper, multiple regression model is used to estimate influencing factors of breadth of outreach in microfinance institutions by using EViews 8 software.

Table 4: Results of estimation of multiple regression model

Variable	Coefficient	Std. Error	t-Statistic	Probability
C	-974.4397	541.6876	-1.798896	0.0729
NP	0.106218	0.098096	1.082796	0.2797
TA	0.840810	0.007539	111.5227	0.0000
AGE	82.92073	64.67881	1.282039	0.2007
DUMMY	-1113.012	892.4267	-1.247175	0.2132
R-squared			0.995921	
Adjusted R-squared			0.995872	
S.E. of regression			3007.456	
F-statistic			20204.23	
Prob (F-statistic)			0.000000	

Source: Author's Calculation.

4.4 Results Discussion

Net profit (NP) is one of the explanatory variables proposed to test in this study. As the regression result depicts, (0.106218, $p = 0.2797$) has no significant effect on breadth of outreach of MFIs. In the current situation in Myanmar, some profitable lending institutions are more likely to focus on profit and lend to a person who comes to pay collateral because they are sure to earn higher interest rates. Lending to the poor and low-income people compared to entrepreneurs can be risky. Total assets is the second independent variable selected to examine its relationship with outreach of microfinance borrowers. The regression outcome shows that (0.840810, $p = 0.0000$) affects the outreach of microfinance borrowers significantly with a positive relationship. Therefore, the more the total assets, the more lending to the borrower.

The regression outcome reveals the existence of insignificant relationship between age of microfinance institution and outreach of MFIs (82.92073, $p = 0.2007$). It is not surprising that age has nothing to do with the outreach of microfinance institutions. Although microfinance associations have been around for a long time, it is not clear how much they will lend. It may take a long time to set up, but it is possible to get a small loan. Although it has only recently been established, it is possible to borrow more. It depends on the purpose and objectives of the microfinance institutions and their willingness to reduce poverty. Therefore, it has been observed that the length of the establishment does not have a direct effect on the outreach of the lending industry. The type of institution also has no effective correlation with the amount of outreach of the microfinance institutions. This paper does not prove to be effective in studying dummy variables with NGOs (1) and companies (0).

5. Conclusions

The findings of this paper show that all variables have no significant effect except total assets, a proxy of MFIs size. The study found that the higher the total assets of lenders (that means the larger the size of the MFIs) the more people lend to the poor. However, there is no correlation between the age of the organization and the outreach of the lending organization in Myanmar. Some of the paper that has been studied about this variable found the age to be relevant and some have not. In fact, in general, these variables may be less relevant. This is because even though the business is mature, it cannot be guaranteed that it will lend to a large number of

borrowers. A study of net profit found that the lending industry was more profitable, but it was not expected to lend more to borrowers. It has been observed that some MFIs in Myanmar focus only on the profitability of their business; they are more willing to lend to more profitable business owners, who are more secure than those who are less secure and less profitable. According to the Junyon Im and Sunny Li Sun (Junyon Im ,Sunny Li Sun, 2014) as the probability of MFIs providing services to the poor under social security considerations increases, profits increase. However, the business logic MFIs are less likely to provide services to the poor and lenders. This paper also found that the type of institution (NGO, Companies) was not as relevant to the breadth of outreach of MFIs, as other studies did.

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Nutritional Status of Under Five Years Children in Hlaing Thar Yar Township, Yangon, Myanmar

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Abstract

Nutrition is the basic requirement for all human beings for everyday movement and daily activities. To become a well-being person, he or she needs to achieve full nourishment. In addition, nutrition for kids is also based on the same formulas as nutritional values for adults. This study aims to investigate the nutritional status of under five years children with the awareness of their mothers or caregivers on the value of nutrition. In this study, both quantitative and qualitative case study research design and cross-sectional descriptive method are used. Stata Software was used for analyzing the data and descriptive and inferential statistics (chi-square test) were also used to present the survey results. The study found that there was no Severe Acute Malnutrition and only 10 children (4.55%) are at Moderate Acute Malnutrition, 49 (22.27%) are At-Risk and 161 (73.18 %) are at the Normal stage. As a result, the nutritional status of under five years children was normal in this study. In addition, the awareness of mothers and child age, ($P = 0.000$) and ($P = 0.015$) are statistically significant in explaining under five years children's nutritional status. This study found that the child possessed a suitable nutrition level when the mother had the proper knowledge of nutrition, awareness, and infant and young children feeding practices.

keywords: Nutrition, Nutritional Values, Severe Acute Malnutrition, At Risk, Moderate Acute Malnutrition, Normal Stage.

1. Introduction

Nutrition is the basic requirement for all human beings for everyday movement and daily activities. To become a well-being person, he or she needs to achieve full nourishment. In every community, children are recognized as a valuable natural resource and the greatest human investment for the development of a society. But malnutrition remains a primary cause of ill-health among children in developing countries.

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Considering the persistent high levels of acute and chronic malnutrition, the United Nations International Children's Emergency Fund (UNICEF), in partnership with local authorities, communities and implementing partners, supports the scaling-up of critical nutrition interventions. In both acute and protracted humanitarian situations, all women and children require a set of essential nutrition interventions to protect their health and well-being and to ensure every child achieves his or her full growth potential. These critical interventions include support for Infant and Young Child Feeding (IYCF) through counselling, micronutrient supplementation, community-based nutrition promotion, and the management of acute malnutrition (UNICEF, 2014).

Although Myanmar has shown a sound macroeconomic growth, the prevalence of undernutrition remains high among children and women. The most recent estimates from 2015-16 show a national prevalence of stunting of 29.2%, having declined from 40.8% in 2000. The prevalence of stunting in rural areas (31.6%) is higher than in urban areas (21.0%), and there are substantial differences by State/Region (Multi-sectoral National Plan of Action on Nutrition, MS-NAPAN, 2018).

Many children in Myanmar suffer from different forms of malnutrition. In Myanmar, 22.6% of under five years children are moderately stunted or too short for their age, while 12.7% are severely stunted; children who are moderately wasted or too thin for their height are 7.9%, while those severely wasted are 2.1%. In rural areas, children are more likely to be underweight and stunted than children in urban areas. Undernutrition is most common in Rakhine and Chin States than in other States and Divisions of the country, with a significant prevalence among the poorest families. According to the Demographic Health Survey [DHS] (2016), nationally, one out of three children under five years of age suffers from chronic undernutrition. It is caused by many factors: inadequate health; incorrect childcare and feeding; poor sanitation and hygiene behaviours; lack of diversified diet; limited access to basic social services; food insecurity and inadequate livelihoods; limited women's empowerment. Thus, in Myanmar, the World Food Programme [WFP], in partnership with the Government and UN agencies, is actively supporting the development of a new prioritized multi-sectoral Myanmar Action Plan for Food and Nutritional Security (2016-2025), as a response to the Zero Hunger Challenge (WFP Myanmar, 2016, Nutrition, Zero Hunger).

To grow healthy children, mothers or caregivers need to be fed the right amount of nutrients and follow a well-balanced diet which includes all of the food groups described in the food guide pyramid. Good nutrition is the source of child survival, health, and brain development as well as a well-balanced nourishment is a fundamental factor to grow and learn, to participate in, and contribute to their communities properly, which leads to substantial provision for the country's socioeconomic development. Actually, proper nutrition is not only crucial for

everybody but also important for kids because of their growth and development. Nutritional deficiencies affect physical growth development in the long run and it can lead to poor health and disability in old age. The high prevalence of malnutrition jeopardizes future economic growth by reducing the intellectual and physical potential of the entire population (Desalegn, D., Egata, G., Halala, Y., 2017).

Moreover, nutritional deficiencies become the main issue for developing countries. Health and Social Services agreed that young children need to develop healthy eating and physical activity habits early on. Children are at a time in their life when they are constantly growing and learning new knowledge (Kaban Montessori School, 2018). Children who follow a regular diet of healthy fats and high-fibre foods may lead to avoiding the chances of chronic illnesses even though the illness tends to be genetic within their families. Currently, less than a quarter of infants in Myanmar are exclusively breastfed and many young children are fed diets deficient in proteins, fats, and essential vitamins and minerals. Therefore, this study intended to investigate the nutritional status of under five years children and to find out how mothers or guardians perform on the health and nutritional value of their kids.

1.1 Objectives of the Study

The objectives of the study are to examine the nutritional status of under five years children and to know about the awareness of mothers or caregivers on the value of nutrition in Hlaing Thar Yar Township, Yangon, Myanmar.

1.2 Method of Study

Both quantitative and qualitative case study research design and cross-sectional descriptive methods were used for this study. A semi-structured interview questionnaire was prepared in order to obtain the intended information. Primary data were collected after getting ethical approval from the relevant authorities and the respondents. A stratified random sampling method was applied to select the sample of 200 households from four wards of Hlaing Thar Yar Township. Stata software was used for analyzing the data. Both descriptive and inferential statistics (chi-square test) were also used to present the survey results. Moreover, frequencies and cross-tabulation were applied to clean the data and describe

frequencies, means, the standard deviation in descriptive analysis on socio-demographic characteristics of households, and nutritional status of under five years children.

The questionnaire was designed to assess the nutritional status of children and its association with demographic characteristics of the households, socioeconomic factors, mothers' awareness, and dietary diversity intake of the under five years children. And a standard MUAC (Mid- Upper Arm Circumference) tape was used to measure the nutritional status of under-five years children. The measurement of the dietary diversity score of the children was constructed on simple counts of the number of food groups consumed by the child in the previous 24 hours. Generally, the seven food groups recommended by the World Health Organization (WHO) for Infant Young Children Feeding (IYCF) were used as guidelines for assessing individual dietary diversity.

1.3 Scope and Limitations of the Study

The focus of this study is to find out how mothers or guardians perform on the health and nutritional value of their children's nutritional status and to assess the nutritional status of under five years children using MUAC cut-off values for malnutrition. This study has some limitations. Firstly, as MUAC does not count body composition, it may be an equipment of a limited value in identifying overweight and obesity with low skeletal muscle mass. Secondly, the study sample was extracted from a single township and does not cover the wider Myanmar population, even though the participants were randomly selected in each ward.

2. Survey analysis

2.1 Survey Profile

The survey area was focused on Hlaing Thar Yar Township which is located in the western part of Yangon, Myanmar. The township comprises twenty wards and nine village tracts and shares borders with Htantabin Township in the north and west, Insein Township, Mayangon Township, and Hlaing Township in the east

across the Yangon River, and Twante Township in the south (Yangon City Development Committee [YCDC], 2009). Hlaing Thar Yar Township's population is nearly 730,000 and about half of them are squatting illegally. Migration has been attracted by the development of fast-expanding industrial zones, such as garments and other light industries. After Cyclone Nargis, some of the affected population from the Delta region migrated to Hlaing Thar Yar. Hlaing Thar Yar Township can be known as a traditional township; poor people who moved out of traditional rural livelihoods, however, still work as low-skill casual laborers. In addition, Hlaing Thar Yar Township is a flooding and large slum area of Yangon in comparison to the other township. Therefore, the indicators for infant and young children feeding practices were poor, along with inappropriate health care seeking behaviour in case of children's illness.

2.2 Survey Design

The structured questionnaire was designed to assess the nutritional status of under five years children. It involved five sections; the first section was about the demographic characteristics of the participants; the second section was concerned with socioeconomic factors of the households; the third section related to the dietary diversity intake of the under five years children; mothers or caregivers' awareness was examined in the fourth section, to determine to what extent their attitude turn into some health knowledge indicators like the preventive method, personal hygiene, home sanitation, healthy food, chemical fertilization, etc. Likert Scale was used in determining awareness, attitude, and perception of mothers or caregivers. The last section was the anthropometric measurements of children under five with MUAC tape in this study. The sampling unit for this study was the households with children aged 6 to 60 months of age and the respondents were the mothers or the principal caregivers of the index child. Data were collected by three well-trained surveyors and the measurements were done by two nutritionists.

3. Survey results

3.1 Demographic Profile of the Children's Mothers or Caregivers

The following table shows the distribution of demographic characteristics of the under five years children's mothers and caregivers in Hlaing Thar Yar Township, including age, gender, marital status, education level, household income (Myanmar Kyats: MMKs), and occupation.

Nutritional Status of Under Five Years Children in Yangon, Myanmar

Tab. 1 Demographic Characteristics of Mothers or Caregivers

Particular	Categories	Frequency	Percentage (%)	Mean \pm Standard Deviation
Age (years)	17-19	20	10.00	33.29 (10.3713)
	20-29	42	21.00	
	30-39	92	46.00	
	40-49	30	15.00	
	50-59	9	4.50	
	> 60	7	3.50	
Gender	Male	13	6.50	1.935 (0.2471)
	Female	187	93.50	
Marital Status	Single	-	-	1.16 (0.3675)
	Married	164	82.00	
	Divorce/ Widow	36	18.00	
Education Level	Illiterate	6	3.00	3.92 (1.1089)
	Monastery	10	5.00	
	Primary School	53	26.50	
	Middle School	68	34.00	
	High School	51	25.50	
	University/ Graduate	12	6.00	
Income (MMKs)	(150,000-200,000)	19	9.50	244005 (52063.69)
	(200,001-250,000)	132	66.00	
	(250,001-300,000)	30	15.00	
	(> 300,000)	14	7.00	
	Not Answer	5	2.50	
Occupation	Government Staff	3	1.50	5.345 (1.5774)
	Company Staff	9	4.50	
	Own Business	16	8.00	
	Factory Worker	25	12.50	
	Shopkeeper	50	25.00	
	Casual Worker	29	14.50	
	Dependent/ Housewife	68	34.00	
Total		200	100	

Source: Survey Data (2018)

Table (1) reveals the distribution and relationship between demographic characteristics and socioeconomic factors of households. The mean age of the mothers or caregivers was 33.29 years, with the youngest being 18 years and the oldest 68 years old at the 95% confidence level, 33.29 ± 10.3713 . Thus, the average age of a mother or caregiver was between 33 years and 43 years. A total of 200 households, including 187 (93.5%) female and 13 (6.5%) male respondents, including 220 under five children, participated, because households with more than one child aged (6 – 60) months were included in this study.

Concerning the marital status, there is no single, about 82 % of respondents were married, the remaining 18 % of respondents were divorced and some were widowed. In addition, 82 % of females were the mothers of under five years children, only 6.5% were their fathers and 11.5% were the head of households in their families.

Regarding the educational background, among 200 respondents 3% of females are illiterate, 5% of households' heads are learned by monastery education, most of the children's mothers and caregivers had completed Middle school (33%), Primary school (26%) and High school (25%), respectively. About 6% were attending University or graduated.

Concerning the household's monthly income, 2.5% of respondents refused to declare their family income. 9.5% of respondents were included in the low-income bracket (150,000-200,000) MMKs, while 66% of respondents were in the middle-income bracket (200,001-250,000) MMKs, considered as middle income. High-income respondents were 15 % and 7 % of respondents were classified as very high-income earners, respectively.

This study found that housewives or dependents were high up to 34 % of the sample, because most of the targeted respondents were females who were mothers of under five years children. The second most popular occupational group was shopkeepers (25%), while factory workers were 12.5%. About 8% were self-employed or engaged in their own business and 14.5% were casual workers. Company staffs were 4.5%, and only 1.5% were government staffs.

3.2 MUAC Measurement

According to the anthropometric method used to assess body composition, the body is considered to be made up of two components, such as the fat mass and the fat-free mass. Among the different measurements used to assess these two compartments, the Mid Upper Arm Circumference (MUAC) is an accurate way to measure fat-free mass. It is the easiest and simplest way to measure, as a special

tape is used for measuring the nutritional status of under five years children in this study.

The MUAC tape has three or four colours, with the red colour (i.e. MUAC less than 11.0 cm) indicating Severe Acute Malnutrition (SAM), in which case the child should be immediately treated. A MUAC of between 11.0 cm and 12.5 cm (with red colour in three-colours tape or orange colour in four-colours tape) indicates Moderate Acute Malnutrition (MAM), in which case the child should be immediately referred for supplementary treatment. A MUAC showing the yellow colour (between 12.6cm and 13.5cm) indicates that the child is At-Risk and should be counselled and followed-up for growth promotion and monitoring; finally, the green colour (above 13.5cm) 'indicates that the child is Normal stage or well-nourished'.

In 2013, the WHO postulated guidelines to use MUAC at the community level to test for SAM, while healthcare workers in primary healthcare facilities and hospitals can assess the nutritional status either with MUAC or WHZ (Weight for Height) and check the bilateral oedema in children aged 6–59 months and infants. Children with medical complications and SAM are treated as inpatients in facilities and hospitals, whereas, children without medical complications and SAM are treated at home, following a community-based program for the management of acute malnutrition (CMAM) (World Health Organization, 2003).

3.2.1 Severe Acute Malnutrition (SAM)

Severe acute malnutrition is characterized by the presence of oedema of both feet or severe wasting and remains a major cause of mortality among under five years children. According to the WHO growth standards, (2006), severe wasting or severe acute malnutrition is defined by a middle-upper arm circumference [MUAC] < 11.0 cm in children 6-59 months, or a weight-for-height/length < -3 Z scores in children aged 0 to 59 months. If children who suffer from Severe Acute Malnutrition show loss of appetite or any other medical complication, they should be admitted for inpatient care. Children who have a good appetite and no medical complications can be managed as outpatients (WHO, 2000). The weight and height of children under 59 months are used as proxy measures for the general health of the entire population. Weight-for-height (wasting) provides the clearest picture of acute malnutrition in a population at a specific point in time. Black R, Allen L, Bhutta Z, et al., (2008), asserted that SAM children have an approximately 10 times higher risk of mortality than their well-nourished peers.

Wasting and stunting are very different forms of malnutrition. Stunting is chronic and its causative factors are poorly understood. Stunting usually does not pose an

immediate threat to life and is relatively common in many populations in less-developed countries. This is not to say that it is unimportant, just less important than wasting in humanitarian emergencies. Wasting resulting from an acute shortage of food is reversible with refeeding and has a relatively high mortality rate. For these reasons, wasting is the highest priority form of malnutrition in humanitarian emergencies (London School of Hygiene and Tropical Medicine, 2009).

3.2.2. Moderate Acute Malnutrition (MAM)

Moderate Acute Malnutrition (MAM) refers to moderate wasting, that is the weight for height < -2 z-score and > -3 z-score for 0 - 59 months children or MUAC < 12.5 cm and > 11.5 cm for 6 - 59 months children.

Acute malnutrition, or wasting, is an indicator of recent or current undernutrition and is often the result of short-term inadequacy of food, and a high burden of morbidity, such as diarrhoea or respiratory infection. It is assessed by measurements of weight-for-height, mid-upper arm circumference (MUAC), or the presence of oedema. According to the 2015-16 DHS, 7% of the children under five years of age are classified with acute malnutrition, which is a reduction of about a third from the level observed in 2000 of 10.7%. The prevalence of severe acute malnutrition (SAM) among under five children is only 1%, while the problem of moderate acute malnutrition (MAM) is significantly higher. Although younger children have a higher risk of wasting, there are no significant differences based on socioeconomic status, which implies that problems leading to acute short-term nutritional insults are widely distributed in the country and occur even among families who should be able to afford sufficient quality and quantity of food.

3.3 Nutritional Status of Under Five Years Children

The following table described the condition of nutritional status of under five years children in Hlaing Thar Yar Township, Yangon, Myanmar.

Tab. 2 Nutritional Status of Under-Five Years Children

MUAC Grading (cm)	Nutrition Level	Frequency	Percentage (%)
< 11.0	Severe Acute Malnutrition	0	0
11.0 to 12.5	Moderate Acute Malnutrition	10	4.50
12.6 to 13.5	At Risk	49	22.27
≥ 13.6	Normal	161	73.18
Total		220	100%

Source: Survey Data (2018)

Table (2) shows that there was no Severe Acute Malnutrition and only 10 children (4.5%) were at Moderate Acute Malnutrition, 49 children (22.27%) were At Risk, and 161 children (73.18%) were Normal nutritional status. As a result, the nutritional status of under five years children was normal in this study.

3.4 Children's Nutrition Level by Age and Gender

Age and gender of the children may be critical factors to determine the nutritional status of children. Similarly, Olack, B.; Burke, H.; Cosmas, L.; Bamrah, S.; Dooling, K.; Feikin, D.R.; Talley, L.E.; Breiman, R.F., (2011), stated that boys are more likely to be malnourished because they are more influenced by environmental stress, which largely contributes to malnutrition. Therefore, the study discusses the different nutritional statuses of under five years children by grouping them into each age level and gender point that can be seen in the following table (3) and table (4), respectively.

Tab. 3 Classification of Children's Nutritional Status by Age Groups

Child's Age (months)	Severe Acute Malnutrition < 11.00 cm	Moderate (11.0-12.5cm)	At Risk (12.6-13.5cm)	Normal (≥ 13.6 cm)	Total
6-12	0	6 (60.00%)	20 (40.82%)	36 (22.36%)	62 (28.18%)
13-24	0	3 (30.00%)	12 (24.49%)	37 (22.98%)	52 (23.64%)
25-36	0	0 (0.00%)	6 (12.24%)	45 (27.95%)	51 (23.18%)
37-48	0	1 (10.00%)	5 (10.20%)	31(19.25%)	37 (16.82%)
49-60	0	0 (0.00%)	6 (12.24%)	12(7.45%)	18 (8.18%)
Total	0 (0.00 %)	10 (100%)	49 (100%)	161 (100%)	220 (100%)

Source: Survey Data (2018)

Chi2-P= 0.015

From table (3), there were 6 (about 60%) Moderate Acute Malnutrition Children among the under the one-year age group, 3 (about 30%) Moderate Acute Malnutrition children between one- and two-years age group and approximately, 1 (about 10%) of Moderate Acute Malnutrition children are between three to four years of age. In summary, Moderate Acute Malnutrition commonly occurs in younger age groups, because of the need for supplementation for children of this age.

Moreover, the mean age of the sampled children was 26.6 months with the youngest being 6 months and the oldest 60 months old at the 95% confidence level, 26.64091 ± 1.95839 . Thus, the average age of a child was between 28.6 months and 24.7 months. As a result of the P-value, $P = 0.015$, Pearson chi-square significant level indicates that age of the child may influence the nutritional status of the child was also supported by the findings from this review.

Tab. 4 Children's Nutrition Level by Gender

Gender	Moderate (11.0 to 12.5 cm)	At Risk (12.6 to 13.5 cm)	Normal (\geq 13.6 cm)	Total (%)
Male	5 (50.00%)	27 (55.10%)	84 (52.17%)	116 (52.73%)
Female	5 (50.00%)	22 (44.90%)	77 (47.83%)	104 (47.27%)
Total	10 (100%)	49 (100%)	161(100%)	220 (100%)

Source: Survey Data (2018)

Chi2-P = 0.001

According to table (4), the nutritional status of under five years children by sex was classified into two groups to know the difference between male and female nutrition levels. The targeted sample of 200 households in this study is comprised of 116 male children and 104 female children, and a proportion of 52.73% boys and 47.27% girls, respectively. Results indicate that out of 220 children, there are five male and five female at Moderate Acute Malnutrition. Although several research studies describe that boys are more likely to suffer from malnutrition, as well as the growth rate of boys is slower than girls from the medical point of view, in this study the number of males and females at Moderate acute Malnutrition did not differ according to sex. However, male children in At-Risk and Normal Nutritional status are more frequent than females. Thus, the study found that the prevalence of malnutrition between males and females, showing significant differences at Pearson chi2 (4) = 18.2408, P = 0.001.

3.5 Mother's or Caregiver's Awareness

Definition of awareness is the quality of being aware: knowledge and understanding that something is happening or exist. Generally, awareness means the personal ability to know and perceive automatically, to believe, or to be conscious of being events. Awareness of mother or caregiver refers to knowledge, attitudes, and practices which can be acquired through many ways such as education, communication with each other around their environment, different types of media, self-experiences, etc. Knowledge is important to make someone's

activities. Mother's knowledge will affect the household consumption patterns and knowledge would change her attitudes. It was the approval of an action. A progressive attitude develops health values, particularly the value of nutrition manifested in response.

Similarly, feeding and caregiving practices are important contributing factors to the nutritional status of children. Care can be defined as the provision in the households and in the community of time, attention, and support required to meet the physical, mental and social needs of the growing child and other household members (Engle, Menon & Haddad, 1996). A caregiver's ability to provide adequate care is dependent on several factors, including, but not limited to, the caregiver's education, knowledge and beliefs, physical health, autonomy and control of resources, workload and time availability, and family and community social support (Engle, et al., 1996). Moreover, mothers or caregivers with a low educational level have a small chance of getting well-paying jobs. Phooko-Rabodiba et al. (2016) further elucidated that education enhances awareness and knowledge of health issues, hygiene practices, and household income. Thus, caregivers with a low educational level may lack an understanding of hygiene practices and other health issues.

In this study, mothers' or caregivers' awareness level was assessed by different indicators related to health knowledge such as healthy food, preventive methods, home sanitation, personal hygiene, self-medication, and hygienic practices. The perception of mothers was strongly influenced by the actual growth of their children.

Tab. 5 Mother's or Caregiver's Awareness Level on the Value of Nutrition

Level of Awareness	Poor	Basic	Good	Very Good	Total
Frequency	12	95	56	37	200
Percentage	6.00	47.50	28.00	18.00	100

Source: Survey Data (2018).

Table (5) describes the level of mothers or caregivers' awareness of the value of nutrition. The majority of the respondents (47.50%) had basic knowledge, while the minority of respondents (only 6.00%) had poor knowledge and practice level; about 28.00% and 18.50% of respondents had good and very good awareness levels, respectively.

Tab. 6 Nutritional Status of Children and Mothers' or Caregivers' Awareness

Nutrition Level	Level of Awareness				Total
	Poor	Basic	Good	Very Good	
Moderate	5 (41.67%)	5 (5.26%)	0 (0.00 %)	0 (0.00%)	10 (5.00%)
At Risk	4 (33.33%)	35 (36.84 %)	6 (10.71%)	4 (10.81%)	49 (24.50%)
Normal	3 (25.00 %)	55 (57.89 %)	50 (89.29%)	33 (89.19%)	141 (70.50%)
Total	12 (100%)	95 (100%)	56 (100 %)	37 (100 %)	200 (100%)

Source: Survey Data (2018)

chi2- P = 0.000

Table (6) indicates that mothers' or caregivers' awareness has a highly significant impact on the nutritional status of children ($p=0.000$). The study reflects that the children whose mothers or caregivers were unaware or had poor or basic nutritional knowledge were not only suffering from Moderate Acute Malnutrition but were also found in a situation of At-Risk level, while mothers or caregivers with higher levels of awareness nurtured their children at Normal stage.

The children's nutritional status depends upon the mother's or caregivers' awareness level and the awareness of mothers strongly influenced the actual growth of their children. Thus, there was a positive relationship between the nutritional status of children and mothers' or caregivers' awareness.

Tab. 7 Nutritional Status of Children and Households' Monthly Income

Nutrition Level	Income Level (Kyats)					Total
	Not Answer	Low income	Middle income	High income	Very High income	
Moderate	2(40.00%)	4(21.05%)	3(2.27%)	1(3.33%)	0(0.00%)	10 (5.00%)
At Risk	2(40.00%)	9(47.37%)	25(18.94%)	8 (26.67%)	5(35.71%)	49(24.50%)
Normal	1(20.00%)	6(31.58%)	104(78.79%)	21(70.00%)	9(64.29%)	141(70.50%)
Total	5(100%)	19(100%)	132(100%)	30(100%)	14(100%)	200 (100%)

Source: Survey Data (2018)

chi2- P = 0.000

Table (7) shows that 80.00% of respondents who refused to answer about their family income have under five years children with Moderate Acute Malnutrition or At-Risk, while only 20.00% of them were found at Normal stage. Similarly, 21.05% and 47.37% of low-income respondents have children in Moderate Acute and At-Risk level, while 31.58% of them were at Normal stage. Conversely, there was no Moderate Acute Malnutrition child in very high-income families, even though only 3.3% of respondents with high income have under-five children in Moderate Acute Malnutrition status. According to the study, high-income families were less likely to have child malnutrition and lower-income families are more likely to be malnourished. The study indicates that there was a statistically significant correlation between households' monthly income and nutritional status of under five years children ($P = 0.000$). As a result, low family income is a factor that influences the household consumption pattern, which turns into the nutritional status of the household, that will lead to the cause of malnutrition in children.

3.6 Dietary Diversity

In this study, the dietary diversity method is used to determine the nutritional status of under five years children in Hlaing Thar Yar Township, Yangon,

Myanmar. It is a measure of the number of food groups consumed over a reference period, usually within 24 hours. In general, there are seven major food groups based on the WHO's Infant Young Children Feeding (IYCF) guidelines. These food groups are (1) grains, roots, and tubers (2) legumes and nuts (3) flesh foods like meat, fish, poultry, and liver or organ meats (4) eggs (5) Vitamin A-rich fruits and vegetables (6) dairy products like milk, yogurt and cheese and (7) other fruits and vegetables. To measure the dietary diversity score of the children, simple counts of the number of food groups consumed by the child in the past 24 hours were performed. Generally, the seven food groups recommended by WHO's Infant Young Children Feeding (IYCF) guidelines for assessing individual dietary diversity were used.

Tab. 8 Nutritional Status of Children concern with Dietary Diversity Score

Nutrition Level	Dietary Diversity Score			
	Low	Medium	High	total
Moderate Acute	9 (90.00)	1 (10.00%)	0 (0.00%)	10 (100%)
At Risk	31 (63.27%)	14 (28.57%)	4 (8.16%)	49 (100%)
Normal	92 (57.14%)	36 (22.36%)	33 (20.49%)	161(100%)
Total	132 (60.00%)	51 (23.18%)	37 (16.82%)	220 (100%)

Source: Survey Data (2018)

From table (8), in terms of dietary diversity score, the majority of the children, about 60%, had low dietary diversity (≤ 3 food groups), about 23.18% had medium dietary diversity (4 and 5 food groups) and 16.82% obtained high dietary diversity score (≥ 6 food groups). The study found that 90.00% of Moderate Acute Malnutrition were at low dietary diversity score, 10.00% of Moderate Acute Malnutrition were at medium dietary diversity score and there were no malnourished children who were included in the group with a high dietary diversity score. At the same time, the dietary diversity of children depends on the family income and awareness of mothers or caregivers. The cost of diet in poor households explored in this study showed that families in urban areas cannot afford a nutritious diet and essential expenditure on non-food items.

4. Conclusions

The nutritional status of Hlaing Thar Yar Township is not in severe condition and only 10 children (4.5%) were at Moderate Acute Malnutrition, 49 children (22.27%) were At Risk, and 161 children (73.18%) were at Normal nutritional status. As a result, in this study the nutritional status of under five years children was normal.

The study found that up to 6% of mothers or caregivers were unaware or had poor nutritional knowledge, 47.5% had basic knowledge and 46.5% of respondents had good nutritional knowledge. Especially, mothers' or caregivers' awareness has a highly significant impact on the nutritional status of children ($P = 0.000$), at a 5% significance level. Thus, this study reflects that children whose mothers or caregivers had poor and basic nutritional knowledge not only suffered from Moderate Acute Malnutrition but were also found in a situation of At-Risk level, while mothers or caregivers with good nutritional knowledge nurtured their children at Normal stage. In addition, Moderate Acute Malnutrition was higher when mothers had Primary and Middle school education. On the other hand, higher education levels of mothers or caregivers resulted in a lower rate of malnutrition in their children. Similarly, the awareness of mothers or caregivers and dietary diversity were the strongest factors affecting children's nutritional status ($P = 0.000$).

According to the mothers' or caregivers' educational background, Moderate Acute Malnutrition highly occurred in children whose mothers had Primary and Middle school education, while higher education levels of mothers or caregivers resulted in a lower rate of malnutrition in children. The lack of education contributes to malnutrition in several ways, including a low family income. At the same time, the dietary diversity of children depends on the family income and awareness of mothers or caregivers, since the largest occurrence of Moderate Acute Malnutrition in children was related to a low dietary diversity score. The cost of diet in poor households explored in this study showed that families in urban areas cannot afford a nutritious diet and essential expenditure on non-food items. Ultimately, the awareness of mothers or caregivers is the most important factor for nutrition, including the means to achieve an optimal diet and other factors contributing to good nutrition.

Finally, this study explained that the children achieved a suitable nutrition level when the mothers or caregivers had the proper knowledge of nutrition, awareness, and infant and young children feeding practices. Many mothers or caregivers in Hlaing Thar Yar are at low socioeconomic status, such as lack of education, low family income, unstable jobs, etc, but they have good environmental knowledge and keep their children healthy, following the guidelines of the Child Health Seminars organized by World Health Organization

[WHO], United Nations International Children's Emergency Fund [UNICEF] Myanmar, World Food Programme [WFP], International Non-government Organizations [INGOs] and Non-government Organizations [NGOs]. Infants and young children may face hunger, inadequate nutrition, and impaired physical and neurological development as a cause of early death of their mothers, as the utmost responsibility for child nutrition stays with the parents. In 2004, the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO) found out the vitamin and mineral requirements for all age groups.

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