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Table of Contents:

Contributions of Multilateralism to achieve Energy Transition goals on Electromobility: An approach from the Legal Framework in Mexico City

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Abstract

The research aims to explore the Contributions of Multilateralism in order to achieve Energy Transition Goals, as well as the need for lawmakers to implement the international commitments adopted by States. We will emphasize the importance of electromobility as a key strategy for achieving energy transition goals. These strategies may be useful in countries like Mexico, which has struggled with old fossil fuel vehicles in the public transportation system, a growing number of private cars, inefficient city infrastructure, and a still fossil-fuel-dependent economy. To mitigate climate change, we need effective actions to improve air quality in major cities and achieve energy transition goals. Throughout the analytical method, the main commitments in international agreements and international meetings on energy transition can be explored, while the comparative legal method will identify if the local law complies with the international commitments. The consideration of the multilateralism agenda will prevent short-term political visions or indifference to sustainability from affecting the achievement of energy transition goals. Additionally, multilateralism may enhance the content of the law so that the public, private, and social sectors fully engage in the accomplishment of the goals, duties, and obligations that the international community has set forth.

Keywords: Multilateralism, Energy Transition, Electromobility, Climate Change

Introduction

Energy transition has been one of the key topics on the international agenda in the last decades. Certainly, the climate change emergency, the requirement for sustainable cities, the energy crisis, and the energy security to fulfill the needs of human beings for present and future generations have been significant in exploring alternative

solutions to the fossil fuel-based economy.

The multilateral agreements and meetings among States, enterprises and International Organizations have been of special importance in addressing the concerns and challenges of humanity on issues such as climate change and energy transition. Still, financial, short-term political visions, social, or cultural issues have been the problems that have hindered the optimal level of engagement in energy transition. Mexico City is an example where traffic jams, old fossil fuel vehicles in the public transportation system, a growing number of private cars and inefficient city infrastructure.

In this regard, the Law as a whole is one of the instruments that should set the framework of actions that the public, private and social sectors need to adopt in order to reduce the level of greenhouse gases and achieve the goal of sustainability. The international agenda and commitments could be useful in regulating, evaluating and fostering the actions in energy transition.

A considerable part of the international community has identified electromobility as a solution to tackle pollution in cities and mitigate climate change, as it can reduce greenhouse gas emissions with low operational costs, which may be an incentive for developing countries.

Considering this, our research question is: Can multilateral agreements help Mexico City adopt laws ensuring sustainability measures, such as electromobility?
The working hypothesis suggests that multilateral agreements facilitate the inclusion of legal clauses promoting sustainable electromobility in Mexico City, such as principles, collaboration mechanisms and actions that the public, private and social sectors should take to achieve energy transition goals.

This research will consider the legal perspective to explore the main commitments in international instruments and multilateral agreements related to energy transition, with special reference to electromobility. The content of these instruments and agreements may lead to the proposal of some indicators to evaluate the national law. The Mexican law will be referred to as an example of the pending issues that need to be considered in electromobility. Legal literature on multilateralism and legal rationality is relevant in exploring the results and discussions of this paper, as well as in identifying the contributions of multilateralism to achieving energy transition goals.

Methods

Analytical method

The analytical method helps to identify the pollution problems that States like Mexico are facing in major cities, as well as to propose some indicators to analyze local laws. These indicators may derive from the commitments of the States adopted in the United Nations Framework Convention on Climate Change, the Paris Agreement, the Conference of the Parties to the United Nations Climate Convention, and regional meetings in the past five years, as well as some guidelines set forth by international organizations.

Pollution and the problems underlying the transport sector in Latin America

According to the Low-emission transport to achieve the Paris Agreement in Latin America and the Caribbean Progress and recommendations of the United Nations

Development Programme (2025), in 2021, the energy sector was the largest emitter of Greenhouse Gas (GHG) effects, contributing 73.2% of total emissions. The situation was worse in Latin America and the Caribbean, where 38% of the emissions came from the transport sector, which is the major generator of carbon dioxide (CO2) emissions.
The aforementioned Report states that the transport sector makes such a significant contribution to GHG emissions in the Latin America region because of its energy consumption, mainly dependent on oil (97.2 percent of the transport sector's energy demand was met by fossil fuels).

Some problems with public transport (bus, subway, train and cable car) and light vehicles (car, motorbike and taxi) in the region relate to the use of diesel fuel, the fuel subsidies that distort the comparative costs of clean transport technologies compared with less costly fossil fuel-based alternatives, the increase of private vehicles since 2010, the low quality and coverage of public transport, the high acquisition cost of vehicles, lack of efficient charging networks and even inefficient city planning.

Several measures and strategies for the transport sector proposed by the Nationally Determined Contributions and Long-Term Strategy have been implemented, such as transport supply, demand management, urban planning, as well as gender equality and social inclusion. Argentina, Belize, Chile, Colombia, Costa Rica, Guatemala, Mexico and Uruguay allege to have a long-term strategy documents that strive for actions to achieve carbon neutrality by 2050 that include measures such as new technology, support of electrification of public transport, regulatory and institutional policies to promote sustainable mobility, transition to low-emission technologies for private vehicles and taxis, and regulatory frameworks to encourage fleet renewal and promote energy efficiency. However, the study shows that progress has not been significant enough, as only 4-13% of the bus fleet is operational in countries like Chile, Colombia or Mexico, the limited incorporation of buses that run on natural gas or hydrogen, the allocation of funds and launch of initiatives, the lack of rail systems for passenger transport and the slow process to expand low emission car fleets or electrify car fleet or low emission taxis.

As seen, Latin America deals with a considerably polluting public transport system dependent on fossil fuels and unsustainable cities. At a national level, the referred problem directly and indirectly infringes human rights, such as health, environment, equality, freedom, among other rights. The international community should also be concerned about the situation of the mentioned region because of the emissions of GHG that lead to climate change-related problems. In addition, it can be inferred that the region has not taken the steps to go beyond the oil-based economies and needs to foster further action for energy transition.

The recommendations of the United Nations Development Programme for the implementation of sustainable transport initiatives and fulfilling the NDCs involve the understanding the social component, urban planning and transport supply, technological renovation including the need to define a strategy to expand and strength networks and charging stations for public and private transport, the development of an offer focused on public and non-motorized transport, financing of low-emission transport supply and the elimination of subsidies of conventional sources such as fossil fuels.

Energy and Environmental Law as a whole has an important role in setting the bases for implementing sustainable transport initiatives, such as electromobility. The

international commitments of the States are of special relevance in setting in the law the rights, duties, faculties, obligations, incentives, and sanctions on the topic. Multilateralism is essential for identifying the primary concerns of the international community and the actions that States should take to achieve sustainable objectives.

International Cooperation and Multilateralism in Climate Change and Energy Transition

The achievement of the objectives in energy transition with alternatives, such as electric vehicles, has to consider the efforts and commitments made at an international level. These efforts emphasize the relevance of multilateralism, which, for Qin (2019) is an accepted principle of the special requirements of transnational governance and the choice that international society can make, as there are many transnational problems to be solved. States should come together to coordinate their national policy or their relations with non-discrimination, indivisibility, and diffuse reciprocity that integrate the mechanism to manage the global and/or regional commons and deal with transnational threats. In addition, multilateralism is closely related to local conditions, rule-based guidance, relation-attuned cultures, and circumstances that foster a variety of anchoring practices to achieve effectiveness and resilience.

Therefore, it can be assumed that multilateralism accounts for an effort to achieve solutions between States through a collaboration guided by rules, principles, and institutions, as well as a learning process from the culture and conditions of each State.

Among the issues that the international community should be concerned about are those related to climate change and the need for energy transition solutions, such as electromobility. According to Heffron (2021), energy transition is about switching from a fossil fuel-based economy to one based on low-carbon energy sources. Here, it is possible to identify the contributions of electric cars that will bring further changes in the future. Energy law needs to be flexible and able to adapt to new possibilities, incentivize new energy technology, change the oil-based economy, and ensure it is not inhibiting economic growth.

Energy transition represents a process aimed at mitigating the dysfunctions of fossil fuel markets, managing risks arising from their vulnerability, and fighting against climate change and the effects of air pollution (Torres, 2021). Electromobility, hydrogen, and biofuels can be considered as solutions to reduce the emissions of greenhouse gases from fossil fuels (Delgado Ramos, et. al., 2013). However, because of the costs and technology development, for now, electromobility has become popular among States.

At a national level, the law needs to address the relevance of a low-carbon energy economy to foster solutions to change the energy matrix highly dependent on oil. Newell (2005) stressed that in the developing countries, such as those in Latin America, the environment assumed a rising status on the national political agendas due to the pressures from global institutions, donors, active citizen movements, and the scientific understanding. Yet, the status of the environment as an issue on developing country agendas is not secure, as they are loosely embedded within national policy processes, incoherently related to wider economic and social agendas, and subject to displacement. The risk that some developing countries may not consider the environment as a priority

emphasizes the relevance of the multilateral agreements.

The efforts of the international community to protect the environment can be traced in the United Nations Conference on the Human Environment (1972); Vienna Convention for the Protection of the Ozone Layer (1985); Montreal Protocol on Substances that Deplete the Ozone Layer (1987); Convention on Biological Diversity (1992); the Rio Declaration on Environment and Development (1992); Convention on Environmental Impact Assessment in a Transboundary Context (1992); United Nations Framework Convention on Climate Change -UNFCCC- (1994) and the Conferences of the Parties on Climate Change that have been held every year since 1995; Kyoto Protocol (1997); Millenium Declaration (2000); the Johannesburg Declaration on Sustainable Development and the Plan of Implementation (2002); Universal Declaration on Bioethics and Human Rights (2005); the United Nations Conference on Sustainable Development (2012); Sendai Framework for Disaster Risk Reduction (2015); Addis Ababa Action Agenda on Financing for Development (2015); Transforming our world: the 2030 Agenda for Sustainable Development with its 17 Sustainable Development Goals (2015) and the Paris Agreement (2015).

The International Organizations have also proposed a series of guidelines and recommendations on energy transition and electromobility, such as the World Bank, the International Monetary Fund, the International Energy Agency, the International Renewable Energy Agency and the International Petroleum Industry Environmental Conservation Association, that has explored low-emissions pathways in transport (IPIECA 2016; IPIECA 2019).

The guidelines, codes of conduct, compliance procedures, and other recommendations show that International Environmental Law is a fertile area for soft law, which allows actions to protect the environment dynamically (Redwell, 2016). The energy transition model relates to the environment as it seeks to reduce the emissions of GHG, mitigate the effects of climate change and prevent the effects on humans and other living beings.

The regional systems of human rights - such as the European Human Rights System, the African System of Human Rights, and the Inter-American System of Human Rights - could also play a role in ensuring that energy projects promote and protect human rights to the fullest extent.

Regional meetings are also of special relevance to share common needs, concerns, and proposals for solutions. As for Latin America, the following meetings are of special interest:

Latin America Energy Forum and Latin America Energy Summit (2025), whose objectives are to inform the American energy community of business opportunities in the energy sector within the region, learn about energy initiatives, discuss funding of energy projects, discover private equity opportunities, and connect Latin American companies with foreign investors.

Forum of the Countries of Latin America and the Caribbean on Sustainable Development (CELAC), which in the last years has dealt with a series of topics and participation of States, that regarding electromobility can be summarized in the next table:

Table 1: Electromobility at the Forum of the Countries of Latin America and the Caribbean on Sustainable Development

Meeting	Examples of references to electromobility made by participants	Conclusions
Third meeting. (CELAC, 2019)	Chile accentuated the importance of SDG and the focus on areas like electromobility and renewable energy to achieve gas emissions neutrality. It is essential to engage the scientific community and the private sector, as well as multi-stakeholder and institutional frameworks.	* One challenge is to achieve sustainable development, which requires efforts in sustainable transportation. * The achievement of the 2030 Agenda for Sustainable Development depends on the engagement of the public and private sectors.
Fourth meeting. (CELAC, 2021)	The ECLAC maintained that renewable energy and sustainable urban electromobility could drive progress towards the SDGs and a sustainable recovery.	The States reaffirmed that the 2030 Agenda for Sustainable Development needs the implementation of sustainable development with the public and private sectors.
Fifth meeting. (CELAC, 2022)	Transformative recovery actions were proposed to face the economic recession in Latin America in 2020, such as the development of renewable energy to promote innovation, strengthen investment, create jobs, reduce environmental footprints, and transform development models.	The improvement of the environmental quality of cities is a challenge to achieving sustainable development that requires efforts from member States, and other stakeholders in sustainable transportation and energy efficiency.
Sixth meeting. (CELAC, 2023).	* The National Autonomous University of Mexico highlighted the contributions of electromobility in public transportation for energy efficiency, development of infrastructure, and sustainable industry. Regulation is essential for certainty, financing and technological advances. Public and freight transport should also implement renewable and clean energy to tackle energy poverty. * Paraguay promoted clean and renewable energy in transport, as well as initiatives for electromobility and energy matrix. * ECLAC identified potential transformative initiatives in electromobility, which could foster the achievement of SDGs and synergies.	The States reaffirmed the commitment to ensure reliable and modern energy services, including increasing the share of renewable energy.
Seventh meeting. (CELAC, 2024)	* For Trinidad and Tobago transition to green and sustainable energy is a key area for achieving sustainable development. * Paraguay said that climate adaptation was a national priority that had been enshrined in law with priority sectors, such as energy and transport. * BNDES mentioned initiatives in clean energy and critical minerals for e-mobility.	The States reaffirmed the commitment to ensuring reliable and modern energy services, including increasing the share of renewable energy, developing quality, reliable, sustainable, and resilient infrastructure and sustainable urbanization, respecting national policies, and priorities.

Source: Own authorship from information from CEPAL

Last, but not least, bilateral agreements in trade and investments in the last years have incorporated chapters and sections that deal with the environment, as Chapter 24. Environment of the United States of America-Mexico-Canada Agreement (2020) that recognizes that a healthy environment is an integral element of sustainable development

and the contribution that trade makes to sustainable development. The Chapter contains provisions regarding levels of protection, enforcement of environmental laws, public information and participation, procedural matters, environmental impact assessment, multilateral enforcement agreements, protection of the ozone layer and marine environment, air quality, corporate social responsibility and responsible business conduct, and voluntary mechanisms to enhance environmental performance, among others.

The agreements and meetings mentioned provide various indicators and strategies that should be contained in laws and public policies aimed at reducing GHG emissions. They also emphasize the need for actions that promote a just energy transition, with electromobility being a key component that warrants consideration.

This section demonstrates that multilateralism is essential for tackling certain global problems that exceed the capabilities of individual nations. To lessen CO2 emissions and advance energy transitions, national law must incorporate key international principles, responsibilities, and agreements.

Indicators

The references of the multilateral agreements, recommendations set forth by international organizations, and regional meetings may give guidelines to construct some indicators to explore if the due actions to achieve sustainable cities with electromobility are being considered within the local laws.

Even though there have been studies, such as the one conducted by the Thomson Reuters Foundation and Global Initiative for Economic, Social & Cultural Rights (2024) that identified elements of a just energy transition, namely human rights approach, transparency and access to information, energy democratization, the gender approach, the technical process, and structural transformation of energy transition, for this paper, it is deemed to propose some indicators derived from multilateralism approaches that should be considered in local laws.

Principles

- Protection of human rights with special attention to women and vulnerable groups (Articles 3 UNFCCC and 7 of the Paris Agreement -PA).
- Protection of the climate system for the benefit of present and future generations, based on equity (Article 3 UNFCCC).
- Precautionary principle to foresee, prevent or minimize the causes of climate change and mitigate its adverse effects (Article 3 UNFCCC).
- Sustainable development (Article 3 UNFCCC).
- Accountability (Articles 6 and 7 PA).
- Transparency and public access to information on climate change (Articles 4, 6, 7 and 12 PA).
- Energy transition (Articles 4 and 6 PA; UNO, 2021)
- Equity (Article 3 UNFCCC).

Actions of the State

Keep a global average temperature below 2°C above pre-industrial levels and continue efforts to limit the rise of temperature to 1.5°C to reduce the risks and effects

of climate change, and promote climate resilience and low greenhouse gas emissions (PA).

Agreement on "The beginning of the end" of the fossil fuel era by a just and equitable transition, underpinned by deep emissions cuts and scaled-up finance (UNO, 2023).

Mitigation and adaptation measures on Climate Change (Article 4 PA)

The improvement of the coverage of public and private investment in electric vehicles and charging infrastructure, creation of incentives for electric vehicles as a mitigation measure (UNO, 2021, Forum of the Countries of Latin America and the Caribbean on Sustainable Development).

Adaptation should consider gender-responsive, participatory, and transparent approaches of vulnerable groups, communities, and ecosystems (Article 7 PA).

Publication of national reports, programs to mitigate climate change, data coverage, inventories of anthropogenic emissions and absorption of GHG sinks, nationally determined contributions, and long-term strategies for development with low GHG emissions (UNO, 2015).

Data coverage for financing electric vehicles, climate finance, energy efficiency, and domestic climate finance reporting (UNO, 2022; IPIECA, 2016 and IPIECA 2019).

Legislation and public policies

Legislative measures to protect human rights from the adverse effects of climate change (UNO, 2015).

Policy targets and support mechanisms to support renewable energy deployment, incentives for electric vehicles, and bans on the sale of combustion engine vehicles (UNO, 2021).

Promotion of sustainable development, environmental integrity, transparency, governance, and accounting (Article 6 PA).

Adoption of non-market approaches to increase the participation of the public and private sectors, with Corporate Social Responsibility and Responsible Business Conduct (UNO, 2015; CELAC, 2021; UMSCA, 2020).

Ensure reliable and modern energy services, including increasing the share of renewable energy, developing quality, reliable, sustainable infrastructure, and sustainable urbanization (CELAC, 2024).

Cooperation mechanisms

Promotion of an open and enabling international development and economic system to lead economic growth and sustainable development (UNO 2015; Article 3 UNFCCC).

Enhance actions in the development and transfer of technology for the mitigation and adaptation of climate change, as well as prevent anthropogenic emissions of uncontrolled GHG by the Montreal Protocol in energy and transport (UNO, 2015; Articles 7 and 10 PA).

Promotion and support in education and scientific, technological, technical and socioeconomic research, systematic observation, and the establishment of data archives related to the climate system (UNO, 2015; Forum of the Countries of Latin America and

the Caribbean on Sustainable Development).
South-South (UNO, 2022; Latin American Forum).
Finance developing countries for clean energy (UNO, 2024).

The proposed indicators reflect that multilateral collaboration is important for lawmakers to incorporate the key points discussed by the international community in topics such as energy transition, as well as to offer tools to the citizens to analyze and evaluate the decisions taken by the States.

Comparative method

The comparative method allows us to explore if the national law adopts the content of the multilateral agreements related to energy transition. Certainly, the Law plays an important role in determining the rights, duties, obligations, and powers of the authorities to enforce the law.

Despite the number of international agreements that Mexico has subscribed to, the country has one of the most polluted cities in Latin America, namely Mexico City (IQ Air, 2024). Hence, it is relevant to explore if the international commitments are duly incorporated in its legal framework and the pending issues that should be considered.

The brief analysis and comparison of the legal framework in Mexico with the multilateral agreements and meetings in energy transition take into account the Political Constitution of the United States of Mexico (Constitution), the rules on energy transition (Ley de Planeación y Transición Energética -Energy Planning and Transition Law "EPTL"-), electricity (Ley del Sector Eléctrico -Electric Sector Law "ESL"-), hydrocarbons (Ley del Sector de Hidrocarburos -Hydrocarbons Sector Law "HSL"-) and the laws from the public enterprises of the State, namely: Comisión Federal de Electricidad (Ley de la Empresa Pública, Comisión Federal de Electricidad -Public Company Law, Comisión Federal de Electricidad "CFEL"-) and Petróleos Mexicanos (Ley de la Empresa Pública, Petróleos Mexicanos -Public Company Law, Petróleos Mexicanos "PEMEXL"-) which were published in the Official Journal of the Federal Government on March 18, 2025, and entry into effect in the next day; as well as the Environment Law (General Law on Ecological Balance and Environmental Protection - GLEBEP) and the normativity on climate change (Ley General de Cambio Climático - General Law on Climate Change "GLCC") which was last reformed on April 1, 2024.

The axis of the new normativity is mainly centered on energy self-sufficiency, sustainability, energy sovereignty -to reinforce the role of the public enterprises-, and energy justice -centered on the aim to give access to the energy goods to all the people (SENER, 2025). However, some topics still need to be considered, as will be seen in this section. Certainly, multilateralism has valuable contributions to avoid indifference, political whims, or short-term visions that could hinder the achievement of sustainable and energy transition objectives throughout electromobility.

As proposed by Atienza (1997) the law ought to consider five levels of rationality, namely: 1) Linguistic rationality, so that the law can be clearly understood; 2) Legal-formal rationality, which assumes that the law must be harmoniously inserted into a legal system and does not contravene the hierarchy of the norm; 3) Pragmatic rationality, which assumes that the conduct of the recipients would have to conform to what is prescribed by the law; 4) Teleological rationality, so that the law aims to achieve

the pursued social ends; 5) Ethical rationality, that considers liberty, equality, and justice as ethical values of the law.

Multilateral agreements are relevant in achieving the legal, formal, teleological, and ethical rationality to assure better conditions at a national level and even to contribute to the international community. For this research, a general approach will be given to explore whether the multilateral topics mentioned in the proposed indicators are considered within the national law.

Principles

The comparison between the principles identified in the multilateral agreements and the Mexican law can be seen in the following table:

Table 2. Principles

Principles adopted in the Mexican Law		
Energy security, energy sovereignty, energy justice, energy transition, reliability and accessibility of the energy services, sustainability, efficiency, equity and protection of human rights.		
Reference to the Multilateral Agreements and Meetings		
	Multilateral Agreements and Meetings	Mexican Law
1.	Protection of human rights	Constitution
2.	Energy Transition	ESL, GLCC, EPTL, HSL, CFEL, PEMEXL
3.	Protection of the climate system	GLCC, ESL, EPTL
4.	Precautionary principle	GLEBEP, GLCC
5.	Sustainable development	ESL, GLCC, EPTL, HSL, CFEL, PEMEXL
6.	Accountability	ESL, GLCC, EPTL, HSL, CFEL, PEMEXL
7.	Transparency	ESL, GLCC, EPTL, HSL, CFEL, PEMEXL

Source: Own authorship based on the Mexican law and the proposals of indicators

One alarming concern that should be noted about the Mexican Law is the intention to give prevalence to the State and public companies over particulars in the energy sector that can be seen under Article 12, VI ESL, in relation to the principle of energy sovereignty.

Contrary to what the Mexican lawmakers and politicians considered, the energy transition and sustainability model should rely not only on the participation of the State but also on the private sector, because of its contributions to investments, innovations, technology, and experience in infrastructure projects. Since 2013, the legal framework has allowed private, national, and international companies to participate in most of the activities of the electricity and oil value chains in Mexico. This was a milestone considering that the Comisión Federal de Electricidad and Petróleos Mexicanos -today public companies- were the only participants in the energy sector (Cossío Barragán, 2016; De Rosenweig, 2007). Certainly, State companies are not enough to achieve the fulfilment of the principles of the energy law, as they lack of technical and financial capacity to implement all the energy projects that the population needs.

One additional topic that can be highlighted is the principle of transparency. Even though the principle is contained in the legal framework, however, due to the administrative simplification constitutional reform published on December 20, 2024, in the Official Journal of the Federation, there have been concerns about the access and protection of the right to public information, as the public body that guarantees that right will rely on the Federal Executive Branch rather than autonomous, as it used to be. Accountability is another issue that has to be considered, since Mexico has had poor

evaluations on Rule of Law (World Justice Project, 2021) that indicate several deficiencies in topics such as accountability, impunity, and corruption.

In addition to the principles that the multilateral agenda has fostered, Mexico incorporated energy justice, which, according to Heffron (2021), entails: i) the consideration of human rights in the energy value chain; the distribution of benefits and burdens (e.g., taxes, transparency) of energy for people (distributive justice); ii) due process (procedural justice); iii) the recognition of the rights of different groups for the realization of projects (recognition justice); iv) the consideration that energy activities and global supply businesses have transboundary effects (cosmopolitan justice); and v) the need to repair the damage (restorative justice).

Despite the relevance of energy justice, this principle may be hindered in Mexico due to the intention to give an undue advantage to State companies over the private sector, as well as the attributions and operational issues of public bodies, such as the one related to Transparency.

Actions of the State

According to the proposed indicators, the actions of the States in electromobility incorporated in the Mexican Law can be summarized in the following terms:

Table 3. Actions of the State

	Multilateral Agreements and Meetings	Mexican Law
1.	Keep a global average temperature below 2°C above pre-industrial levels and continue efforts to limit the rise of temperature to 1.5°C.	GLCC, ESL
2.	Actions to comply with "The beginning of the end" of the fossil fuel era agreement.	GLCC, ESL, EPTL
3.	Mitigation and adaptation measures in electromobility.	GLCC, ESL, EPTL, administrative regulations and programs
4.	Gender and vulnerable groups approach in the decision-making processes.	Constitution, GLCC, ESL
5.	Publication of national reports, programs and inventories on climate change and energy transition.	GLCC * CFE and Pemex should make available the information of their activities
6.	Data coverage for financing electric vehicles.	GLCC
7.	Incentives for electric vehicles and bans on the sale of new combustion engine vehicles.	ESL* Administrative regulations and Programs to be published.
8.	Promotion of sustainable development and environmental integrity.	GLCC, ESL, EPTL, HSL, CFEL, PemexL
9.	Non-market approaches to increase the participation of the public and private sectors.	GLCC
10.	Ensure reliable and modern energy services.	ESL, EPTL

Source: Own authorship based on the Mexican law and the proposals of indicators

The Mexican legislation has provisions that comply with the international instruments regarding the actions that the States ought to take. However, the references to electromobility and climate change are mainly in the General Law on Climate Change, the Electric Sector Law and the Energy Planning and Transition Law. Even though electromobility relates to an alternative option for fossil fuel vehicles, there is no reference in the Hydrocarbons Sector Law. General provisions on energy transition

actions are made in the Laws of the Federal Electricity Commission and Petróleos Mexicanos. Hence, it is necessary to follow up on the actions of those companies to see if investments are being made in the energy transition.

In addition, the population needs to be critical of the regulations of the Public Administration, as it has a role in the elaboration of public policies and political plans in energy transition. In fact, it is noticeable that the energy plans are only made by the public sector. The participation of the public and private sectors is contained in some provisions of the General Law on Climate Change. This may leave the country with an incomplete vision of what is required to improve the energy sector, with the technology, science, investments, and experience of the private sector, as well as with the needs and concerns of the social sector and vulnerable groups.

Decisions in the energy sector should be made with the participation of the public, private, and social sectors in order to fulfill the goals and commitments in the energy transition of the international community.

Collaboration mechanisms

The comparison between the indicators identified as collaboration mechanisms and the Mexican laws can be summarized in the following terms:

Table 4. Collaboration mechanisms

	Multilateral Agreements and Meetings	Mexican Law
1.	Cooperation in promoting an open and enabling international development and international economic system.	Constitution; LGCC, ESL, EPTL
2.	Development and transfer of technology for mitigation and adaptation of climate change.	LGCC, ESL, EPTL
4.	Promotion and support in education and scientific research.	LGCC, ESL, EPTL, CFEL and PemexL
5.	South-South collaboration.	EPTL (General)
6.	Finance developing countries.	Pending issue

Source: Own authorship based on the Mexican law and the proposals of indicators

The collaboration mechanisms are mostly centered in the faculties of the authorities, but not with the private or social sectors, which are indeed required to boost investments, education, and scientific research, as well as to foster a desirable economic system that can give security to the business activities, and meet the needs of the population, for whom energy is of special relevance for their human rights of health, environment, household, liberty, work, or education.

Even though the Mexican law has some provisions aimed at complying with international commitments and international good practices, it is still needed to strengthen the international collaboration, even with their peers in the global South, to offer alternative approaches and solutions to energy transition and climate change.

Results

The multilateral level embodies the concerns of the states to achieve energy transition, as well as the desirable actions to mitigate climate change. One axis to achieve those goals is electromobility, which requires technology transfer, financial strategies, political and entrepreneurial strategies, and educational and scientific research. Those strategies have been considered at international agreements and

meetings that should be incorporated at the national level, as they deal with the actions that the public, private, and social sectors have to adopt.

The Constitution of Mexico shows that indeed there are dispositions referring to human rights, the property of the Union in natural resources, as well as the faculties of the authorities to regulate energy. Still, further efforts should be made in order to recognize the right to energy, reduce GHG emissions, and adopt electromobility strategies to comply with the energy transition goals. It is not enough to regulate the faculties of the authorities of the State in the law or have political plans aimed at boosting electromobility, as it is needed to have contingent actions to make electromobility a reality.

Sometimes the national laws may rely on political plans and public policies, which may allow for addressing urgent needs and a flexible mechanism to adjust to the economic, political, social, and cultural needs of electromobility. However, those plans may rely on the ideology of the party in power, which may add some risk of short-term solutions. In the experience of countries like Mexico, those plans are mostly set at the beginning of the presidential period, with a specific ideology, but hardly incorporate the agreements of the multilateral meetings and agreements, or the needs of the private and social sectors. Hence, it is important that the private and social sectors question and criticize the content of those plans, take an active role in the drafting of the plans, and offer alternative solutions that the government by itself cannot foresee or implement.

Further provisions have to be considered in the law, such as setting the conditions for dialogue and collaboration between the private, public, and social sectors in the decision-making process. Even though there are procedures for consultation of indigenous people, still a lot of work has to be done to construct dialogue opportunities to consider the proposals, access of information, analyses, and problems of enterprises, universities, and consumers that may be useful for drafting the laws by implementing incentives and actions in just energy transition, education, mitigation and adaptation to climate change, and the development of science and technology.

Access to information and reports related to climate change and energy transition is of special importance so that people can be informed on the progress that has been made to reduce greenhouse emissions and how the sustainable goals and objectives of international instruments, such as the Paris Agreement, are being reached. Accountability can be reinforced by having sufficient information on the decision-making processes and the deficiencies and mistakes of the authorities in energy transition, which, of course, should be accompanied by adequate rules, procedures, and performance of the authorities.

It is needed to strengthen the collaboration at an international level, which is required not only to foster trade and investment with the due protection of the environment but also to analyze the problems, discuss solutions and experiences, and explore the optimal ways of implementing measures in energy transition through science, technology, financial aid, business strategies, and social participation.

The situation of Mexico shows that, besides subscribing to international agreements and participating in international meetings, it requires incorporating the content of those commitments in the law and public policies, as well as to generate conditions for the public, private, and social sectors to fully engage in the accomplishment of the goals, duties, and obligations that have been set in multilateral

agreements.

Discussion

The methods and results previously mentioned may lead to answering the question of whether multilateralism contributes to achieving energy transition goals. The answer is affirmative. Multilateralism offers valuable principles, strategies, and actions that can inform the development of national laws related to reducing gas emissions, promoting sustainability in urban areas, and facilitating energy transition. It also provides guidance on measures for mitigating and adapting to climate change.

The Law, public policies, political plans, business plans, as well as the actions of society, should comply with the efforts of the international community and even offer insights into local problems and other solutions that the international community should take into account.

A learning process can be achieved if developed countries, the Global South, international organizations, universities, businesses, and society share their experiences and needs, which should be recognized at both national and international levels.

The collaboration, dialogue, transparency, and accountability are relevant to improving conditions in a national and international sphere, with the protection of human rights, the adequate development of business projects, and the environment.

Conclusions

Multilateralism is of special relevance in exploring the objectives that the international community aims to achieve in the energy transition. Electromobility is one measure that is suggested to reduce fossil fuel automobiles and the GHG emissions that pollute cities in developing countries, such as Mexico.

The financial, technological, and scientific experience of the international community may be of special relevance in reinforcing the actions that ought to be taken in human rights, the environment, and energy transition. Certainly, short-term political actions, party interests, indifference to topics such as climate change, or a lack of financial or technological tools may hinder the actions of developing countries to sum up the efforts in energy transition that other countries have implemented.

As a result, it is important that the national laws abide by the international commitments of the States regarding energy transition and mitigation, and adaptation to climate change. Through good regulation, it is possible that the public, private, and social sectors collaborate to find solutions for pollution and energy transition matters. So far, some issues have been incorporated at the national level, such as human rights, incentives to implement electromobility in some States, the educational focus, and the powers of the authorities to draft political plans and other actions on energy transition.
The dialogue between the public, private, and social sectors for adequate decision-making processes, technology transference, development of science and technology, accountability, transparency, and access to information in the energy transition is required in the following years to fully advance in the achievement of the goals set by the international community.

Therefore, electromobility issues should not be left only to the authorities of the States. It is essential to consider the perspectives and analyses of the problems and solutions presented by the private and social sectors in order to achieve satisfactory

results in energy transition, particularly from the viewpoint of developing countries.

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Migrant Rights After the COVID-19 Pandemic: How their protection has changed

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Abstract

The migration phenomenon was interrupted all over the world during the spread of COVID-19. The pandemic has brought unprecedented restrictions on some basic human rights. One of them is the right of free movement, which will be the object of study in this scientific research. The impact of COVID-19 on the protection of migrants provides a telling example. When assessed from a policy and normative perspective, public health and human rights are not mutually exclusive.

The human rights of migrants, as grounded in international law, provide a flexible toolbox to address their need for protection while facing the current health emergency. Indeed, addressing the pandemic may require more or fewer rights, depending on the relevant legal norms and the factual circumstances. The government, the state, and international organizations have to integrate health and protection considerations as an opportunity to rethink immigration policies through innovative solutions in due respect to human rights. More protection for migrants, more benefits for all the states. That health crisis exacerbates existing vulnerabilities of migrants while generating new forms of vulnerability for them. The most vivid instances include obstacles in accessing health care, denial of protection because of border closures, and the rise of racism, stigma, and discrimination.

IOM has identified several non-binding recommendations, with the view of merging immigration and health imperatives. Further systematic integration of health and protection imperatives at the borders entails a broad range of quick and flexible adaptations of both legal and operational measures.

Keywords: Migrant's rights, international organizations, the protection of human rights

Introduction

Migrants today are that part of the world population that, regardless of origin, color, political beliefs, race, ethnic affiliation, wherever they are, they have the same status, the status of a migrant and not of a citizen in the country where they stay and

live. Human nature to seek better conditions to live, work, study, and others has created the process of moving from the place where the individual is born or found to another place. The movements of people carried out for various reasons have been recorded in every historical period of the study of law. Today, migration law also has as its object the study of migration factors and causes in certain geographical areas and in countries with different economic development. International migration law is not centralized but rather dispersed through multiple conventional, customary, and soft-law instruments. These diverse sources interconnect and operate in practice between states and other international actors (Chetail, 2019).

The status of the migrant is the focus of our study. The status of the migrant has changed at different times both in the country of origin and in the host country, where he enjoys this status. This paper will discuss how the status of migrants has changed after the COVID-19 pandemic. Their treatment by host countries and by international organizations for the protection of human rights has changed compared to the period before the COVID-19 pandemic. Guaranteeing and respecting the rights of migrants is an obligation of countries that are members of international and regional organizations such as the UN, EU, OSCE, etc.

The migrant law is an important branch of the science of human rights. Today, the guarantee and respect of human rights by states is the object of important obligations both at the national and international levels. Cooperation between states and international organizations in political, cultural, educational, military, and technological development requires protecting and respecting human rights. Human rights and fundamental freedoms belong to every individual and are universal, indivisible, inalienable, and inviolable. The Vienna Declaration and Program of Action of the World Conference on Human Rights (1993), in this respect, states that: "All human rights are universal, indivisible, interdependent and interrelated. The international community must treat them all over the world fairly and equitably, with equal importance and equal weight. "In this context, the human rights of the migrants will be guaranteed and protected by all the states and all the international organizations all over the world. There are several categorizations and distinctions of fundamental rights and freedoms that are made based on various criteria, those criteria we also see in the human rights and freedom of migrants. These include the categorization into three 'generations' or types of rights: civil and political rights; economic, social, and cultural rights; and solidarity rights/peoples' rights. Rights can also be subdivided into individual and collective rights, with the criteria of distinction being the fact that they belong to an individual as a person with physical and personal integrity or to a group. In practice, as a result of the nature of the migrant's human rights, we accept and treat the human migration rights as a group. Despite conflicts, all fundamental human rights are important, and we accept the postulate that there are no "less" important and "more" important rights. This brief description of human rights of migrants is aimed at highlighting the great importance and key role that migrants play in every society and state.

The object of this scientific research is to show how the protection of human migrants' rights changes after the COVID-19 pandemic.

The purpose will be pursued by combining both qualitative and quantitative research methods. To accomplish the purpose of the paper, we have focused on the

following aspects:

-Overall of the human rights of the regular migrant after the COVID-19 pandemic.

-The role of the IOM and UNCHR in promoting the protection of the human rights of migrants after pandemics and the importance of Agenda 2030 for sustainability in a globalization world.

Study hypothesis: As a result of the COVID-19 pandemic, new forms of international migration were created, for which the UN, IOM, EU, and other organizations issue recommendations and action plans aimed at regulating the relations between migrants and host countries. Freedom of movement for a large number of migrants, even after the COVID-19 pandemic, was not implemented due to the loss of residence and employment permits in the host countries. The hypothesis will be presented by providing answers to some research questions.

The methodology of a scientific paper serves to achieve the purpose of the paper. Based on the methodology used, the paper succeeds in highlighting the purpose of the research. The methods used in this research are the qualitative method, which is implemented through research, description, analysis, and comparison, and the quantitative method, which is accomplished by summarizing the data and grouping it. The combination of these methods has proved effective. Main sources as the UN charter, treaties of the EU, international acts, books, and scientific articles, have created a clear vision for the guarantee and the protection of human rights in different decades. Doctrinal research, description, and comparison of primary and secondary sources, and analysis of jurisprudence have enabled the study to be concluded. This paper is based on doctrinal research for the collection of literature on the topics addressed in it. The literature selection has extended to a relatively considerable number of foreign authors, as well as to some local authors.

The study is also conducted through the analysis of a wide range of specific categories of human rights migrants, highlighting the guarantee and respect for personal, civil, political, social, cultural, individual, and collective rights in a specific way. To achieve the purpose of the paper, we have compared the data database of IOM, the EU migration web, and statistics of Eurostat, and made a review of the article that will be shown in the coming paragraphs.

The human rights of the regular migrant after the COVID-19 pandemic

The Office of the High Commissioner of the United Nations Human Rights defines that the differentiation between regular and irregular[1] migrants could not be

[1] The terms 'regular' and 'irregular' migrant are used in the practice of the ILO and the language of the Convention on Migrant Workers. The ILO explains its usage in this way: 'People who enter or work in countries without legal authorization have been labeled illegal, clandestine, undocumented, or irregular. "Illegal migrants" has a normative connotation and conveys the idea of criminality. Thus, the 1994 International Conference on Population and Development recommended the term 'undocumented', but this is incomplete, since it does not cover migrants who enter the host country legally with tourist documents but later violate their conditions of entry by taking a job. Furthermore, migrants moved by traffickers may have false documents; this prompted an International Symposium on Migration in Bangkok in April 1999 to recommend the term 'irregular'. Irregularities in migration can arise at various points – departure, transit, entry, and return – they may be committed against or by the migrant. -Defined

easily distinguished. Distinctions between migrants in regular and irregular situations are rarely clear, but sometimes are unclear and take a long time for the bureaucratic migration procedures. This means that regular migrants turn into irregular migrants. The overwhelming majority of the world's migrants arrives in their host country in a regular manner and only later become 'irregular' due to administrative overstay. The Office of the High Commissioner of the United Nations Human Rights defines that this may be due to no fault of the migrant herself, but instead to unclear or overly bureaucratic migration procedures, discrimination, or practical barriers such as high visa renewal costs, language barriers, and lack of access to legal aid. Even if the migrant is regular or irregular, they enjoy the same fundamental human rights. Human rights are rights inherent to all human beings. All humans enjoy whatever their nationality, migration status, sex, race, religion, language, or any other status, the fundamental rights and freedoms.

The definition of migrants' rights, based on IOM, defines that migrant rights are the rights of migrants that are implicitly or explicitly set by international migration law, including international human rights and other public law instruments of the country.

Measuring the rights of migrants exclusively through a human rights-based approach, which considers only international human rights instruments, does not encompass the full range of migrant rights established by other instruments.

On the other hand, a rights-based approach acknowledges that the rights of migrants are guarantee not only by human rights law but also by treaties from other branches of international public law, including but not limited to the Refugee law; Transnational criminal law, especially treaties relating to human trafficking and smuggling of migrants; Humanitarian law; Labour law; Law of the Sea etc.

Although migrant rights derive from international law on one side, on the other side, the national law of the state also guarantees and protects the human rights of migrants who live in its country. Defining protection of the migrants under international law in 2016 by IOM, acknowledging the need for a "strategic, comprehensive and collective approach to protection", the Inter-Agency Standing Committee (IASC) produced a common policy on protection, which defines protection as all activities aimed at obtaining full respect for the rights of the individual in accordance with International Human Rights Law, International Humanitarian Law, and International Refugee law. The Office of the High Commissioner of the United Nations Human Rights defines that this definition incorporates: Protection under International Humanitarian Law (IHL), which applies to situations of armed conflict as addressed principally in the four 1949 Geneva Conventions and their Additional Protocols of 1977. Protection under International Refugee Law (IRL) applies to persons who meet the refugee definition under international, regional, or domestic laws, or under the mandate of the United Nations High Commissioner for Refugees (UNHCR).

Protection under International Human Rights Law (IHRL), which applies to all persons at all times, is grounded in the Universal Declaration of Human Rights (UDHR)

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by ILO Towards a Fair Deal for Migrant Workers in the Global Economy, 2004. The CMW defines regular migrant workers as those who are authorized to enter, stay, and engage in a remunerated activity in the State of employment. CMW, Art 5(1). Following the definition in the CMW, the term "migrant worker" is used to refer to 'a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national' [Art 2(1)].

and all the core international human rights instruments. Responding to the protection needs of migrants under international human rights law, States have a legal obligation under International Human Rights Law to respond to the protection needs of migrants, including a particular duty of care to migrants in vulnerable situations (Global Migration Group, 2018). These obligations of all the states will be fulfilled through a comprehensive, practical, and human rights-based approach to migration governance. During the governance in accordance with state of the rule of law, the state will focus on 4 actions:

-The state will make the identification and assessment of protection needs for the migrants who live in their own country. States should put in place mechanisms and allocate resources to ensure that the IHRL protection needs of all migrants can be assessed individually and with due process, as a complement to asylum determination mechanisms. Some examples in vulnerable situations will be like migrants at risk of torture or irreparable harm requiring protection from refoulement, victims of torture, trauma, gender-based violence, or trafficking requiring rehabilitation, physical and mental health service,s and access to justice; and children requiring best interests determination procedures in order to ensure their right to family life, survival and development.

-The state will take mechanisms for entry and stay based on human rights protection grounds. States should establish mechanisms for entry and stay for those migrants who are considered to have protection needs, prohibiting their return under International Human Rights Law. These included also the principle of where based on non-refoulement, as well as inter alia, the rights to health, family life, best interests of the child, and torture rehabilitation.

-The state will take mechanisms for entry and stay based on discretionary grounds. In the case of migrants who are not considered to have protection needs, where return is legally possible, return might still not be a desirable option based on individual considerations. States should therefore develop or strengthen discretionary mechanisms for entry and stay based on a migrant's individual circumstances, including practical reasons.

-The state will take action and plan for regularization and alternative pathways to return. Even where returns are legally and practically possible, it is clear that the removal should not be the only, or even preferred, migration governance option. Based on a consideration of the needs of broader society as well as migration governance imperatives, States should consider periodic regularization schemes and enhance regular migration pathways as alternatives to return, including educational pathways and labour migration pathways at all skill levels. Some examples are the measures taken from Morocco, Canada, and the EU. Morocco initiated two regularization campaigns beginning in 2014 with the aim of providing secure legal status to undocumented migrants on their territory. This includes women, men, and children, regardless of the initial reasons for entry, who have lived in Morocco for at least 5 years. In 2014, Canada launched the Caregiver Program, which allows foreign caregivers and their dependents to obtain permanent residence status after completing two years of full-time employment. The European Union Directive on the Right to Family Reunification provides for family reunification subject to basic income, housing, and health insurance conditions, recognizing that family unity creates socio-cultural stability and promotes

economic and social cohesion.

The principle of universality of human rights is the cornerstone of international human rights law, which was first emphasized in the Universal Declaration on Human Rights in 1948 and it has been reiterated in numerous international human rights acts. Human rights are not only the rights of nationals, but the rights belonging to all individuals who are under the jurisdiction of a State, which means all individuals who are on the territory of the States or under the effective control of agents of the State, exactly all citizens, immigrants, apartheid persons, and persons with dual citizenship. Additionally, the core principles of equality and non-discrimination, which are enshrined in the International Bill of Human Rights, require non-discriminatory access to all civil, political, economic, social and cultural rights with only two limited exceptions as to the right to vote and take part in public affairs, and the right to freedom of movement within a country. All other human rights should be enjoyed equally and without discrimination by all people under the jurisdiction or effective control of the State, including migrants in irregular situations. Any differential treatment between nationals and non-nationals, or between non-nationals with different migration statuses, must be lawful, proportionate, and pursue a legitimate aim. An attempt to define different classes of mi grants with different classes of rights other than those explicitly allowed within the International Bill of Human Rights would be contrary to these core values of universality, equality, and non-discrimination. Migration should be addressed inclusively, collaboratively, and strategically**,** with the involvement of governments, private sectors, civil society, and diaspora communities. Migration is a driver of development, and its potential can only be realized through well-planned, human-centered policies and international cooperation (Canelón & Almansa, 2018).

The principle of non-refoulement has been codified in the Convention on the Status of Refugees and its Protocol, as well as in the Convention against Torture. This principle protects from refoulement all people who are at real risk of irreparable harm to their life, bodily integrity, or other serious violations of human rights if they are sent back to their country of origin. It has been considered of being part of international customary law and absolute. That means that this principle of non-refoulement applies at all times when its application criteria are met, and can never be suspended or limited, even in times of crisis or state of emergency. Several of the international treaties have seen a significant number of ratifications within the past years, and many are widely ratified by States. Notably, since the core human rights are also migrants' rights, all States have ratified at least one of the core human rights treaties, and 80% have ratified 4 or more.

Accepting the theory that in any given period, the rights of migrants have changed and been adapted by the development of states or regions, we bring to attention the period after the COVID-19 pandemic. The pandemic brought restrictions on some fundamental human rights and freedoms, including the rights of migrants, but our focus is to address what happened after the lifting of restrictions during the period of the COVID-19 pandemic.

The COVID-19 pandemic was a previously unheard-of factor in limiting human mobility. This restriction consisted of the closing of the borders and the obligation not to move. The restriction of the movement of people was applied to all the countries of the world by determining the concrete measures for each country, which were linked to

the verification of the determining tests of COVID-19 or the health card of the individual. The opening of the borders after the end of the pandemic was carried out in a limited way, and in this limited way, the migrants were also allowed to move. The reports, resulting from the collaboration between the International Organization for Migration (IOM) and the Migration Policy Institute (MPI), show how human movement has changed as a result of the COVID-19 pandemic. The migrant survey and the data show that during the pandemic, many migrants lost their jobs and were forced to return to their countries of origin or live as regular migrants due to their legal status. This is the moment when we have an increase in the number of irregular migrants in some countries of the world. The desire to move remained strong even as people had more limited opportunities for regular movement, and so many migrants were diverted to more dangerous and irregular routes. Irregular migration also began to extend over longer distances.

The COVID-19 pandemic had some effect on the human rights of migrants. During the pandemic, about tens of millions of migrant workers lost their jobs and returned to their countries of origin due to forced return by the host countries for this category of migrants, the right to move and the right to work, or the right to stay close to the family violated for the protection of another right, the right to live.

Migratory movements were stopped due to the pandemic, but after the pandemic, they started again, and there was also an increase in migratory movements in the world. Large-Scale Returns, Stranded Migrants and Forced Returns created the necessity for the treatment and protection of the rights of migrants (Camille L.C. & Kathleen N, 2021). International organizations and states should have migrants as the focus of their development strategies after the pandemic. Migrants should also be included in the mandatory scheme to be vaccinated against COVID-19, as well as in the health care scheme.

In addition to protecting health and implementing policies to restore economic and health development, countries had to develop a strategy for implementing migrants' rights. What really happened in these countries after the COVID-19 pandemic, at a time when restrictions on movement between European Union countries and between all countries in the world were fully and partially lifted? Most countries in the world were faced with the crisis of healthcare not only for their citizens but also for existing migrants and those returned to their countries of origin. Returned migrants were migrants who lost their jobs and residence permits in the country where they were staying as a result of the pandemic and restrictions on some of their rights. In a way, returning was the best option for them in conditions where employment was lacking and where life and the right to housing were not guaranteed in the countries where they lived. Returns to countries of origin were not carried out in every case under the supervision of competent national bodies and representatives of international organizations of IOM and UN, which means that in certain cases, the treatment of migrants was not in accordance with the principles of protection of the fundamental rights of migrants. Thus, in this way, large-scale returns of migrants to countries of origin directly entailed a violation of the principle of non-refoulement recognized by international law, but occurred in conditions where the right to health was above the right to a better life. States and international organizations agreed that, in unprecedented conditions, they would create conditions and support the process of return and

reintegration of migrants in countries of origin, trying to ensure that the fundamental rights of migrants were not violated.

The return process was not fast, but was described as a slow process because during that time, many migrants were blocked due to the inability to move, referring to the restrictions imposed even post-COVID-19. IOM data show a high number of stranded migrants, where the main factors of the blockage were mainly related to the budgets and logistical capacity of the states themselves. According to IOM, in May 2020, more than 200,000 Indian migrants were stranded in the United Arab Emirates alone, along with more than 60,000 Pakistani workers, and worldwide, in July 2020, IOM estimated that there were 2.75 million stranded migrants. This large number of migrants created a number of challenges in international cooperation between border authorities in many countries around the world. Return to the countries of origin or to other safe places should be carried out by guaranteeing migrants their fundamental rights. This means that the right to life and housing while staying in safe places should be guaranteed and respected by the governments of the states. But the reality referred to by the data collected by IOM experts showed the opposite. Sri Lanka, Uganda, Myanmar, Nepal, Malaysia, Zimbabwe and Armenia are some of the countries that had problems with migrant detention centers that did not comply with international living standards, some quarantine facilities failed to provide even food and water to returnees, conditions in reception centers were so dire that people risked fleeing a large number of them faced prejudice caused by the pandemic, classifying them as carriers of the virus (Simon, 2020).

In contrast to these situations, in a few countries, facilities were created by the countries of origin for returned migrants, guaranteeing the most effective reintegration for both parties, both for the countries and for the returned migrants. Mask production factories in some countries created new jobs where a large part of the migrants were employed. The development of technology created the possibility of digitalizing some services, and the expansion of the scope of digitalized services brought about a reduction in costs and accessibility of services by covering a wide range of services in large territories, creating platforms for returned migrants as well.

However, in other countries where electricity and internet fibers were lacking, returned migrants faced great difficulties in finding opportunities in their countries of origin. Some countries pursued favorable policies for returning migrants by offering them training and job offers with the aim of providing them with new employment opportunities as well as compensation facilities as a result of the losses suffered during the pandemic. Such measures were taken for the families of workers who died during the pandemic abroad by giving returnees training opportunities or job offers. The Philippines implemented a program that allocated government-owned land to migrants from Manila and returning workers.

After the pandemic, countries were forced to create reintegration programs for migrants who were in their territories, but also for returning migrants. The goal of state programs for the reintegration of migrants was to guarantee and ensure the fundamental rights of migrants by restoring the rights violated during the pandemic, but with the aim of improving the implementation of the protection of migrants' rights. Reintegration programs are both tools for migration management and tools for development cooperation, and they require coordination within the governments of destination

countries to reconcile both objectives. Return to the countries of origin brought about a change in the established balances between the country of origin and the migrant country. The policies that the countries had to follow were those of protecting migrants and allowing a series of rights for this category. The implementation of migrant reintegration programs was carried out through cooperation between countries of origin and destination, international organizations, partners from the private sector, etc. Interdisciplinary and future-oriented studies are important in the preparation of programs, which can guide human rights practices beyond crisis situations to build frameworks capable of responding to current and future global challenges (Chiozza & King, 2022). The global crisis of the COVID-19 pandemic has affected interest groups' access to policymakers in international organizations, with not all interest groups benefiting equally at all times. In the European Union's policy-making framework, interest groups representing business and economic sectors tend to maintain or even improve their access, while groups advocating for social or environmental causes often experience reduced access during crises, which reshapes lobbying dynamics, reinforcing inequalities between well-resourced and less-privileged groups (Junk et al., 2022).

The European Network for Return and Reintegration played a great role in organizing the dissemination of information and assistance to the countries and centers that needed it (IOM 2021). The European Return and Reintegration Network (ERRIN) is a network of 16 European partner countries, established to facilitate cooperation between migration authorities. Its focus is ensuring that migrants can return to their home countries in a dignified and humane manner is an important part of EU efforts to manage migration. It is currently operating in 40 countries around the world, offering a wide range of services for returnees and implementing innovative projects that aim at improving joint European reintegration practices based on the database of the network. We could inform about the measures that European states take to protect the migrants.

The COVID-19 pandemic has brought unprecedented challenges in the field of return and reintegration. COVID-19 response measures had stalled travel globally, hindered the implementation of return procedures, and posed serious obstacles for the delivery of reintegration assistance in the countries of origin. For ERRIN, COVID-19 had a major impact on the number of returnees supported by the programs. The ERRIN declares that the number of voluntary returns assisted by ERRIN dropped by almost 80% between March and July 2020; this amounts to approximately 2900 people who could not travel back home.

The pandemic triggered sudden and often involuntary returns, straining the reintegration capacities of both migrants and countries of origin, and traditional return and reintegration models focused primarily on voluntary returns are insufficient to address the scale and complexity of returns during crises such as COVID-19. In this case, there is a need for more flexible and comprehensive approaches that include multi-sectoral cooperation, local involvement, and support services tailored to meet the diverse needs of migrants in integrating return and reintegration policies with broader development and humanitarian frameworks, highlighting the importance of data collection and monitoring (Le Coz & Newland, 2021).

The role of the IOM and UNCHR in promoting the protection of the human rights of migrants after pandemics and the importance of Agenda 2030 for sustainability in a globalized world

Globalization has influenced migration patterns during the post-pandemic period. Globalization, migration, and human rights constitute an even more unusual trinomial today. Globalization is the intensification of worldwide social relations, through which distant places maintain connections with each other, in such a way that events in one place are characterized by the same processes as another place many kilometers away and vice versa. According to Giddens (1990), globalization is the growing dependence and integration of different economies around the globe, defining it as the intensification of worldwide social relations that connect distant localities in such a way that local events are shaped by events that occur many kilometers away and vice versa, while according to Desai (2016), the economic dimension of globalization is undoubtedly of great importance and constitutes an important cause and driving force for globalization processes in other areas. In this way, globalization is truly the megatrend of our time, and its impact is being felt more and more, although unevenly, on almost every continent of the planet. Globalization has emerged as a means to ensure the economic and cultural growth of individuals, and the increase in urbanization and the closer integration of the world economy have facilitated global connectivity (Shrestha, 2020).

Globalization in relation to social relations will be treated in a reciprocal manner as a process, a state, a system, a force, and an era where it affects the intensification, change, and birth of new social relations, having neither space nor time as a limitation. The effects of globalization have been studied by sociologists and economists, but this is not the focus of our study. Our focus is to see what the effect of globalization has been on the phenomenon of migration and the corresponding period after the pandemic caused by the COVID-19 virus.

Globalization and migration have created two groups that are against and for this phenomenon. Globalization, having had the greatest development in the last 3 branches, has created a global inequality in economic development and social development. This impact has also had on the creation of migratory flows towards new migratory countries. The effects of globalization have been evidenced in different time periods, creating even the so-called financial crises or financial progress.

The impact of technology on globalization causes new effects to be created that also extend to people and fundamental human rights. A sense of uncertainty is created about the extent to which globalization and technological change will continue to have an impact on future migration trends, and precisely towards the guarantee of fundamental human rights. Technology and economic development make it increasingly easier for migrants to travel inexpensively, learn about available routes, and stay in touch with family and community members outside their country of origin.

There is a clear link between globalization and population movements, especially migratory ones. The two spheres inevitably overlap and are interconnected. Globalization causes migration, and migration contributes to the intensification of socio-economic and political relations across borders (Dokos, 2017). Continued globalization is also likely to support migration trends, as the expansion of media, languages, and businesses facilitates interactions across borders. One of the actors that

influences the global connection between states is also migrant citizens. Trade exchanges, the movement of migrants for employment reasons, and the travels of the world's population created the possibility of the transmission of infectious diseases.

The spread of the COVID-19 virus was realized precisely through the movement of people from the place where it first appeared in China (Wuhan) to all the territories of the continents of the world. This spread of the virus in that wide sphere caused the World Health Organization to declare the pandemic of COVID-19 and to take preventive and curative measures for all citizens of the world. The COVID-19 pandemic had a great impact on the globalization of interstate relations and the free movement of migrants in many countries of the world. COVID-19 represents the embodiment of globalization in its blind disregard for borders, but it could cause the most significant reversal of globalization we have seen in decades (Toulan 2020).

Toulan arrives at this postulate because the global economic downturn resulting from COVID-19 was at least as devastating, if not more so, than that of the global financial crisis. The economic downturn came as a result of restrictive measures on movement and the lack of jobs. All of these had an impact on migrants everywhere in the world, but to a significant extent also on migrants in the European Union.

With the beginning of the 21st century, international migration became globalized, with the number of immigrants tripling in recent decades, according to reports submitted by governments to the IOM. If 30 years ago only a few countries of the world were involved in international migration, today it marks almost all regions of the world, whether with departure, arrival, or transit of migrants (Tsapenko & Sautkina, 2018). The first wave of global migration dates back to the years 1880-1930 and researchers mostly link it to several factors such as the fall of the Berlin Wall, information distributed through mass media, the internet and mobile phones has made it possible to create a more complex picture of the way of life and consumption in other parts of the world; the existence of migration networks has made it possible to exchange information, whether they are family relationships or international entrepreneurs (Manthei & Raffelhüschen, 2018).

Privara and Rievajova (2021) bring to attention a new feature of global migration in the 21st century, arguing that the entry of migrants into the host country is becoming increasingly difficult due to policies to control and combat illegal migration. This policy of imposing numerous border controls or not allowing easy migration in many European countries, but also in the USA, presents a situation opposite to the problem in the 19th century. In the 19th and 20th centuries, the state's exit policies were difficult, providing for severe sanctions in the legal norms related to free movement and unauthorized exit from the country of origin. This strong regime has been in place in all countries of the Eastern bloc and the Western Balkans, and the USA.

Conversely, entering the host countries was easier due to the lack of strict rules and controls on interstate borders, and the legal norms were such that it was difficult to leave the country of origin, but at the same time, it was easy to enter any other country. Migration flows during this century occur for economic, environmental, and security reasons, which will remain, for the foreseeable future, a major, even critical, challenge for Europe, which will need to develop an effective long-term migration management policy.

The near future of the world's states will change. The EU will also face a

difficult situation as a result of demographic trends. A growing retired population will have to contend with a shrinking workforce that will put considerable pressure on public pensions and healthcare systems. In this way, Europe will have to attract immigrants both to compensate for the ageing of its population and to meet the demand for skilled workers. Even after the pandemic, data from European governments show a low birth rate and a rapid ageing of the European population. In this context, competition with other developed and developing economies in attracting skilled migrants may become increasingly difficult. In addition, EU citizens may view migrants as economic competitors, not as contributors, due to high unemployment rates. Achieving a balance between economy, social cohesion, and security will not be easy for EU countries, where some countries have the highest number of migrants among the other EU member states.

According to Privara and Rievajova (2021), a new feature of migration globalization in the 21st century is the category of migrants. Another essential feature of international migration in the 21st century is that there are changes in the categories of migrants. The profile of migrants has changed over time and in geographical space, followed by the factor of policies followed by states and international organizations. Globalization in migration has created a change in the formation of migrants, where there is an increase in the number of labor and skilled migrants in countries that previously did not have the status of a host country, according to international migration law. Economically backward countries did not create opportunities for professional and qualified citizens, creating outward movements of their own citizens, creating a paradox in that although the overall migration rate from economically backward countries is very low, the relationship between GDP per capita and the rate of qualified immigrants is inverse (Privara et al., 2020).

Privara and Rievajova (2021), highlighting the challenges of migration in the current phase of globalization, have determined that the second important characteristic of international migrants in the current phase of globalization is the increase in the share of women in the flow of international migrants. Their assessment is correct because, referring to IOM data, the percentage of women in international migrant flows increased from 46.8% in 1960 to almost 50% in 2018.

After the COVID-19 pandemic, international organizations such as the UN, WHO, and OECD created another strategic plan to protect and ensure the cooperation of states in guaranteeing, protecting, and promoting the fundamental rights of migrants. National policies must be in line with international policies. An international mechanism after the pandemic to guarantee the migrants the fundamental rights of migrants is the Agenda for Sustainable Development, and exactly the agenda's goals. The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015, provides a shared blueprint for peace and prosperity for people and the planet, now and into the future. At its heart are the 17 Sustainable Development Goals (SDGs), which are an urgent call for action by all countries, developed and developing, in a global partnership. They recognize that ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and spur economic growth, all while tackling climate change and working to preserve our oceans and forests. In each of the goals that states must complete, migrants and their position and legal status in each state where they migrate occupy an important place.

In the migration data portal for each objective, there is data on migrants. The most important aspect regarding the status of migrants is presented as follows:

-Goals- End poverty: increase access to resources and provide aid to communities most affected by conflict or natural disasters, also referring to migratory flows which are created specifically to fight poverty. Migrants are more likely than non migrants to be in poverty. Around 35% of international migrants were in or at risk of poverty compared to just 23% of non migrants. Due to different restrictions, many migrants have no access to social protection. Exactly 22% of labor migrants are not covered, and 55% of migrants cannot transfer their benefits home or to another country, referred to the World Bank in 2022.

-Goal- Zero hunger: ensure investment in the infrastructure and technology needed to improve agricultural productivity. Data from the IOM shows that a large number of migrants are employed in the livestock and agriculture sectors. Referring to the migration data portal in Italy, 370000 migrants from 155 countries are employed in agriculture, around of the total sector's estimated workforce.

-Goal- Health and well-being: reducing inequality and ensuring good health for all people. Percentage of 180 countries reporting access to COVID-19 vaccines as of March 2022, like migrants in regular situations 90%. Migrants in irregular situations 50%, refugees and asylum seekers 73%, internally displaced persons 47%.

-Goal- Quality education: promote inclusive, quality education so that all children complete primary and secondary education. UN DESA and IOM in 2021 declared that 64% of 138 countries provide equal access to primary and secondary education regardless of migrant status.

-Goal- Gender equality: ensure equal rights, as well as universal access to reproductive health. Data for each UN country on the IOM portal shows cases of victims of trafficking in migrants and discrimination against migrants.

-Goal- Reducing inequalities: improving market regulation and promoting migration and mobility of people. Missing migrant projects for 2024 show that more than 63000 people died or went missing during migration from 2014-2023.

-Goal-Sustainable cities and communities: ensure access to safe housing and invest in public transportation and urban management. Based on the IOM data portal in European countries, 44% of migrants from non-European Union countries reported living in overcrowded households compared to 18% of citizens.

-Goal-Peace, justice, and strong institutions: exchange ideas to find lasting solutions to conflicts and promote human rights. In increasingly diverse and distrustful societies, migrants can enhance intercultural interaction and community bonds, although migration remains far from safe and inclusive referred IOM data Portal.

All UN states, including members of the European Union, have the obligation to report on the fulfillment of these objectives and, in particular, the obligation to report on the return of migrants to their states. The COVID-19 pandemic has had a significant impact on the lives of migrants, with WHO reports stating that migrants have been included in the global health crisis from the outset, facing barriers to access to social protection measures and the enjoyment of the right to health care and compulsory vaccination against the COVID-19 virus (OECD 2022; WHO 2020). Migrants have faced violations of their right to employment, with job losses resulting from restrictions, and violations of their right to housing, with the result that they are not allowed to stay

in the countries where they migrated and return to their countries of origin. This highlights the vulnerability that many migrant groups face due to job losses, employment without the possibility of remote work, poor housing conditions, and barriers to access to social protection measures. International organizations and other international agencies on the protection of human rights have drawn up strategies with recommendations for governments to respond quickly and effectively to the specific needs of the migrant population in relation to the disease and its consequences (ECDC 2020; WHO 2020).

The COVID-19 pandemic exacerbated the human rights challenges faced by migrants in the EU, highlighting systemic inequalities in healthcare, housing, education, and employment. Migrants in irregular situations were particularly vulnerable, facing heightened risks of exclusion, exploitation, and neglect. While the states implemented some measures to address these challenges, such as ensuring access to emergency healthcare for all, the crisis underscored the need for comprehensive reforms to protect the rights of migrants and integrate them more fully into their social systems. Long-term solutions must address the legal, social, and economic inequalities that contribute to the marginalization of migrants in the EU, ensuring that all individuals, regardless of status, have access to the full spectrum of human rights.

In the European Union countries, the rights of migrants have faced a number of changes and challenges in the wake of the COVID-19 pandemic, relating to migration policy, health security, social protection, and legal treatment. Overall, the pandemic has deepened some of the existing inequalities and problems, while also triggering new changes in migration and asylum policies in some EU countries. The reports of the United Nations High Commissioner for Refugees (UNHCR), the analyses of the European Council on Refugees and Exiles (ECRE) and the reports of the IOM has shown an overview of changes in migration policies in the EU after the pandemic and the impact of the global health crisis on living conditions, health services, and social support for migrants in EU countries. Based on the reports of these international organizations, the following developments and changes are as follows:

-The pandemic has triggered immediate reviews of migration and border control policies, with EU countries closing their borders or restricting the movement of migrants and asylum seekers. Germany, France, Austria, and Hungary closed their borders or imposed strict border controls to restrict the movement of migrants and refugees, preventing those seeking international protection from reaching safety. Greece, Poland, and Bulgaria had turned off the possibility of applying for asylum. The border has been temporarily blocked due to the pandemic, and stricter measures have been imposed on migrants trying to cross the border illegally. McAuliffe and Triandafyllidou (2021) explore how technological innovation, geopolitical shifts, and environmental changes are key forces shaping the future of global migration and mobility. They analyzed how the pandemic affected migration policies and legal migration, highlighting the challenges related to border policies and the deterioration of living conditions for migrants during the global health crisis.

-The pandemic has led to a delay in the asylum process and changes in the way asylum applications are processed in EU countries. Due to travel restrictions and social distancing, many countries have delayed the processing of asylum applications and frozen procedures for asylum seekers seeking international protection. This has led to an

increase in the number of unprocessed asylum seekers and more stress on reception centers. Many countries have closed or restricted asylum centers and accommodation for migrants, making it less possible for them to seek legal protection and assistance.

-In many EU countries, living conditions for migrants and refugees have deteriorated during the pandemic, particularly for those living in refugee camps and collective shelters. Refugee camps, which are often overcrowded, have become vulnerable to the spread of COVID-19. This has raised serious concerns about the health safety of migrants, including a lack of hygiene and limited opportunities for social distancing. Deteriorating health conditions: In many countries, migrants have faced a lack of healthcare and have had difficulty accessing treatment for COVID-19 due to their precarious status or lack of legal documentation.

-For migrants working in the most risky sectors, the pandemic has worsened working conditions and increased discrimination. Migrants, especially those working in agriculture, domestic help, and other essential services, have faced difficult conditions and a high risk of infection. This has led to the mistreatment of migrant workers, who are often unrepresented or insecure in their jobs. Unemployment and discrimination: Migrant unemployment has increased due to the economic crisis caused by the pandemic, and they are likely to face increased discrimination in the labor market, having difficulty finding employment opportunities and social support.

-Another challenge for migrants has been health protection and access to healthcare. Migrants living in EU countries without a regular status have had difficulty obtaining necessary healthcare, including treatment for COVID-19. This has led to the further spread of infection among migrant groups. Many hospitals and health centers in the EU have been overwhelmed by the pandemic, and this has limited the opportunities for migrants to benefit from healthcare services and treatment options for other illnesses.

-However, the pandemic has prompted several international solidarity initiatives and efforts to improve the protection of migrants. Many international organizations, such as UNHCR and the World Health Organization (WHO), have stepped up efforts to provide health support through Interstate solidarity policies. Some EU countries have adopted solidarity policies to distribute migrants and refugees from countries with the highest burden, such as Greece and Italy, in order to provide a more equal opportunity for protection and services. A retrospective observational study of 70,512 irregular migrants who arrived in Italy by sea between January 2021 and January 2022 found that the incidence rate of SARS-CoV-2 among them was significantly lower than that of the resident population in the same age group (under 60 years). Specifically, new arrivals had an incidence of 40.6 cases per 1,000 compared to 177.6 per 1,000 among residents, resulting in an incidence rate ratio (IRR) of 0.23, meaning that migrants were infected at approximately one-quarter the rate of the general population. Furthermore, almost all positive cases among migrants were asymptomatic, with no reported hospitalizations and no observed illness. The study concludes that newly arrived migrants did not increase Italy's COVID-19 burden and highlights the effectiveness of structured health governance and quarantine measures in protecting public health (Sisti et al.,2023).

-Due to the pandemic, many countries have increased controls and prosecutions of irregular migrants and refugees who have not had the opportunity to apply for asylum, while there have also been efforts to facilitate the integration process of

migrants who are legitimate in EU countries. Mentzelopoulou and Spinelli (2022) discuss the broad impacts of the pandemic on asylum procedures and asylum policies in the EU. Their study report highlights the challenges that EU states have experienced in protecting migrants and the impact of movement restrictions on asylum processes. The COVID-19 pandemic significantly disrupted asylum procedures across EU Member States, exposing systemic weaknesses while accelerating digital transformation. Emergency measures, including border closures, suspension of personal interviews, and limited access to services, challenged the protection of asylum-seekers' rights. However, innovative practices such as remote processing and e-administration emerged as potential long-term improvements. The European Parliament and Commission highlighted the importance of upholding fundamental rights, ensuring access to protection, and adapting EU migration and asylum policies to respond effectively to future emergencies. Based on the political dynamics that apply to the legalization of migrants during the COVID-19 pandemic in Italy and Spain, the pandemic highlighted the essential roles of undocumented migrants, prompting civil society actors to advocate for their legalization. In Italy, a top-down approach led to a collective regularization program, while in Spain, despite strong advocacy, the government did not implement similar measures. These different outcomes depend on the political possibilities, institutional constraints, and mobilization of advocacy coalitions in each country, indicating that the pandemic served as a critical point, revealing the vulnerabilities of undocumented migrants and the different political incentives influencing legalization policies in Southern Europe (Perna & Puig Batalla, 2023).

Following the pandemic, the rights of migrants in the EU have gone through a difficult period. Despite some efforts at solidarity and support, migration has become more restricted, and asylum and legal migration procedures have slowed down. Many migrants and refugees have experienced difficulties in accessing health services, deteriorating living conditions, and a lack of job opportunities.

Conclusions

Following the pandemic, the status of migrants has changed significantly, particularly with regard to their international movement, labour rights, and legal residence in host countries. Although many migrants have lost their jobs and their residence rights, their human rights remain guaranteed by international law, including refugee law and the rights of migrant workers.

Impact of the pandemic on regular and irregular migration: The pandemic has led to an increase in irregular migration, as many migrants have lost their residence and work documents. However, during the pandemic period, there has also been a restriction on international movement, making it more difficult for migrants to exercise their rights to movement and work.

Since the pandemic ended, States and international organizations, such as the United Nations, IOM, and OSCE, have focused their efforts on ensuring the protection of migrants' rights and ensuring that they are able to renew their documents and restart their lives in safety and dignity. This has included the establishment of reintegration programs for migrants who have returned to their countries of origin.

Following the pandemic, many States have established reintegration programs for migrants who have returned to their countries of origin, providing them with jobs

and development opportunities. Cooperation between the States of origin and host countries, as well as with international organizations, has been essential for the implementation of these programs.

Protecting migrants' rights in the wake of the pandemic has required an improved and more coordinated approach among States and international organizations. In the wake of COVID-19, there has been a growing awareness of the importance of respecting the rights of migrants and implementing policies that favor their integration and protection.

In accordance with international instruments, the rights of migrants are the same as the rights of any individual, and these rights must be respected without distinction. The pandemic has highlighted the need to ensure the protection of the rights of migrants at all times, including those of movement and residence, without discrimination.

The post-pandemic era has underscored the complex relationship between globalization, migration, and human rights. The COVID-19 pandemic revealed and exacerbated existing vulnerabilities in the migration system, particularly for those in irregular situations. It highlighted how interconnected globalization is with migration, as global movements not only facilitate the spread of infectious diseases but also lead to shifting migration trends and border policies.

While globalization continues to drive migration trends by connecting distant regions, it also contributes to new inequalities that impact migrants, particularly in health, employment, housing, and education. The pandemic further amplified these disparities, particularly in the European Union, where restrictive measures on migration and asylum processes were implemented, resulting in delayed applications, deteriorating living conditions, and greater discrimination against migrant workers. Vulnerable groups, especially those in precarious legal statuses, faced disproportionate risks in terms of healthcare access and economic insecurity.

The post-pandemic period has called for urgent reforms to protect migrants' human rights. While international frameworks such as the UN's 2030 Agenda for Sustainable Development continue to emphasize the inclusion and protection of migrants, challenges remain in ensuring that these rights are upheld across all host countries. Efforts by international organizations, like the WHO and IOM, have been critical in providing support, but there remains a significant gap in the protection and integration of migrants in many countries.

The COVID-19 pandemic thus serves as both a wake-up call and a catalyst for change. As migration continues to be shaped by globalization, it is essential that governments, particularly in the European Union, develop comprehensive, long-term policies that address the root causes of migration, provide equitable access to services, and safeguard the rights of all migrants, irrespective of their legal status. Without such reforms, the challenges of the pandemic will continue to burden migrant populations, undermining the fundamental principles of human rights and social justice.

In conclusion, this paper emphasizes that, in the wake of the COVID-19 pandemic, it is necessary for states and international organizations to continue working to protect and promote the rights of migrants, ensuring that they have the opportunity to live a dignified life, despite the challenges caused by the pandemic.

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Leadership at the Crossroads: Navigating Commitment and Turnover in Kenya's Universities

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Abstract

This conceptual study examines the complex interplay between leadership styles, organizational politics, and faculty loyalty in Kenyan universities, using Leader–Member Exchange (LMX) theory as an analytical lens.

It explores how varied leadership behaviors - from participatory and transparent to autocratic and exclusionary - shape staff morale and turnover intentions in a higher education system strained by expansion, reduced funding, and heightened accountability. Drawing on contemporary literature, the paper highlights how inclusive leadership undergirds institutional cohesion, while politicized governance and inequitable treatment erode staff commitment. It offers a critical synthesis, underscoring the need for future empirical research and targeted governance reforms. This conceptual groundwork aims to inform policy and leadership development in Kenya's higher education system, emphasizing that high-quality supervisor-subordinate relationships are essential to reversing attrition and reinforcing professional allegiance.

Keywords: Leadership, Organizational Politics, Loyalty, Commitment, Turnover Intentions, Leader-Member Exchange, Employee Retention, Governance

Introduction

Kenya's higher education system is at a pivotal crossroads, confronting a complex interplay of massification, declining public funding, and intensified accountability demands (Omolo, 2021). These structural pressures have not only reshaped the operational dynamics of universities but have also foregrounded the centrality of leadership in managing institutional change. As universities grapple with these challenges, internal politics and leadership practices have emerged as critical determinants of institutional climate, influencing both organizational cohesion and staff morale.

Recent research indicates that faculty and administrative staff are not solely motivated by extrinsic factors such as salaries or workloads. Rather, their commitment and decisions to stay or leave are profoundly shaped by the perceived fairness, inclusivity, and supportiveness of leadership (Amah & Ahiauzu, 2021; Kimathi & Mugo, 2019). Effective leadership - marked by transparency, participatory governance, and responsiveness - can foster a sense of belonging and professional fulfillment, even in resource-constrained environments (Ng'ethe, Iravo, & Namusonge, 2019).

This conceptual paper critically examines how leadership styles and university politics intersect to shape staff loyalty and turnover intentions in Kenyan universities. By situating this inquiry within broader discourses on organizational behavior and governance in African higher education, the paper contributes to a nuanced understanding of how leadership can serve either as a stabilizing force or a catalyst for attrition in academic institutions.

Statement of the Problem

Kenya's higher education landscape - encompassing both public and private universities - is experiencing significant turbulence due to massification, funding uncertainties, governance challenges, and shifting stakeholder expectations. As institutions navigate these complexities, internal leadership dynamics and organizational politics have emerged as powerful, yet underexplored, determinants of employee commitment and retention. While public universities often struggle with bureaucratic inefficiencies and political interference, private institutions face pressure to maintain competitive performance and financial viability, sometimes at the expense of inclusive and ethical leadership practices. Despite growing concerns over staff turnover and eroding institutional loyalty, limited scholarly attention has been paid to how leadership behaviors and political climates across institutional types jointly shape employee experiences. This conceptual gap underscores the need to critically examine the intersection of leadership, organizational politics, and turnover intentions to inform more resilient and inclusive governance practices in Kenya's universities

Relevant Theory: Leader-Member Exchange (LMX) Theory

This study is grounded in Leader-Member Exchange (LMX) theory, which posits that the quality of relationships between leaders and subordinates significantly influences organizational outcomes. High-quality LMX relationships are built on trust, mutual respect, and reciprocal support, leading to increased employee commitment, job satisfaction, and retention (Graen & Uhl-Bien, 1995). In contrast, low-quality exchanges are characterized by formal, transactional interactions that often lead to disengagement and turnover.

In the context of Kenyan universities - where leadership is frequently affected by political interference, unequal resource distribution, and opaque promotion practices - LMX theory offers a valuable lens for analyzing the relational dynamics that shape institutional stability. By focusing on the differential treatment of staff and its impact on organizational commitment, LMX helps explain how effective leadership can buffer against the negative effects of internal politics. As such, this theory provides a relevant framework for understanding the link between leadership practices, employee attitudes, and leadership turnover in Kenya's higher education sector (Amah & Ahiauzu, 2021).

The Leader-Member Exchange (LMX) theory posits that leadership effectiveness stems from the quality of relationships between leaders and their subordinates. High-quality LMX relationships are characterized by trust, respect, and mutual obligation, while low-quality LMX relationships are transactional and limited (Graen & Uhl-Bien, 1995). In Kenyan universities, where politics often influence resource allocation, promotions, and recognition, LMX theory provides a valuable lens for examining how leadership quality affects employee attitudes and behaviors. High LMX can buffer the negative effects of organizational politics, enhancing commitment and reducing turnover intentions (Amah & Ahiauzu, 2021).

Higher Education Context in Kenya

Kenya's higher education landscape has witnessed rapid expansion, driven by mass enrollment, the proliferation of universities, and a series of ambitious policy reforms aimed at enhancing access and quality. While these efforts have democratized education, they have also imposed significant strain on institutional capacity. Public universities, in particular, are grappling with chronic underfunding, overcrowded classrooms, aging infrastructure, and an unsustainable reliance on adjunct faculty (Ng'ethe et al., 2019). These challenges have severely compromised the quality of instruction, research output, and student support services.

Compounding the structural strain is the politicization of higher education governance. Frequent state interventions - especially in leadership appointments and resource allocation - have eroded institutional autonomy, undermined meritocratic principles, and cultivated environments of mistrust and instability (Omolo, 2021). The cumulative effect is a fragile academic ecosystem marked by low staff morale, fluctuating commitment, and high turnover rates.

To address these issues, policy must shift from expansion to consolidation prioritizing quality assurance, sustainable financing, leadership accountability, and institutional independence.

State funding reduction

In the 2025/2026 fiscal year, the State Department for Higher Education and Research requested KSh 264.4 billion but received only KSh 142.3 billion, resulting in a 46.1% recurrent funding shortfall (KSh 122.1 billion) and a 73.3% deficit in development allocations (KSh 9.6 billion)

Previously, in 2023/2024, the recurrent requirement was KSh 153.9 billion, but allocation was only KSh 114.3 billion, yielding a gap of KSh 39.5 billion; development funding also fell short by KSh 9 billion (allocation of KSh 3.3 billion versus requirement of KSh 12.4 billion)

Additionally, for 2024/2025, universities and TVETs faced a total funding shortfall of KSh 58.8 billion, with caps and loans significantly underfunded (e.g., capitation: allocated KSh 26.1 billion vs. needed KSh 59.3 billion) Business Daily Africa.

Organizational Politics

Organizational politics refers to informal, self-interested behaviors aimed at influencing decisions and outcomes. In Kenyan universities, such politics manifest in

opaque hiring practices, ethnic favoritism, selective rule enforcement, and politicized promotion processes (Balozi & Muturi, 2022). These dynamics erode procedural justice and institutional trust. Employees exposed to high levels of internal politics often report diminished job satisfaction, psychological stress, and heightened intentions to leave (Olivier, 2020). The academic environment - traditionally grounded in collegiality and meritocracy - becomes corrosively competitive when political maneuvering overrides professional norms. This toxic atmosphere alienates staff, weakens commitment, and compromises long-term performance.

Leadership and Loyalty

Leadership significantly shapes institutional culture and moderates the effects of politics within universities. Research shows that autocratic leadership - characterized by centralized decision-making and limited input - correlates with increased turnover intentions, whereas democratic and laissez-faire styles are associated with reduced turnover among staff in Kenyan universities.

Meanwhile, transformational leadership - marked by vision, inclusivity, and empowerment - has been linked to enhanced employee engagement, commitment, and job satisfaction. In Kenyan higher education, it fosters unity, lowers turnover costs, and aligns the team with institutional goals.

Additionally, studies from public universities across Kenya confirm that transformational leadership boosts performance by elevating employee engagement and productivity.

Conversely, leadership flawed by ethnic favoritism, nepotism, or political patronage undermines trust and erodes staff loyalty - a trend well-documented in Kenyan public universities. In these environments, inclusive, merit-based leadership emerges as a critical counterbalance to politicized governance.

Leadership turnover vs. state funding reduction

Example: At the **University of Nairobi (UoN)**, Vice-Chancellor **Peter Mbithi** served from **January 2015 to July 2019**, and his term consciously ended six months early by the university council. His successor, **Stephen Kiama**, was suspended in **August 2024** amid governance conflicts; meanwhile, the council chair's appointment was revoked in **February 2025**.

These cases illustrate frequent leadership transitions and potential links to financial and governance stress, although systematic data across universities remains to be compiled.

Employee Commitment and Turnover Intentions

Organizational commitment comprises three dimensions - affective, continuance, and normative commitment - each influencing turnover intentions differently. Meyer and Allen's (1991) foundational model defines affective commitment as emotional attachment, continuance commitment as cost-based attachment, and normative commitment as obligation-based loyalty.

Empirical findings reinforce the inverse relationship between these commitment types and turnover intentions. For instance, in Oman's public sector, higher levels of affective and continuance commitment significantly reduce turnover intentions, whereas

normative commitment shows a weaker effect. A comprehensive regression analysis in an Islamic banking context similarly found strong negative correlations between all three commitment types and turnover intention, with each component contributing cumulatively to reduced attrition.

In Kenya's higher education context, structural and managerial faults - such as delayed promotions, inconsistent evaluations, and poor recognition - erode affective commitment and amplify turnover risks (as reported by Kipkebut, 2020; Odhuno & Mungai, 2023). Conversely, institutions that foster ethical leadership, fairness, and inclusive environments experience stronger staff loyalty and retention (Amah & Ahiauzu, 2021).

Summary Table of Key Data

Issue Addressed	Data Insights
Funding reductions by fiscal year	2023/24: Recurrent deficit KSh 39.5B, developmental deficit KSh 9B 2025/26: Recurrent shortfall KSh 122.1B (46.1%), development KSh 9.6B (73.3%)
Student-professor ratio	Current average: 563:1 2010: 774:1 Recommended ratios often violated
Leadership transitions probability	UoN VC tenure changes: Mbithi (2015–2019), Kiama suspended in 2024 - indicative of instability

Source: Business Daily

The Confluence of Leadership, Organizational Politics, and Turnover

Leadership behaviors and organizational politics are deeply intertwined, shaping staff turnover trends. Empirical research conducted within Kenyan universities confirms that autocratic leadership styles significantly increase academic staff turnover intentions, whereas democratic and laissez-faire styles help reduce them, aligning with global studies on leadership and retention.

The Leader–Member Exchange (LMX) theory offers insight into these dynamics: high-quality leader–follower relationships - based on trust, respect, and mutual obligation - promote inclusion and predictability, which in turn buffer the adverse effects of internal politics. Cultivating transparent, communicative, and fair leadership reduces workplace uncertainty and emotional strain, effectively stabilizing staff retention.

High-quality, inclusive leadership not only counters the corrosive effects of organizational politics but also fosters workplace environments that sustain employee commitment and reduce turnover - making it an essential target for policy and institutional reforms in higher education.

Leadership and organizational politics intersect in shaping turnover dynamics. When leaders are perceived as enablers of political interference, staff disengagement and attrition rise (Balozi & Muturi, 2022). Conversely, leaders with integrity and political courage can counter toxic politics. LMX theory reinforces that high-quality leader-member relationships enhance inclusion and predictability. Transparent, communicative, and fair leadership reduces the emotional toll of working in politically charged environments (Amah & Ahiauzu, 2021), thereby stabilizing staff retention.

Insights for Institutional Governance and Policy Development

Kenyan universities must reorient governance strategies to foster loyalty, reduce attrition, and enhance institutional resilience. A first critical step is building leadership capacity - namely, training academic leaders in ethical governance, emotional intelligence, and participatory management. Such investment helps cultivate leadership that is principled and inclusive.

To promote transparency, institutions should instill merit-based promotion systems with clear criteria and appeal mechanisms. Standardizing these policies can help counter arbitrary advancement and political favoritism. Indeed, previous attempts (e.g., the 2014 harmonized promotion criteria) sought to create uniformity, though setbacks like legal challenges have exposed the fragility of such reforms.

Additionally, to mitigate political interference, universities should establish independent oversight bodies. These would act as impartial gatekeepers, safeguarding decisions on leadership appointments and resource allocations from undue influences.
Enhancing staff engagement is equally essential. Institutionalizing feedback mechanisms and inclusive decision-making forums fosters professional commitment and engagement.

Professor-to-student ratios

Kenya has fewer than **1,000 professors** serving roughly **562,925 students** across 68 universities - an average of **563 students per professor** (Munene, I. 2024).

In 2010, there were 32 universities with ~177,175 students and only 238 professors (≈774 students per professor), highlighting a systemic imbalance.
Over the past decade, student numbers in public universities increased by **70%**, while professor numbers grew only by **11%**.

The Commission for University Education (CUE) recommends faculty-to-student ratios of **1:10** in Applied Sciences, **1:15** in Arts & Humanities, **1:7** in Medical & Allied Sciences, **1:10** in Pure & Natural Sciences, and **1:18** in Social Sciences. Many universities exceed these, with some around **40:1** even when including part-time staff KIPPRA.

Legal Dimension

Universities Act, 2012, Employment Act, 2007, Public Officer Ethics Act, 2003, and Leadership & Integrity Act, 2012 establish governance and ethical mandates.

These statutes enforce due process, recruitment transparency, and accountability, offering legal leverage amid political detriments.

Leadership in Kenya's universities is governed by the Universities Act, 2012 and other statutory frameworks which outline the legal obligations of university councils, vice-chancellors, and senior administrators. These legal structures mandate transparent recruitment, academic integrity, and accountability in governance. However, frequent leadership turnover and wavering commitment raise legal concerns, particularly around breach of contract, wrongful termination, and due process in leadership appointments or removals. Political interference and factional interests often undermine legally mandated procedures, threatening institutional autonomy and stability. The Employment Act and Public Officers Ethics Act further require leaders to uphold integrity, fairness, and commitment to public service. Persistent turnover

disrupts continuity and violates the legal principle of legitimate expectation by staff and students for stable, effective leadership. Courts have occasionally intervened, highlighting the need for adherence to the law in governance disputes. Thus, legal safeguards must be reinforced to protect universities from erratic leadership transitions and to uphold the rule of law. Strengthening internal dispute resolution mechanisms and enforcing statutory procedures is essential to balancing leadership transitions with institutional integrity. Ultimately, a commitment to legality in leadership practices is critical for sustainable growth and public trust in Kenya's higher education system.

Summary

Governance Focus	Policy Action Highlight
Leadership Development	Train principals in ethical, empathetic, and participatory practices
Promotion Transparency	Enforce standardized, merit-based advancement processes
Political Independence	Introduce oversight mechanisms to protect institutional decisions from undue influence
Employee Engagement	Institutionalize inclusive forums and structured feedback loops
Staff Welfare	Invest in health, mentorship, and research capacity-building initiatives

Finally, prioritizing staff welfare through mental health support, mentorship programs, and research opportunities strengthens employee attachment and productivity.

Conclusion

The convergence of leadership dynamics and organizational politics critically determines employee loyalty and turnover in Kenyan universities. Applying Leader–Member Exchange (LMX) theory, the paper demonstrates how equitable, inclusive, and trust-based leader–staff relations can buffer the adverse effects of political opacity and resource scarcity. As higher education institutions confront pressures such as rapid expansion and funding constraints, cultivating transparent governance and leadership accountability emerges as pivotal.

Empirical studies affirm that leadership style directly affects turnover intentions: autocratic leadership correlates with higher turnover, while democratic and participatory styles mitigate attrition and bolster staff retention.

These insights underscore the importance of human-centered, inclusive leadership models.

Policy-Oriented Recommendations

Institutionalize Leadership Capacity Building

Launch mandatory training programs for university leaders in ethical governance, emotional intelligence, and participatory management, to foster inclusive environments and effective LMX relationships.

Enforce Transparent Promotion and HR Practices

Establish clear, merit-based criteria, open recruitment, and appeals processes for

promotions and staffing, reducing perceptions of bias and improving trust in governance.

Minimize Political Interference

Create independent oversight bodies - comprising university councils, faculty representatives, and external stakeholders - to act as checks and balances in key leadership and resource decisions.

Improve Employee Engagement and Well-being

Implement periodic staff feedback mechanisms, mentoring programs, and psychological support services to address job satisfaction, burnout, and morale, thereby enhancing emotional commitment.

Monitor and Evaluate Leadership Impact

Integrate leadership style and retention metrics into university performance dashboards to inform governance improvements and accountability.

By embedding these strategies in policy, Kenyan universities can transform leadership from a source of attrition into a catalyst for staff loyalty, institutional stability, and academic excellence, thereby cultivating resilient, high-performing academic communities.

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The application of anti-abuse provisions to inheritance and gift tax law, using the example of German inheritance and gift tax

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Abstract

Most tax systems have explicit or case-law-based anti-abuse provisions. In Germany, such a regulation was legally standardized in § 42 AO. In the past, literature and case law in this context have mostly dealt with cases from income tax law. However, as will be shown below, anti-abuse legislation also plays an important role in inheritance and gift tax law. Special features arise here, above all, from the different taxation depending on the degree of kinship, which is not known in the income tax law, and benefits for business assets in § 13a ErbStG. The aim of the article is to investigate the application of the general anti-abuse provision to inheritance tax law by analyzing legal literature and case law. Findings show that there is only very little literature or case law that explicitly deals with the topic. Nevertheless, as a result, it can be stated that general anti-abuse provisions are, without limitation, applicable to inheritance and gift tax law and have high practical relevance.

Keywords: Inheritance Tax Law, Gift Tax Law, Anti-Abuse Legislation

Introduction

§ 42 AO was developed based on a decision of the highest financial court in 1919. In this decision, the court indicated that there was no rule that stipulated that a construction that was only used to avoid taxes must be taxed in the same way as a regular construction. Since the last bigger amendments to § 42 AO in 2008 (Heintzen, 2013; Leisner-Egensperger, 2008; Wedelstädt, 2007), it has used the following wording:

§42 AO - Abuse of tax planning schemes

1. *It shall not be possible to circumvent tax legislation by abusing legal options for tax planning schemes. Where the element of an individual tax law's provision to prevent circumventions of tax has been fulfilled, the legal consequences shall be determined pursuant to that provision. Where this is not the case, the tax claim shall, in the event of an abuse within the meaning of subsection (2) below arise*

in the same manner as it arises through the use of legal options appropriate to the economic transactions concerned.

2. *An abuse shall be deemed to exist where an inappropriate legal option is selected which, in comparison with an appropriate option, leads to tax advantages unintended by law for the taxpayer or a third party. This shall not apply where the taxpayer provides evidence of non-tax reasons for the selected option which are relevant when viewed from an overall perspective.*

As far as can be seen, there is no literature that specifically deals with the topic of anti-abuse provisions in the field of inheritance and gift tax law. But it is possible to draw conclusions from literature which generally deals with anti-abuse provisions in tax law or inheritance tax.

In 2016, a general anti-tax avoidance rule has been adopted as part of the anti-tax avoidance directive of the EU. Some authors have dealt with this. Beckers & de Broe (2016) describe how ECJ case law developed a concept of anti-abuse jurisprudence and analyzed the concept. Öner (2016) also investigated the efficiency of the general anti-abuse rule of the Anti-Tax Avoidance Directive and found difficulties when applying the rules. Freedman (2014) argues that general anti-avoidance or anti-abuse provisions are an essential part of a modern tax system.

Researchers who focus more on the inheritance tax do not specifically address anti-abuse provisions. Gerzog (2014), for example, discusses the advantages or disadvantages of an inheritance tax compared to the existing estate tax in the US. Others like Pedersen and Böyum (2020) consider the problem from a philosophical point of view, especially how it is justified to collect taxes from the family after a death.

Legal options for tax planning schemes

The wording “legal options for tax planning schemes” not only refers to civil law constructions but also public law constructions and even exclusive tax law constructions (Drüen, 2019; Sieker, 2018; Wendt, 2010). In principle, all legal options for tax planning schemes can be subsumed under this wording and are affected by an anti-abuse regulation. On the other hand, § 42 AO cannot be applied if no economic circumstances are affected, only a legal relationship without any economic background. For example, a marriage establishes a legal relationship between spouses. Due to several implications of this legal relationship in tax law (e.g., a lower splitting tariff), married couples are taxed at a lower rate. However, this does not constitute a tax planning scheme under § 42 AO. This result seems questionable in the context of inheritance tax if a marriage is arranged shortly before an individual’s death solely to avoid paying taxes; for example, an old and wealthy widower could, in theory, marry his great-niece (which is legally permissible), who would inherit his entire fortune. Due to the legality of same-sex marriage, the same would be possible with his great-nephew. Only marriages with direct descendants (i.e., children) or between siblings are prohibited. In any case in which the marriage is valid under civil law, § 42 AO cannot be applied.

The freedom of contract or private autonomy allows taxpayers to choose the most advantageous contractual forms for their transactions (Crezelius, 2007). They are also free to use legal entities, if appropriate. The legal system only limits these opportunities by defining rules and regulations. However, within these limitations,

taxpayers are generally free to make their own decisions. The civil law construction is the starting point for tax treatment. Tax law, in principle, does not prevent advantageous civil law constructions. If different civil law constructions are possible, it is acceptable to consider the tax implications of different constructions and choose the ones with the most beneficial taxation. There has even been discussion about the constitutional right to "optimized tax design" (Lenz & Gerhard, 2007).

Legality of circumventing transactions

Circumventing transactions aim to produce economic success, which conflicts with the objective of a burdening tax regulation, especially a prohibition norm or other burdening rule, such as formal requirements or permission requirements. By circumventing the prohibiting or complicating rule, economic success can presumably be achieved at all or at least easier. The contracting parties can also attempt to achieve the application of a beneficial regulation which normally would not be applicable. There is no general prohibition in civil law to use circumventing transactions. § 42 AO only orders to withhold the desired beneficiary taxation. Tax law can be circumvented by every taxpayer. For example, foreign taxpayers with limited tax liability can also circumvent tax law.

Legal definition of abuse (§ 42 Abs. 2 S. 1 AO)

§ 42 Abs. 2 AO contains a legal definition of abuse that replaces the previously developed definition in the jurisprudence (Hay, 2010). For the application of § 42 AO, it is not enough for tax-saving options to be used. Rather, legal options must be misused. Abuse means choosing an inappropriate legal construction to achieve a desired economic goal and reduce taxes.

Inappropriate legal constructions

A basic condition for abuse is that the legal construction to be inappropriate. The term "inappropriate" is not defined in the law itself because it is not useful to define; this would require a definition with more indeterminate or uncertain legal terms. Legislators' decision not to define the term also allows further development in the jurisprudence (Wienbracke, 2008). § 42 AO does not evaluate the appropriateness of the economic behavior itself because there is no authorization within the section for this. If the tax-saving construction serves an economic purpose, there is no control over whether the design option is appropriate. However, the design option is inappropriate if it serves no economic purpose at all, if it lacks a rational economic reason, or if it reduces taxes and is not justifiable through any economic or other rational non-fiscal reasons. It is not necessary for the contracting parties to use a specific construction to implement a transaction; however, absurd legal constructions or tricks are inappropriate. It is also relevant whether a well-informed and wise person would choose the construction to achieve the economic objective, given the economic circumstances. According to the traditional view, the legal system attempts to provide legal constructions that are as simple as possible for all economic transactions. Therefore, the simplest available legal construction that can be used to achieve a desired economic result is also the appropriate legal construction. Appropriate legal constructions are simple, functional, transparent, and economic. Inappropriate legal constructions are

circumstantial, complicated, artificial, uneconomic, unnatural, strange, unnecessary, absurd, unclear, impractical, irrational, and ineffective (Carle, 2008). Most inappropriate constructions are not an honest expression of what is really wanted to achieve. Appropriate constructions are designed to achieve the objective in a direct way, while inappropriate legal constructions often rely on detours that are not easily explainable. Vague legal terms and general clauses can offer only a certain degree of legal certainty. They cannot provide absolute certainty about the future application of the law. If vague terms are used to describe the character of a transaction, this is only an indication an appropriate or inappropriate transaction. Unusual and inappropriate transactions must be separately considered and not be treated as equivalent. An unusual legal construction is not automatically inappropriate. However, an unusual legal construction is a strong indication of an inappropriate construction, while a typical legal construction is an indication of an appropriate transaction. The taxpayer does not have any duty to design a construction in a manner that incurs taxes. On the contrary, all taxpayers are free to attempt to lower their taxes as much as possible and choose design options that would result in lower taxation. An effort to reduce taxes does not make a design option inappropriate. This is true even if reducing taxes was the only reason to choose a certain design option. However, there must also be a rational economic reason for the construction or a recognizable non-fiscal reason. If the purpose of saving taxes is not exist and there is no reasonable economic purpose, then the construction is inappropriate. An appropriate construction is not possible if economic justification is only claimed, pretended, or faked. The claim to options provided in the law (e.g., 13a Abs. 10 ErbStG, which increases the tax exemptions for inherited or donated business property from 85% to 100% if the taxpayer applies for this and certain conditions are met) without a non-fiscal reason generally does not lead to inappropriateness, because options provided in tax law are passed only for tax reasons. Inappropriateness may occur only if multiple tax options are used in a contrary way. Sometimes, the intended economic result can be achieved through several legal constructions, without one of them necessarily being inappropriate. The taxpayer can choose the most advantageous construction. If the taxpayer selects an appropriate construction, it is irrelevant whether an even more appropriate construction was available. For example, it is not inappropriate for married couples to specify in their last will that the longer-lived spouse will not be the heir of the spouse who dies first, but rather obtain a usufructuary right for the rest of their lives. This would mean a significantly lower inheritance tax for the longer-lived spouse if they only want to use the property until their own death and do not intend to sell it.

Tax benefits

For § 42 AO to be applicable, the inappropriate construction must lead to tax benefits for the taxpayer or a third party. In this context, tax benefits refer to the difference in taxation between two legal constructions, not only in terms of lower taxation but also a later timing for the tax collection. The question of whether a cross-border construction leads to tax benefits cannot be judged only from the perspective of one country; rather, the overall views of the affected countries are decisive. Furthermore, whether the tax benefit was intended by law must be evaluated, which is the case if the taxpayer uses legal tax options provided by legislators or if a certain

behavior is encouraged through fiscal benefits (Hahn, 2008). Some have even argued that lawmakers must clearly indicate whether a tax benefit for a certain design option is desired or tolerated. In some cases, lawmakers act in accordance with this argument and describe this requirement in the rule itself. However, in most cases, there is no explicit description in the rule because the tax benefit is unintended and results from discontinuity in the tax law or a lack of coordination. If the legislature's intention is unclear, some have argued that it must be clarified by investigating the historical development of the tax regulation and interpreting it in a teleological manner. If this still does not lead to a clear result, it has been argued that § 42 AO cannot be applied in favor of the taxpayer. Thus, the application of § 42 AO should no longer depend on the taxpayer's intention to commit abuse.

Consideration of non-fiscal reasons

Even if an inappropriate construction is assumed, the taxpayer always has an opportunity to exonerate themselves (Füllbier, 2012). There is no abuse of design options if the taxpayer can prove that they had considerable non-fiscal reasons for choosing a certain inappropriate construction. In this context, "considerable" does not mean that non-fiscal reasons must dominate because this requirement could be easily implemented in the law by legislators (argumentum e contrario). Conversely, not every non-fiscal reason can be considered a justification for inappropriate design options. Quantitatively speaking, "considerable" means perhaps 10–50% non-fiscal reasons. However, justification for a construction cannot be provided through numbers. The decisive factor is the content of the non-fiscal reasons, which must be evaluated according to the overall circumstances of the construction (Vogel, 1996). For instance, considerable non-fiscal reasons include

- avoidance or reduction of liability,
- personal and economic reasons, or
- legal, political, and religious reasons (Clausen, 2003)

Legislators and the financial authorities take the position that an economic reason is missing if the main purpose of a foreign corporation is to protect a domestic corporation's property in times of crisis, facilitate a succession, or provide the pension of shareholders. This position is criticized in the literature because the protection of property in times of crisis is one of the most reasonable economic purposes that property owners have. However, there is a consensus that the economic behavior itself cannot be investigated if it is appropriate because the financial authorities do not have the competence or capacity to investigate whether certain constructions make economic sense. Conversely, even a complete lack of considerable non-fiscal reasons is only an indication of an inappropriate construction, as the motivation to reduce taxes is legitimate. This motivation is often leveraged by the legislature when passing laws that have an incentive tax-saving effect if the taxpayer behaves in a certain way. Then, a construction cannot be regarded as abuse if it only makes economic sense by considering tax-saving effects, or if the only motivation for the construction is to reduce taxes.

Intentional abuse

There are different opinions in the literature and the jurisprudence regarding whether the application of § 42 AO requires that an inappropriate tax scheme was chosen by the taxpayer with the explicit intention of circumventing the law. One side argues that the taxpayer's intention (fraudem legis) is necessary. Then, the intention of abuse must be separately examined for each affected tax type while considering the legislators' intention. If the taxpayer does not have any reasonable explanation for an inappropriate construction, abuse can be assumed. In contrast to this opinion, some believe that a separately determined intention to circumvent the law is not necessary for the application of § 42 AO. The application of tax law is an objective matter and does not depend on subjective factors such as intention. These two different opinions only have a minor impact on practice because, if the objective conditions of § 42 AO are fulfilled, this usually means circumstantial evidence for intentional abuse on the part of the taxpayer. Thus, subjective criteria can be assumed in most cases. A different treatment of cases is conceivable if the taxpayer chooses a circumventing construction unintentionally or only because they are inexperienced or unadvised. Then, the two different opinions lead to different results.

Relationship between § 42 AO and special legislation (§ 13a ErbStG)

If the facts of a case fulfill the legal definition of a special abuse norm, the latter is primarily applicable. The legal consequences can then only be derived from this special abuse norm. Thus, the general abuse rule in § 42 AO can only be referred to if no special abuse rule is applicable to the case. In previous cases, the BFH decided that, even if the facts of a special abuse rule are not completely fulfilled, this rule may prevent the application of a general abuse rule. Lawmakers attempted to resolve this problem by changing the wording of § 42 AO in the last reform in 2008 to prevent a general shielding effect of special abuse rules in these cases.

The special abuse rule concretizes the circumstances of an inappropriate construction, so that inappropriateness cannot be judged in the opposite way regarding § 42 AO. It must be evaluated if tax law norms serve the avoidance of abuse and therefore can be regarded as special abuse norms under § 42 AO, by interpretating the norms. It is decisive in what context and systematic position the norm stands. Moreover, the concrete wording or historical development of the norm can be decisive. Individual judgment about whether a rule fulfills the requirements and can be regarded as a special abuse rule is not simple because this is not explicitly formulated in the norm itself.

The following two examples demonstrate the difficulty of a clear delineation. To reduce inheritance or gift tax paid on private property, it is possible to transform the private property in advance of a donation or inheritance into business property. Then, the subsequent transfer of business property can be made largely tax-free (instead of a high tax on the transfer of private property). To prevent this construction, legislators amended the inheritance and gift tax law and sanctioned such constructions through § 13b Abs. 2 S.3 ErbStG a.F. This regulation was classified as a special abuse rule.

Through § 13a Abs. 3, Abs. 6, and Abs. 10 ErbStG, legislators sanctioned heirs or recipients who reduced the payroll of their companies or sold their companies within five or seven years after the transfer. This rule is not regarded as a special anti-abuse rule because the legislators' intention was to support and protect employment at the

companies through a blocking period.

Legal consequences

The legal consequence of applying § 42 AO is that the illegal construction is taxed in the same way as it would have been if the taxpayer had chosen a comparable and appropriate legal construction (Schwarz & Pahlke, 2019). § 42 AO breaks the principle of § 38 AO by requiring that the real facts do not constitute the basis for the taxation. Therefore, § 42 AO either simulates fictitious appropriate facts for the taxation or maintains the real facts but requires taxation according to the circumvented tax regulation. The purpose of § 42 AO is to prevent tax benefits that were not intended by lawmakers. Each person who takes advantage of improper constructions is affected by legal consequences, even if the constructions were not implemented by the beneficiary. § 42 AO is effective only to the disadvantage of taxpayers. Only if the application of an improper construction leads to higher and lower taxes at the same time, can this be summarized (§ 174 Abs. 1 AO). The tax must be paid even if a comparable economic result could be reached through another tax-free construction. The request for a tax decrease cannot be based on § 42 AO. If the construction is regarded as abuse, it is not at all relevant to the taxation, which means that all affected types of tax arise as if an appropriate construction had been chosen from the beginning. However, double taxation based on the real facts and the fictitious facts is not permitted. Taxes that were already paid for the inappropriate construction are counted and considered. All final tax assessments for previous years can be changed again (§§ 173 Abs. 1 AO or 175 Abs. 1 Nr. 2 AO). Apart from these results, § 42 AO has no further impact on civil law constructions. In particular, the contracts remain effective. Further consequences can only result from the interpretation of the contracts (§ 157 BGB), disruption of business fundamentals (§ 313 BGB), or claims for restitution (§ 812 Abs. 1 BGB).

Burden of proof

The tax authorities have the burden of proof to demonstrate that the chosen construction constitutes abuse. By contrast, the taxpayer can provide evidence of non-fiscal reasons for the chosen construction. This entails a two-step investigation process. If there are doubts regarding the abusive character of a construction, this is to the taxpayer's disadvantage. There is no general assumption that only unusual constructions are inappropriate. However, there is an assumption of an inappropriate construction if it is unusual and additional economic or non-fiscal reasons are lacking. Reasons for choosing a special construction can only be considered if the taxpayer informs the tax authorities of these reasons. If there is controversy about whether these reasons are substantial, a court must render a decision.

Conclusion

The anti-abuse provision of § 42 AO generally aims to prevent tax avoidance through inappropriate tax management. § 42 AO also applies without restriction to inheritance and gift taxation. However, the distinction between special statutory anti-abuse provisions in inheritance tax law is sometimes difficult. § 13a ErbStG, for example, provides for restrictions on tax relief for business assets if the transferred business reduces its wage bills or if the business is sold within a certain period after the

transfer. These provisions were introduced to preserve jobs and are not special anti-abuse provisions. Sometimes, diversification advantages arise in inheritance tax law depending on the degree of kinship. But a marriage, for example, to avoid inheritance tax is no abuse of tax law. The application of § 42 AO in inheritance tax law is therefore limited to cases that are neither regulated by the law itself nor whose tax consequences arise from the law. The transfer of assets to a spouse in order to subsequently transfer them to the children to avoid gift tax may be such a case of § 42 AO.

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