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***COMPARATIVE ANALYSIS OF LABOR RELATIONS IN THE
LATIN AMERICAN CIVIL SERVICE:***

Argentina, Costa Rica, Mexico, and Peru

Working Paper

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(Original document in Spanish)

COMPARATIVE ANALYSIS OF LABOR RELATIONS IN THE LATIN AMERICAN CIVIL SERVICE: Argentina, Costa Rica, Mexico, and Peru

A. INTRODUCTION

This document is a summary of the study entitled, “Comparative Analysis of Labor Relations in the Latin American Civil Service. Argentina, Costa Rica, Mexico, and Peru.”¹

The study covers the period from 1990 to 2000—a period characterized by the processes of state adjustment and modernization; growing social demands on pivotal state machinery, policies, and programs; change of jurisdictional competencies in short cycles; greater importance placed on civil society vis-à-vis the government machinery; progress and reverses in the democratization process; debate about non-delegable public services vis-à-vis the strong trend toward privatization; and a variable search for transparency in processes and quality of service delivery in a context of new regulatory challenges for services operating concurrently with the private sphere.

The report presents, first, a theoretical framework whose purpose is to organize the ideas that guide the study, identifying the principal variables and hypotheses. Next, the results are presented, bearing in mind the history of the institutional environment and aspects relating to the specific “universe” of labor relations. The final section, which contains conclusions, summarizes the most relevant observations and presents for consideration a “labor relations development index.” The index is based on nominal variables that indicate the existence or non-existence of a set of situations considered key to building an institutional infrastructure that promotes valuable results from the perspective of the public interest.

B. SCOPE AND METHODOLOGY

With respect to the general description of the countries, indicators have been selected from different databases to show their evolution, and also to analyze in broad terms the importance of government employment in the labor market and the performance of the educational and health sectors.²

For purposes of determining its universe, the study uses the definition of “public service personnel” established by the ILO:³ *“all persons employed by the public authorities, be they central, federal, regional, provincial (or, if applicable, state, canton, or of one Land, etc.) or local, or employed by autonomous public institutions devoted to activities other than industry or trade. This term applies to both employees who are recognized as such and may be*

¹ This research project was carried out between November 2001 and January 2002 as part of the agenda of the Regional Policy Dialogue Network on Public Policy Management and Transparency initiated by the Inter-American Development Bank, which tasked the Latin American Centre for Development Administration with arranging for the project’s oversight and implementation. The full document, “*Análisis Comparado de las Relaciones Laborales en la Administración Pública Latinoamericana. Argentina, Costa Rica, México y Perú* [Comparative Analysis of Labor Relations in the Latin American Civil Service. Argentina, Costa Rica, Mexico, and Peru]” contains 208 pages and Annexes (I. Constitutional Bases; II. Regulatory History; III. Legislation; IV. Economic, social, and labor indicators of the countries. Similarities and differences; V. Actors interviewed; VI. Questionnaire. Interview guidelines).

² See Annex “Economic, Social, and Labor Indicators of the Countries. Similarities and Differences.”

³ *Comisión Paritaria del Servicio Público* [Public Service Joint Committee], Fifth Meeting, Geneva, 1994

subject to a special legal system (regular staff) and to public employees, that is workers who without having acquired the status of government employees, are contractually associated with the administration (irregular personnel).”

Within the universe of public service personnel, the study focuses on labor relations as it affects non-financial, civilian public service personnel in three specific spheres of government activity:

- a) centralized and decentralized national administration;
- b) the health sector; and
- c) the education sector.

Also, for the education and health sectors in Argentina and Mexico, labor relations is considered in the national (or federal) and subnational (state, provincial, or local) spheres, according to which is responsible for the respective services.

The analysis focuses on labor relations involving 1.) the principal union powers, selected on the basis of their representativeness and the role they play with respect to working conditions in the public sector; 2.) the representation and collective bargaining mechanisms; and 3.) the amount of union affiliation of government employees at the different levels and in the various sectors.

The key actors interviewed included specialists who enjoy political recognition in the field of public sector labor relations. The specialists include actors (in the state arena) with responsibilities in the following fields: labor relations regulation and administration, with respect to the general administrative career path and in health and education; State reform; budget and oversight; conflicts; human resources; union or professional association relations; health; and education. In the labor arena, union representatives from central administration, health, and education were interviewed.

The methodology, based on interviews with key informants, provided general descriptive information about various involved individuals. It was useful for verification and generation of ideas; and it was a flexible, profound approach, easy to carry out, and adequate to provide a basis for understanding and analysis.

A vast amount of secondary information was also collected. This included general and specialized references, official documents and reports, and a vast body of public and private institutional information available on the Internet.⁴

C. CONCEPTUAL GUIDELINES

To compare the process and the current state of development of public sector labor relations in the selected countries, two complementary readings are necessary. The purpose of the first is to obtain a description which, based on the principal characteristics of the context of change in the State machinery, addresses the characteristics of government employment; identifies and describes the actors within labor relations; and considers the rules they follow in their interaction, and in respect to the agenda and its dynamic. The second tries to integrate the description on the basis of the performance of a group of variables that point to the state of affairs and level and type of development achieved by public sector labor relations in each country.

⁴ This material is listed in the chapters entitled “Bibliography” and “Information on the Internet.”

The central aspects of the readings are addressed in each chapter, and the last chapter provides a comparative summary.

a) Context and components of labor relations

Public sector labor relations in Latin America differs in terms of history and characteristics from country to country. To fully understand it we must view it in terms of the institutional changes resulting from structural reform of the State, different legal systems governing the employment relationship and, especially, the wide range of practices stemming from each country's political and administrative culture.

In particular, it is necessary to address the structure, size, and characteristics of the universe in which labor relations activities are carried out to understand the operating space of the various protagonists. It is also necessary to consider the regulatory framework of those relations, the actors' perspectives on the current agenda, the processes in which they participate, and the actual practices of the relational dynamic, including conflicts and conflict resolution.

The basic assumption is that, through these channels, one can explore the relationship between the effectiveness of the State mechanism (*good governance*) and the different types of labor relations that are established. *Good governance* means government that takes a holistic view of the State, trying to unite sectors that had been fragmented due to the division of labor, in order to achieve, through institutional management, comprehensive public service to the benefit of society.⁵

Policy framework

The relevance of providing a context for analysis of the reforms of the eighties and nineties is that they changed significant aspects of the public labor relations sector's structure and operation. In fact, their most conflictive aspects came under public scrutiny for two main related reasons: the downsizing of state machinery, reducing costs, jobs, and structures, and the reaction of the labor sector to the effect on sources of employment and income.

The change of state functions within the framework of modernization processes entails a new distribution of competencies and other changes in governance. Thus, the relationship between the public and private sectors with respect to service delivery involves new relationships with consequences for the state contracting modalities and labor relations. In particular, the tendency in the labor market to establish more flexible conditions of employment, reduce labor costs, and demand new qualifications and competencies that conflict with the rigid, centralized, uniform systems of public bureaucracies should be taken into consideration.

If we consider the new governance as a set of practical responses by governments to environmental pressures to direct administration toward the achievement of results through such methods as returning authority, accountability, competition, and choice, the delivery of adequate services to citizens, and the strengthening of the government's central functions, there are various implications for relationships between managers and government

⁵ According to Stoker, good governance entails: associations among multiple organizations, clear boundaries between public sector and non-public sector responsibilities, sharing of power among organizations that participate in collective action, autonomous systems, and new governmental tools and tasks (Stoker, Gerry, 1998).

employees, ministries and autonomous agencies, administration and policy authorities, and administration and citizens (Ormond and Loeffler, 1999:147, 159).

Diagnosis of dysfunctions in civil service systems from the management perspective (Longo, 2001: 21 s.) has highlighted the excess of regulations, their standardization, the lack of autonomy granted to managers, the restrictions on labor mobility, and the slowness of human resources management systems, among other things.

The regulations

There is tension between the regulatory systems characteristic of the Latin American countries and the labor relations dynamic. The constitutions codify principles and rights that serve as a reference for specific legislation, sometimes with a high degree of detail. Nevertheless, the interpretation of constitutional texts is not free of controversy, and rights of the public services to unionize and strike, for example, are often sharply restricted by legislation.

The regulations governing labor relations tend, in general, to advance the professionalization of public functions under the imprimatur of unilateralism and negotiation / agreement. In other cases, progress is made toward greater flexibility in conditions of employment, even independent of the status achieved by collective bargaining and even when it does not exist in the public sector. What is extraordinary is the simultaneous presence of both trends, even in the same administrative space, particularly the central administration. This could be explained by “flexibilization of the flexibility,” inasmuch as the forms of contractual association are not new in the civil service. This is true even though traditionally they were highly exceptional as a means of collaboration with the stable teams of employees, and in other cases they blended in with the bureaucratic structure. The characteristics of this modality of employment and the regulations that govern it generally make the process of establishing and fixing salaries more discretionary, and the increase in contracting creates a modality parallel to the stable civil service. Exploring the relationship between flexibility and the patronage system is, in this respect, a pending task.

Sometimes, flexibility is not the result of deregulation or the increased uncertainty of conditions of employment, nor is it an alternative contracting modality. Instead, it exists within the framework of statutory systems in which stability and rights decrease in the interest of other values that prevail in the labor market and the economy.

The concept of stability is seen as inseparable from government employment, and as such it is often endorsed in the employee statutes. Despite the fact that stability is not absolute, because it is at least subordinate to the public servants’ conduct being in accordance with law (appropriate stability), the principle is questioned because, in practice, it becomes *irremovability*, which in turn encourages conduct that is not motivated to improve performance. The argument that considers stability as an unchangeable, absolute constitutional principle which protects workers from arbitrary action is countered by another to the effect that there is an “inappropriate stability” giving rise to denunciation of the employment contract and is governed by law. Finally, an “anti-guarantee” position considers it appropriate to invoke the primacy of the “public economic order” over the “public

employment order,” including the “emergency theory,” which has been applied in the private and public spheres and, in this case, within the framework of structural reform.⁶

The extraordinary labor market conditions, with high rates of informal employment and unemployment, sometimes cause the unions to support a decline in working conditions, with the lowering or freezing of salaries, increased flexibility of work hours and the workday, etc., in exchange for employment commitments from the employer. But it should be pointed out that the hypothetical benefits of those decisions do not have guaranteed results, and they have the additional drawback of receiving more legitimacy than unilateral measures, from the time obligations are created between the signatories.⁷

It is generally argued that regulations do little to explain corporate practices, especially when there is a high level of informal employment in the regional civil services, and there is no reason to believe that the rules applicable to labor relations would be an exception. In any event, various observations in this field—such as the fact that they become the basis of workers’ claims, their observance is demanded, they are made flexible, they are modified to decrease or increase benefits for the parties, and they are the subject of disputes settled by the courts—indicate that their role should not be underestimated.

Especially relevant in this field are the countries’ actions with reference to the ILO labor relations conventions, because adherence to them is a strong indicator of commitments assumed or avoided. The conventions are the following: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and, in particular, the Labour Relations (Public Service) Convention, 1978 (No. 151), and the corresponding [Convention] No. 159, as well as the Collective Bargaining Convention, No. 154 (expressly including the civil service, recognizing that legislation or national practice can establish specific modalities for application). The following table is illustrative.

Table No. 1: ILO Conventions signed by the countries

COUNTRY	CONVENTIONS				
	87	98	141	151	154
ARGENTINA	X	X		X	X
COSTA RICA	X	X	X		
MEXICO	X		X		
PERU	X	X		X	

The labor actors

While taking into consideration our definition of public service personnel, the intent to approach the actual process of carrying out labor relations activities in the public sector leads

⁶ Alvarez de Magliano, M. Cristina “De Nordensthol a Soengas. *La jurisprudencia de la Corte Suprema frente a la situación de emergencia* [From Nordensthol to Soengas. Supreme Court case law on emergency situations],” D.T., volume LI-A, pp. 401/412. Cited by Simón (1999).

⁷ Simón, Julio. “*El orden público laboral ante las reformas de los últimos diez años* [The Public Labor System in the Face of the Reforms of the Last Ten Years].” XXV Symposium on Labor Law, *Asociación de Abogados Laboralistas* [Association of Labor Attorneys]. Simón says it is a question of negotiating concessions, which is the normal mechanism for carrying out negotiations on recession activities and when unemployment levels are medium and high. Mar del Plata, November 1999.

us to consider the labor actors as those individuals or groups that in a stable manner are able to accumulate power and needs and take action to achieve results in a given situation.⁸

The unions, which represent and defend the interests or personnel in the labor arena, are the most noteworthy actors in connection with representing workers' interests. The existing circumstances of the unions vary, and there are cases in which this collective representation is performed by associations of different legal types, that do not have the legal status of unions.⁹ There are even those who propose authorizing these associations to enter into agreements under the principle of the rule most favorable to the worker, when they are able to obtain benefits exceeding those obtained by the unions in the same sector.

As the authorities representing the State must work within financial, policy, or ideological restrictions that dictate the terms under which negotiations can be carried out, the unions also face difficulties in their work. These include weaknesses of different origins: greater resistance to unionization; increased employment uncertainty as the result of policies granting additional flexibility; the loss of prestige, which also affects many representative institutions; governmental actions intended to reduce or limit union power; increase of unemployment and expansion of the informal economy, etc.¹⁰

There are significant segments of State workers who are outside any labor relations system. This includes the many groups that may be formally covered by the labor laws, but that, because of difficulties with compliance monitoring or legal gaps, are in fact excluded from that coverage. Provisional or part-time contracts limit participation in collective bargaining (Sepúlveda 1998).¹¹

The State actors

For the sake of analysis, it is important to clearly distinguish between policy and management competencies. At the policy level, the general strategies, the priorities, the quality standards, and the distribution of resources are defined. Administrative management carries out the policy objectives.

Policy makers represent the authority of the State, and include individuals and teams that exercise government responsibility in the public institutions. In this case, they lead Executive Branch organizations, with the incumbent freely designating them and empowering them to exercise authority and make decisions, be they in ministries, departments of state, or any other government office in the hierarchy.

Subordinate to the policy actors, the managers of substantive areas play an important role, directing the processes through which the policies are implemented and public services are delivered. In charge of specific units and invested with hierarchical authority, they are the

⁸ Matus, Carlos. "Política, Planificación y Gobierno [Policy, Planning, and Government]," PAHO, Washington, 1987, p. 744.

⁹ This is the case of the teachers' associations of Costa Rica and Argentina, where associations by simple registration can participate in collective bargaining, although they do not have formalized agreements.

¹⁰ Simón, Julio César; "Algunos apuntes sobre fortaleza y debilidad del sindicato en Argentina [Notes on the Strengths and Weaknesses of Unions in Argentina]," *Fundación Altos Estudios Sociales* [Foundation for Advanced Social Studies], 4^o Congreso Internacional de Política Social, Laboral y Previsional [Fourth International Congress on Social, Labor, and Social Insurance Policy], Buenos Aires, 1992, pp. 116/130.

¹¹ Sepúlveda Malbrán, Juan Manuel, and Vega Ruiz, María Luz, editors and coordinators. "Guía Didáctica para la Negociación Colectiva [Teaching Guide for Collective Bargaining]," ILO – *Equipo Técnico Multidisciplinario* [Multidisciplinary Technical Team] – Lima – *Servicio de Derecho del Trabajo y Relaciones Laborales* [Labor Law and Labor Relations Service], First edition: May 1998.

upper part of the organizations' midline, responsible to the policy level for the operation of specific areas of administrative activity. They are classified in a heterogeneous typology of statutes, with duties defined by regulation as being in the policy sphere or involving political appointees or positions belonging to the upper levels of the employee hierarchy; and with assignments based on more or less professional criteria and classified into different types of hiring for non-personal or temporary personal services that can even be brokered by international organizations (Longo, 1996).¹²

Playing a particular role as one type of important actor, the managers of regulatory areas are worthy of mention. In terms of their authorities in the realm of labor relations, they can be divided into five major groups. The first are the Human Resources Directors, either in the civil service or in human resources areas at different levels, including the general and sectorial organizations responsible for management, regulation, and interpretation functions in each public organization. The second are the offices that administer, establish, and/or propose regulations at the general or sectorial level for hiring personnel and/or contracting out for services. The third are those in the finance-budget area, administering the vacancies and monitoring the construction of salary levels and payment systems, at both the national and state levels, placing limits on promotions, raises, and hiring. The fourth group includes the areas of modernization and administrative and institutional reform, generally at the highest levels of government. Finally, there are the actors involved in regulating union activity, offices in charge of registering and overseeing the unions, which in general control the obtaining of union legal status and the conditions for maintaining it.

There are also institutional actors that provide arbitration and oversight services, with direct impact on labor relations: the legislative assembly, the ombudsman, the accounting office, the counsel's office, and the arbitration boards.¹³ The latter act as third parties, hearing cases in the event of disputes.¹⁴

The legal system becomes an actor through the decisions of the ordinary or labor courts, which issue final rulings in disputes over rights and obligations, their highest authority being the Supreme Court or the Constitutional Court, depending on the country.

¹² Longo, Francisco; "Políticos, directivos y sindicatos como actores de la gestión de recursos humanos en las administraciones públicas [Policy Makers, Managers, and Unions as Human Resource Management Actors in the Civil Services];" ESADE [Institute of Management and Public Administration] Paper No. 148; July 1996.

¹³ The legislative assembly participates actively and very directly in labor relations matters, even beyond its obvious institutional role. The ombudsman is involved in providing protection from arbitrary action, shifts of power, and the errors of the local civil service, as well as addressing the concerns of those who believe they have been subject to abuse, negligence, or irregularities. The accounting office is in charge of overseeing and controlling government activities in connection with public organizations' financial and budgetary management, and has the authority to involve itself with the general national or subnational State oversight system or a specific organization's oversight system. The counsel's office provides legal advisory assistance on State labor matters, represents the employer, and conducts inquiries and preliminary investigations.

¹⁴ Its decisions are similar to those of a court in the event of legal disputes involving rights and obligations. When the issue involves economic rights, it is an award that the third party considers appropriate. In either case, award or arbitration decision, they are not final, but are similar to a collective agreement that legally binds the parties, but requires the submission of a complaint to the courts for enforcement.

Table No. 2: Labor Relations Actors



The agenda

To identify the principal points of interest of the labor relations agenda, consideration of the items highlighted in the specialized ILO fora will provide a good approximation of what is “state of the art” in this realm.

During the nineties, the impact of structural adjustment on labor relations captured the attention of the ILO *Comisión Paritaria del Servicio Público* [Joint Public Service Committee], which noted how decentralization, privatization, and subcontracting for services led to a reduction in the number of jobs, lower salaries, and sudden, massive unemployment. Given this situation, there is a clear need for the public services to have trained, motivated personnel, and it is assumed that the changes offer opportunities to create a more efficient public sector, better able to fulfill its obligations, facilitating sustainable social and economic development, including full employment. To some extent, this sectorial forum, held in 1994, is a harbinger of the areas of emphasis of the so-called second generation reforms.¹⁵

¹⁵ Among other sectorial meetings of interest to the public service, focusing on the effects of structural adjustment, we should mention: the Reunión paritaria sobre la incidencia del ajuste estructural en la personal de la education [Joint Meeting on the Effect of Structural Adjustment on Educational Personnel], 1996; the Reunión tripartita sobre la vertiente laboral de la transformación estructural y normativa, y de la mundialización en los servicios de correos y telecomunicaciones [Tripartite Meeting on the Labor Aspect of Structural and Regulatory Change and the Internationalization of Mail and Telecommunications Services], April 1998; the Reunión paritaria sobre las condiciones de empleo y de trabajo en el marco de la reformas del sector de la salud [Joint Meeting on Conditions of Employment and Work within the Framework of Health Sector Reform], September 1998; and the

In the context of crisis, labor relations is more exposed to the potential for disputes which are difficult to resolve. Therefore, it is important to safeguard certain values that take precedence over the differences. This includes, for example, responsibility to democratic processes and institutions, transparency and openness of government policies, impartiality and equity in access to public services, the delivery of better services to citizens and the protection of their interests, and respect for rights and reciprocal obligations, among others which are no less important.

Specifically in the labor sphere, the restructuring of the civil service and public services and the policies followed with respect to employment within that framework have special impact. In any event, the tendency is to consider termination the last resort, with respect to which there may be alternatives, such as training, retraining, or relocation of personnel.

Another major area of concern on the labor relations agenda is salary, caught between the scarcity of funds for raising pay and the need to retain qualified personnel with competitive salaries. The labor relations dynamic generally moves to the rhythm of championing by labor of the acquisitive power of the salary, but disputes are often due to delay in payment or non-payment of salary.

So it is not surprising that new modes of hiring would arise in the civil service, involving more flexible contracts, for specific time periods, or part-time. There are controversies about these, with respect to deterioration of the quality of employees, sometimes not represented by unions or deprived of the opportunity to take collective action and access career paths, and receiving fewer benefits than permanent personnel. In other cases, these personnel receive higher salaries than the permanent staff, perform the same functions, and even become quasi-permanent through continual renewal of their contracts. These personnel are not subject to selection and evaluation processes, giving rise to practices that smack of patronage.

Also highly important is an institutional space for conducting relations. Consultation and negotiation, as well as the right to organize, are key to conflict reduction. The periods of structural adjustment and transition have resulted in many very serious problems that can best be addressed through negotiation and consultation.¹⁶

Moreover, the unions' representativeness and their role in connection with working conditions in the public sector are determining factors in the way disputes and their consequences, issues that were previously considered a challenge to the principle of State authority, are resolved.

b) Variables indicative of labor relations development

Among the main problems affecting labor relations in general over the last decade, but also impacting on the public sector, is the difference between protected and unprotected workers and between workers with stable and unstable employment. Also among the problems are the fragmentation of the workforce and the plurality of occupational statutes, which make

Reunión tripartita sobre la gestión de la privatización y reestructuración de los servicios públicos [Tripartite Meeting on the Management of Privatization and Restructuring of Public Services], 1999.

¹⁶ *Propuestas de Programa y Presupuesto para 2000-2001* [Program and Budget Proposals for 2000-2001], volume 3, page 48. Departamento de Administración Pública, Legislación y Administración Laborales [Department of Civil Service, Legislation, and Administration in Connection with Labor], ILO.

union representation more difficult. For its part, union representation is somewhat weakened due to the development of new methods of management.

The globalization process brought with it changes, uncertainty, and readjustments that affected all social sectors, including public and private sector labor relations. In these processes, cooperative labor relations take on importance (without ignoring the parties' legitimate interests) vis-à-vis improving the productivity and quality of the public goods and services delivered to the citizens.

In order for cooperation among labor relations actors to be possible, there should be shared objectives, such as the improvement of individual and collective work (quality and quantity), increased productivity, better working conditions, and the development of human potential. The validity of shared objectives could be verified through certain indicators that reveal the parties' attitudes.¹⁷

So, for example, the parties' capacity for dialogue and recognition as valid negotiators must be considered. A cooperative attitude is fostered through transparency, openness, and frankness in personnel management; access to information on an organization's operations and action strategy; coordinated, integrated personnel systems and policies; appropriate human resources management practices; and continuous consultation between employers and workers on mutual problems and interests.

Labor relations also finds better conditions for development with professional, highly-trained workers; with responsible, democratic, representative union representation; with acceptance of the role of the organizations representing workers; with mutual recognition of the roles of both parties to the relationship; in jointly implementing collective bargaining and collective bargaining procedures for common labor relations purposes promoting the ability to understand and contribute to addressing the public interest and putting into play the results of the relationship; and with the establishment of consultation and information systems in areas relating to productivity and other vital matters, while having recourse to permanent bodies for consultation and discussion.

Based on the above considerations and observation of the countries' experiences, it is possible to identify a set of variables which, to the extent they are present, facilitate better public sector labor relations. Considering them as a group can provide a gauge of the "level of development" of those relations.

Predominance of permanent employment. Labor relations can exist only in the presence of the relatively stable intermediation of one or more associations (professional associations/unions) functioning as social actors.¹⁸ In this respect, the collective aspect "...is achieved when the interlocutor for the organization's management is not the individual employee, or an organizational unit or specific work group, as occurs in ordinary employment relationships, but groups of employees associated with each other through more or less generic professional or labor identities, but that normally transcend a specific functional

¹⁷ Sepúlveda Malbrán, Juan Manuel, and Vega Ruiz, María Luz (editors and coordinators). "Guía Didáctica para la Negociación Colectiva [Teaching Guide for Collective Bargaining]" International Labor Organization (ILO) – Equipo Técnico Multidisciplinario [Multidisciplinary Technical Team]. Servicio de Derecho del Trabajo y Relaciones Laborales [Labor Law and Labor Relations Service]. Lima, May 1998.

¹⁸ Social actor: individual or group that, in a stable manner, is able to accumulate power and needs and take action to achieve results in a situation. Matus, Carlos. "Política, Planificación y Gobierno [Policy, Planning, and Government]," PAHO, Washington, 1987, p. 744.

sphere of work...”¹⁹ Therefore, it is potentially easier for labor relations to develop in a context of a higher percentage of permanent employment.

Institutionalization of dialogue. The regular or permanent existence of spaces for dialogue, with actors representing both the State as employer and the workers, helps create a climate favorable for good labor relations.²⁰

External transparency vis-à-vis society. Negotiations and their results, to the extent that public resources and interests are involved, concern not just the parties to the relationship, but also citizens. Therefore, it is important to publicize by various means the agreements, the lists of demands, the achievements with respect to the unions’ demands, and the officials’ concessions.²¹

Integrated personnel system. The existence of information on government employment management policies and practices, including the quality and quantity of human resources, the working conditions – especially salaries, and professional human resources managers, are indispensable for carrying out constructive negotiations.

Internal transparency of personnel management. The regulations used for personnel recruitment and promotion should be transparent, the processes followed should be publicized, and the competition among those who are in a position to aspire to entry or mobility should be free of any bias.

Freedom to unionize and free representation. Good labor relations is more viable within the framework of free unionization, even if there are as many unions as workers groups can create, either at the national level or by type of activity. Free affiliation, with legal status by sector, makes proportional representation in collective bargaining possible. On the opposite extreme, forced unionization or various restrictions on association weaken the conditions for cooperative relations between the parties.

Joint responsibility for management. The existence of participative, consensus-based plans with the unions, specifically oriented toward quality of services and obtaining verifiable results for the citizens’ benefit, going beyond mere demands, even though the agreements are not formalized or do not result in monetary benefits, has an impact on the quality of labor relations.

Promotion of professionalism. Agreements on professionalization, retraining, qualification, and training of personnel, as well as promotional opportunities in connection with career paths or performance incentives, improve the work environment.

Collective bargaining procedures. The existence of accepted procedures for negotiation, including collective bargaining agreements or agreements on demands, broadens the opportunities to improve labor relations. At the same time, secret negotiations or unilateral decisions harm them.

Linkage of levels of collective bargaining. The national or sectorial negotiations that establish the foundation for negotiations make it possible to incorporate conditions of productivity or

¹⁹ Longo, Francisco. “*Elementos para el análisis de sistemas de relaciones laborales en la administración pública* [Elements for Analysis of Labor Relations Systems in the Civil Service].” ESADE, Barcelona, September 2001.

²⁰ The existence or non-existence of national or sectorial spaces, regulated or not, is considered. Institutions established exclusively to settle conflicts are not included.

²¹ Verification is principally through omission, i.e., the lack of publicity for agreements implies opacity in their negotiation and the cutting off of information to the public.

quality beneficial to the public at the organization level, giving the managers and executives autonomy and flexibility for additional improvements to the general agreements. I

When each of the national experiences has been reviewed, the attempt will be made to verify the relative situation of each country with respect to the variables proposed, in order to compare the four countries' relative levels of labor relations development.

D. LABOR RELATIONS SITUATIONS AND PERSPECTIVES

a) Principal characteristics of the countries

Argentina

The country is in serious straits, the most eloquent manifestation of which is the superficial but stunning indicator of five presidents in two weeks. But despite the fact that the democratic institutions' credibility is at its nadir, the institutions responded to the crisis by using the established mechanisms to overcome *leaderlessness* and return to normalcy after the social upheaval precipitated by 40% of the active population having employment problems and a similar percentage living below the poverty line.

This situation is not unrelated to the economic model sustained over the last decade; one could even say it is its unmistakable product. Under that framework, the policies for State reform were tools aimed more at providing economic governability than satisfactory public services capable of resolving social inequalities and the deterioration of the living conditions of increasingly large population segments. These central aspects, which provided impetus for the so-called second generation reforms, never gained momentum and managed to achieve only minor prominence in climates that swallowed them up.

The deepening fiscal crisis with brutal elements, the cessation of payment of the debt, the devaluation of the currency, and the reappearance of inflation in a sustained recessionary context and in an environment of social fragility, establish a poor foundation on which to create expectations for the improvement of public sector labor relations.

Argentina suffers no lack of regulations. The problem is not that they are not applied effectively to the labor conditions as a consequence of the so-called informal sector. Rather, the problem is that recently the State has failed as an actor, releasing the collective bargaining agreement to *ultra-activity*, not developing regulations for the *Ley Marco de Empleo Público* [Framework Law on Government Employment], with which it returned the legal framework to the one established in 1980 by the dictatorship, when it had finally been replaced by Congress and ratified by the Executive.

The immediate perspective, as a consequence of the serious economic crisis, is that the framework for negotiation opens the way to better working conditions, in compensation for the restrictions caused by fiscal problems and the foreseeable inflation. The legislation that has been passed includes all the opportunities for modern management: polyvalence; inclusion of gender issues; the possibility of flexible schedules; and comparison of public and private sector compensation. But, at the same time, it is not possible to rule out intensification of the disputes because of demands by the unions that most strongly opposed the economic model of the last decade, despite the truces that would be warranted by the critical situation.²²

²² This sector includes the *Asociación de Trabajadores del Estado* (ATE) [Association of Government Workers] and the *Sindicato Unificado de los Trabajadores de la Educación de Buenos Aires* (SUTEBA) [United Association

In general, there is an acceptable level of labor relations development in Argentina. Institutions have been set up that permit its constructive consolidation, and more focus on management performance as a consequence of the agreements is pending. But it is clear that preventing deterioration of the level of development that has been achieved will depend on improving general conditions, which are extremely vulnerable at this juncture.

Costa Rica

Costa Rica has enjoyed significant continuity of the institutions through which the state actors express themselves, as well as the regulations governing public sector labor relations, although in this case there are currently projects for change.

As the regulations have remained stable, their interpretation has given rise to different labor relations practices over time. While this could be seen as a type of flexibility that explains their survival, they have not failed to cause controversy, giving the courts an active role in interpretation. During some periods, collective bargaining was, in fact, facilitated in various public institutions. But in recent years its exercise has been clearly restricted for the sectors governed by civil service law, although the rights won in past negotiations have been honored.

In short, the public authorities have continued to focus on preventing possible bias or “abuses” that could result from ceding the regulations controlling the government employment relationship to the outcome of a negotiation with the labor sector. In any event, progress has been made in determining, with greater precision, the sectors in which the negotiation process is authorized, while the principle of formally restricting or ignoring collective bargaining and the exercise of the right to strike is maintained.

The Constitution does not protect public employees’ stability. So, for financial or operational reasons, the State can terminate public servants, with payment of compensation. The programmed labor force reductions that have occurred propose goals not exceeding 5% of total employment, but in recent years substantial changes have not been noted.

Mexico

Mexico is undergoing a significant alteration of its political system with the first change of governing party in more than eighty years. This finds the current government implementing a strategy to change the traditional labor relations culture by professionalizing unregulated public employment (political appointees), beginning specifically with human resources, which it anticipates will play a leading role in the administrative system.

This is the great issue pending in civil service labor relations, despite having been part of national policy planning in the past.²³

of Buenos Aires Education Workers], both in the *Central de Trabajadores Argentinos* (CTA) [Central Organization of Argentine Workers], although for the teachers, progress has been made in connection with willingness to pay what is owed by the incentive fund.

²³ The workers and their unions are covered in two sections (A and B) of the Constitutional article governing labor law (123). Section B, in effect since 1960, covers State workers, with fewer guarantees than private sector workers. Moreover, current law divides State workers into two groups, political appointees and rank-and-file employees, depriving the former of the right to employment, among other rights, while considering the latter true holders of collective rights.

The current civil service project recognizes three groups of public employees: the policy maker, the political appointee or management employee who belongs to the civil service but with an employment relationship by appointment and with a career path subject to results, and the worker, subject to an employment relationship agreed to with the unions.

A distinction must be made regarding the effect on health and education of separating them from the public sector labor arena. In health and education, the rank-and-file workers constitute, in relative terms, a significantly larger staff than is found in the rest of the central administration. That is a direct consequence of the need for greater continuity of the services provided by those areas, which cannot be subject to the volatility of an unstable workforce. Consequently, there is more unionization as compared with other administrative sectors.

Two issues are noteworthy because of their prominence in the labor relations dynamic and their specificity to Mexico: the rights to unionize and to strike, both recognized by the Constitution, but conditional. Some of the conditions are specified in the Constitution itself.

In the case of the right to unionize, the restriction lies in the inability to establish more than one union in the same labor sector. This prevents the workers from choosing their representatives outside of the structure governed in this way by the State, and also prevents them from waiving affiliation. Moreover, it leaves the political appointees un-represented and unable to take joint action for labor rights. The arguments regarding how well these regulations strengthen the unions (among others, preventing split representation) conflict with arguments concerning freedom of association, preponderant in modern unionism.

With respect to the right to strike, the requirements for a legal strike make it difficult to take this tack if negotiations flounder. So, despite Constitutional recognition of the right, its practice is conditional. Moreover, the law establishes the management breaches that justify a strike.

But it is also important to note that, in some labor sectors, appropriate tools have been developed to improve management. These include the outside evaluation being implemented in the teaching career system to test its validity and effectiveness, or the changes initiated in the health sector, which have results-oriented approach and the actors' commitment to become involved in innovative projects.

Peru

Maximum interrelationship and lack of practical differentiation between the public and private labor systems are noted in Peru. This is currently under review. Until now, this outlook was justified by the common aspects present in any employment relationship. In fact, the Constitution says there should be a convergence of systems based on the essential similarities in the employment relationship, such as personal work, remuneration, and subordination. This view undermined the traditional separation between the "statutory" and the "contractual," which recognizes substantial differences based on the special nature of the employer and the absence of the *animus lucrandi*.

These differences justify different legal treatment for the public sector, especially with respect to the transparency that guarantees equal access to positions, based on the search for the most suitable candidate. This debate, most visible in the competitions for normalization of teaching positions, was successfully concluded in the case of management positions.

Moreover, public goals reaffirm the importance of respect for labor law in establishing and preserving governability and the consolidation and safeguarding of democratic institutions. In Peru, the irregularities in connection with the work stoppages caused deep wounds in society.

The current process of institutionalization of labor relations recognizes two fundamental actors: the *Comisión de Trabajo del Congreso de la República* [Congressional Labor

Committee] and the *Consejo Nacional del Trabajo y la Seguridad Social* [National Labor and Social Security Council].

For the 2001-2002 legislative period, the Basic Prioritized Legislative Agenda includes addressing the basic labor relations laws, such as the *Ley de Relaciones Colectivas de Trabajo* [Collective Employment Relations Law], the *Ley de Despidos Arbitrarios* [Arbitrary Dismissals Law], and the *Ley de Base de la Carrera Administrativa* [Framework Administrative Career Law]. The following, among others, have already been passed: the *Ley de Intermediación Laboral* [Labor Mediation Law], the *Ley de Creación del Registro de las Organizaciones Sindicales del Sector Público* [Law Creating the Register of Public Sector Unions], and the *Ley de Reestructuración de los Regímenes de Pensiones* [Pension System Restructuring Law]. Also anticipated is revision of the *Ley General de Educación y de Reestructuración del Sistema de Seguridad Social en Salud* [General Law on Education and Restructuring Social Security for Health].

The Labor Council's agenda includes, among other things, public sector work stoppages.

The productive linkage between the National Labor and Social Security Council and the Congressional Labor Committee indicate that the re-institutionalization process, while complicated, will be completed shortly.

The spaces for dialogue that have opened up, as well as the State's steadfastness in the negotiation processes for the defense of public goals, such as the quality of education, bode well for progress. Regarding the challenges of the public sector union movements, if they want to achieve their goals and earn society's respect, they will have to consider positions that include users' concerns and the general interest. Otherwise, they will lose the support of public opinion.

Also, the process of dialogue established within the National Labor Council is promising. It has the disadvantage of lack of participation by actors in the adjustment programs. It has been demonstrated that the strategy that abolished the registration of unions and wiped out the opportunity for social dialogue is negative. At this time, the public sector has no legitimate union representation. Reconstruction of this social actor will require a long, collective learning process, inasmuch as it should include new members and practices. The ILO may prove to be very helpful, since it has, at the regional level, many training tools. In any event, it is appropriate to consider that: "flexibilization can only occur without fear, involving the workers in this process, and duly taking their opinions into account," and that "the critical success factor for that association is the quality of the employer-employee relationship. The relationship is defined by mutual confidence and loyalty, and by the intensity of the mutual consultations: collective bargaining, in the broadest sense, can be an appropriate way to improve the quality of the employer-employee relationship, legitimizing the decisions made and the process followed in making them. Without a representative voice, there is danger that the workers' opinions will not be expressed, for fear of confronting management, or will not be taken into account."²⁴

b) The central issues

The description of the national experiences with respect to the status of public sector labor relations is the reference point for comparison, and also makes it possible to formulate certain

²⁴ Ozaki, Muneto, "*Negociar la flexibilidad: función de los interlocutores sociales y del estado*" (Negotiating Flexibility: The Role of the Social Partners and the State), ILO, Geneva, 2000, pp. 170, 171.

thoughts and issues about their development in relation to governability and governmental performance.

Institutional processes

The first important aspect to note is the nature of the recent political-institutional process in each country, since it has a bearing on the State's relationships with its workers.

Mexico and Peru are experiencing systemic, rather than institutional, changes in connection with reorganization of actors and practices in the political system. Mexico is undergoing the first change of governing party in eight decades. In Peru, the change results from a crisis in the power structure that had shaped the institutions for the last decade, restricting the opposition. Both processes have consequences, such as the inclusion of new social actors and changes in the game rules at different levels, including the relations among the State, unions, and workers' representatives in the public sector.

With a different slant, and simultaneously with the study, the profound crisis in Argentina produced modes of government that affected and will condition the future development of public employment. Finally, Costa Rica is the only country studied that enjoys great continuity in this area, so the public sector labor relations dynamic does not result from major changes in the political-institutional context.

Thus, it can be concluded that in Mexico and Peru the changes in labor relations are triggered by political-institutional transitions, because of which the change is driven from outside the labor relations system. But in Argentina, until the crisis, and in Costa Rica, the incorporation of new game rules is driven from within the system, so the recent political-institutional process has no explanatory value.

A second relevant contextual factor is the economic and State reform policies being implemented, adding specific conditions to the terms under which the State has managed relations between its administrative machinery and the labor sector.

Reforms and government employment

In the four countries, the economic and administrative reform policies have had obvious consequences for relations between the State as employer and the civil service workers. Fiscal difficulties have, without exception, made the cost of operating the public sector a variable to be adjusted. In each national experience, the use of policy instruments such as the reduction of jobs and salaries, decentralization, the transfer of services to other levels of government, the merger or suppression of public organizations, and privatization (to name those with the greatest impact) is noted.

The principal consequence of these measures is a drop in total government employment – although there is more stability at the subnational than the central level, which is more prone to decrease. This is generally due to decentralization, as in the case of education in Argentina and Mexico.

Toward the end of the last decade, the size of the public sector, considered as a ratio of government employment to all employment, was similar in three of the four countries: Argentina, 12.7%; Costa Rica, 15.1%; and Mexico, 14.5%. In Peru, public sector employment accounted for 7.2% of all employment.

Employment stability and trends

Implementation of the measures discussed required various types of regulatory support and political alliances, as well as the use of extraordinary emergency powers, due to the legal systems that maintained, regulated, or protected the status of labor relations in each case.

Only Argentina's constitution guarantees employment stability, but the stability clause is not absolute, and the reform legislation empowered the Executive, in an emergency, to "excess" government employees. In the other three countries, the constitution anticipates the eventuality of cutting jobs due to economic needs or restructuring, granting the worker compensation. However, despite the fact that these authorities allow the governments to exercise a certain amount of discretion, there has been a tendency to offer retirement incentives, for example, compensation more favorable than that normally provided for by law under the "voluntary retirement" modality, with the exception already described in Peru at the beginning of the decade.

In the 1990s, the combined effect of these policies was decreasing State demand for human resources in the labor market in all four countries, as evidenced by the lower percentage of government employment with respect to total employment and total population.

But the State's role as employer seems different if one examines the education and health sectors in the four countries, where employment levels stayed the same or increased, always considering the aggregate values to neutralize the impact of the decentralization of these services. Also, jobs in these sectors are characterized by more stability and professionalism.

This expansion of services is indicative of greater demand on public systems. Beyond the demographic pressure of enrollment or curriculum reform, which increases the period of mandatory schooling, it is explained, in some cases, by the middle classes' loss of income as they face the growing difficulty of continuing to pay for private education and health care.

The salary issue

A peculiarity noted in Costa Rica is the existence of overall salary policies, without excessive differences between the public and private sectors, within a framework of constant publicity for salaries and half-yearly negotiations, which can be considered as a legitimizing factor for the allocation of resources by the public sector.

In contrast, in Peru, if one takes the ratio of the minimum and maximum levels of the salary tables for public sector executives and employees (beyond the hiring system), one confirms a ratio of 89 times, both numbers being found in the method of contracting for non-personal services. Also, given that the maximum salaries are found in non-permanent hiring systems, there is the serious contradiction of the loss of institutional memory resulting from discontinuity. The extremely low salary levels are paradoxical when the service work is mainly the responsibility of companies to which work is outsourced. In comparison with the private sector, even if considering the set of all branches of activity at their extreme values, the ratio is 16 times, which, while high, is within the acceptable ranges for a single organizational structure.²⁵

²⁵ Note that taking all the areas of private activity involves considering sectors with different productivity levels, such as mining or retail trade.

Disputes

Job cuts and salary adjustments have been accompanied by localized or general conflict, including demonstrations, decreased cooperation, and strikes to exert pressure and force revocation of measures adopted by the governments. The ability to resist is related to the public servants' degree of organization, which is largely manifested through unionization.

The actors' performance during disputes is associated with the pertinent legal system. The oldest laws placed tough restrictions on the strike as a mode of protest in the public service arena. The four countries' constitutions recognize workers' right to strike, but for the public sector, the conditions surrounding this extreme measure increase.

On the one hand, there are sectors in the public service which are directly prohibited from striking (the police are the most obvious case). In Costa Rica, this limitation extended to the entire public service until, recently, its legislation was brought into line with that of the other countries, applying the concept of essential services, identified through various procedures, the delivery of which is guaranteed regardless of a work stoppage. In any event, this is controversial.

On the other hand, the causes of the disputes have been changing, from making demands regarding working conditions (principally related to salaries or defending the source of work) to claims for actual receipt of agreed-upon salaries, in the face of delays that are sometimes protracted. Argentina has recently seen more virulent protests by public workers, with repeated episodes of violence, because of delayed salary payments or because of the methods of payment used (different types of bonds), particularly outside the Buenos Aires area. The education sector has seen the most days of work stoppage.

Unionization

In the public sector, the rate of unionization is generally higher than in the private sector. This is due to the specific characteristics of the sector, e.g., its size, the homogeneous nature of the employment situation, and the existence of a single employer, the State, all of which facilitate unionization.

There are important differences among the four countries in organization of the labor sector, unionization, and restrictions that determine how they manifest themselves.

Considering total employment in each country, Argentina, with 42% (1995), has the highest rate of unionization of the four, triple the regional average, which was 14.8% in 1996. Mexico, with 22.3% (1991) belonging to unions, is second; Costa Rica is third, with 14.5% (1994); and Peru is fourth, with 7.8%.²⁶ These numbers can vary greatly in the universe of government employment, as in the case of Costa Rica, where unionization in the State is much higher than in the private sector, with a rate of 50% as opposed to 6.2% (1997), bearing in mind that government jobs represent a little more than 10% of all jobs.

In Argentina and Costa Rica there is broad freedom to unionize, although in Costa Rica negotiation with professional associations other than unions is recognized. These are very active and represent large numbers of employees. In Argentina, the law also allows for the so-called "associations by simple registration," which do not have the legal status of professional associations, and which represent much lower numbers, even though they

²⁶ According to ILO (1996) and ECLAC [Economic Commission for Latin America] (1996) data.

participate in negotiations.²⁷ Consequently, different entities representing workers frequently coexist in the same institutional setting. The superimposition of roles results in differing opinions with respect to some disputes and agreement in others, through coalitions of professional associations.

But in Mexico, public sector unions are restricted to one per department or institution, and members cannot waive their union membership, but can only cease to belong if expelled. In Peru, the State also recognizes the right to unionize, but during the 1990s the state unions were dismantled and their presence was reduced to a minimum.

In Argentina and Costa Rica, the professional associations' active participation in discussion of working conditions, in a context of professional association pluralism, makes it necessary to distinguish the collective entities' degrees of representativeness. In Argentina, it is determined by proportional representation based on the number of dues paying members. In Costa Rica, since there are no formalized spheres of negotiation, there is no proportionality of representation. But in both countries, the result of the plurality of professional associations is that some reach agreements with the government and others do not, with varying consequences for dispute resolution.

The State's power to grant the professional associations legal status, to the extent that such legal status entails prerogatives for the organization, may constitute a tool for political intervention that can be employed to pressure the professional associations. In fact, the possibility of authorizing or not authorizing competitors to provide representation in specific areas can neutralize the influence of a particular professional association and favor another. Mexico's recent determination that the classification of the decentralized institutions in section B of the Constitution²⁸ was unconstitutional affected more than half the unions in the *Federación de Sindicatos de Trabajadores al Servicio del Estado* [Federation of Government Workers' Unions].

Also, the State's attitude toward recognition of the "professional association privilege," which protects the workers' representatives from dismissal or other forms of pressure that would affect their activity, is worth mentioning. It is only recently that Costa Rica has afforded protection to professional association representatives.

Moreover, the trend towards government decentralization has made labor organization in the social sectors, such as health and education, more heterogeneous, particularly in the federal countries, giving rise to increased numbers of labor and government actors. This process is accompanied by the diversification of working conditions and salaries as well as participation by the labor sector in public management.

Unilateralism and negotiation

Argentina's regulations are the most flexible, and there are no positions of principle such as those observed in the other countries during the 1990s. In Peru, representation of the labor sector as an actor was practically abolished, and the phase it is now entering, in the best case scenario, may see the reconstruction of the labor sector's identity. In Costa Rica, the State institutions, the executive, the legislative assembly, and the judiciary do not seem inclined to accept, in the central State administration, the possibility of formally "laborizing" employment

²⁷ In Argentina, *gremio*, "professional association," and *síndico*, "union," are used interchangeably. In Costa Rica, *gremios* refers to associations which are not unions. Argentina's *Federación de Educadores Bonaerenses* (FEB) [Federation of Educators of Buenos Aires] is an "association by simple registration."

²⁸ See footnote No. 23.

relationships in a kind of implied consensus. In Mexico, the union and the single federation constitute the principal element of inflexibility, with discretionary authority on the side of the government. One might suggest that, in these cases, willingness to negotiate, to engage in dialogue, to reach agreement, or to engage in disputes and confrontations exists in fact, but there is no intention to grant legal status to game rules in which the State does not have the final word.

Likewise, in Argentina, the State does not permit negotiation when economic resources are at stake. But even considering that negotiation expressly excludes issues from discussion (assigning them the non-negotiable status of “public interest” matters), at least it is open to a wide range of issues on which the State gives up the unilateral decision making authority it exercised in the past.

In short, unilateralism predominates. The rules governing employment relationships in the State are within the sole purview of the administration, not subject to negotiation, with the State reserving for itself the power to interpret and make decisions on issues in which the public interest, of which it assumes guardianship, may be in play.

Perhaps that is why there is more openness toward acceptance of *de facto* agreements, collective bargaining, or when spaces for dialogue are opened and in which petitions, proposals, demands, or grievances are accepted which are subsequently adopted (but by administrative decision subject to veto by an authority higher than the one under which the dialogue takes place, as occurs in Mexico and Costa Rica).

It is important to point out the contradiction between the trend toward “laborization” of employment relationships in the decentralized public sector and reluctance to abandon unilateralism in the centralized administration by the Executive Branch, despite the progress in *de facto* negotiations on working conditions. The aforementioned decision of Mexico’s Supreme Court, declaring unconstitutional the interpretation that included the decentralized sector in section B of Article 123, drastically reduces the sphere governed by administrative law. But the periodic negotiation of demands remains, without a legal framework for collective bargaining, in the central State administration. In Costa Rica, where the constitutionality of negotiation is not recognized for sectors governed by the *Estatuto del Servicio Civil* [Civil Service Law], the universe subject to labor law has progressively expanded. A change in the current game rules involves important policy decisions, including constitutional reforms, and the non-adherence to ILO Convention 154 is a clear indicator of the situation (with the previously mentioned exception of Argentina).

In this arena, there is probably a limit, given a history of abuses and privileges in favor of government employment, in the context of a labor market in which jobs are more vulnerable, unstable, and flexible.

But with respect to that, it should be noted that there is not necessarily a relationship between negotiation and rigid overprotection of jobs under conditions different from those that prevail in the labor market. This is demonstrated by the agreement in Argentina, which is criticized because it supposedly accepts flexibility beyond the protection granted by the Constitution and laws. Other experiences would show, moreover, the necessary alignment of general employment conditions in the labor market and the public sector, especially due to their pertinence for achievement of the State’s mission in favor of the common good.

With respect to alignment, it is interesting to note salary negotiations in Costa Rica, where salary agreements between private sector companies and unions, which include adjustments for inflation, are the reference for public sector salary policy.

c) Index of public sector labor relations development

Having analyzed the performance of the variables that can contribute to the attainment of a favorable environment for constructive labor relations because of their impact on public management, a comparative summary in the form of an index of labor relations development in the four countries can be performed.²⁹

In the countries studied, with the exception of the central administration in Peru, permanent or stable employment presents positive values in the different sectors of government employment considered.

In Argentina, at the national and provincial levels, and with different employment systems – collective bargaining agreements, statutes, and career ladders, the model of predominantly stable employment protected by the Constitution is maintained. This is true despite the considerable growth of contracting systems in the central administration, just recently withdrawn as a consequence of the crisis. In Costa Rica, with less heterogeneous systems (the central administration and the teaching career are covered by the same statute), and despite the growth of labor contracts, stable employment clearly dominates in all sectors. Also, both countries have strong, pluralistic professional associations, which can be attributed to the predominance of permanent employment and unrestricted freedom to unionize. These factors also help explain the strong institutionalization of spaces for dialogue. In Mexico, on the other hand, where the dichotomy between unionized rank-and-file workers and non-unionized political appointees spans the three sectors, stable employment is most prevalent in education and health. This is due to the nature of the services, which require more rank-and-file public workers, unlike the central administration, where the proportion is lower. Finally, with the exception mentioned previously, Peru is also following the current trend, with massive competition to fill permanent positions in education and, somewhat more selectively, in health.

The presence of institutionalized spaces for dialogue is widespread in the four countries, although their characteristics are different, either because of the purpose of the dialogue or the way they are organized. In the Argentine central administration and health sector, they participate in collective bargaining and on joint committees, and the agenda includes working conditions, which is indicative of the scope of the dialogue. In Costa Rica, the greatest institutionalization is in the bipartite *Comisión Negociadora de Salarios del Sector Público* [Public Sector Salary Negotiating Committee], which encompasses all three sectors, although there are also complementary sectorial spaces. In Mexico, the law permits the unions to discuss general working conditions every three years, as well as agreements on fringe benefits at the departmental level. In Peru, the space authorized by the Consejo Nacional del Trabajo y la Seguridad [National Labor and Security Council] is noteworthy, but the most significant spaces for dialogue are in the education sector.

But, in terms of transparency vis-à-vis society, with the results of the negotiations being widely disseminated, there are just two really positive cases: education in Argentina and health in Costa Rica. The power in the former case is due to the actors' attitudes; they

²⁹ According to Renate Mayntz, "index" means "... a one-dimensional variable with "r" values on which are represented the "v" classes of possible combinations of attributes drawn from the multidimensional space ..." (p. 61). The rest of the indicators are nominal, and therefore their measurement "...is based on rules classifying the unipositional logic of predicates, and they involve only the classification of the object of investigation with respect to possession or non-possession of a certain (qualitative) characteristic..." (p. 51) Mayntz, Renate "Introducción a los métodos de la sociología empírica [Introduction to the Methods of Empirical Sociology];" Edit. Alianza – Universidad; 1993.

systematically try to engage society in face-to-face discussion. The latter case is influenced by implementation of the management contracts. To a lesser extent, the Costa Rican central administration also has transparent competition, as does education, through the agreements between the State and the teachers' professional associations. In Mexico and Peru, the education sector has the most relative transparency, through the teaching career and the rules for competition for teaching positions, respectively. Interestingly, it is generally the education sector, probably because there is so much public interest in it, which tends most toward transparency in agreements.

Also, there are few integrated personnel systems that make it possible to efficiently manage the various aspects of the information on government employment. They are found in all employment sectors in Costa Rica, and have been implemented to some extent in Argentina. In this arena, there should be no major obstacles to progress.

Internal transparency of personnel management is also prominent in Costa Rica, although it exists to a moderate degree in different employment sectors and countries. There is greater relative transparency in the education sector, because of the different values with respect to the other sectors, in Argentina and Peru, and because of positive values in Mexico, although equivalent to the other sectors.

Constitutional recognition of the rights to free affiliation and union representation in all four countries are only fully effective in the central administration, in addition to in the health and education sectors in Argentina and Costa Rica (with the additional characteristic of superimposition of spheres of professional association action). In Mexico, freedom to unionize is restricted by the recognition of just one union per sector, which also infringes on free affiliation and freedom to refrain from joining, which is legally blocked. In Peru, free affiliation and representation of workers' interests has recently been re-established, but it is too soon to see practical results.

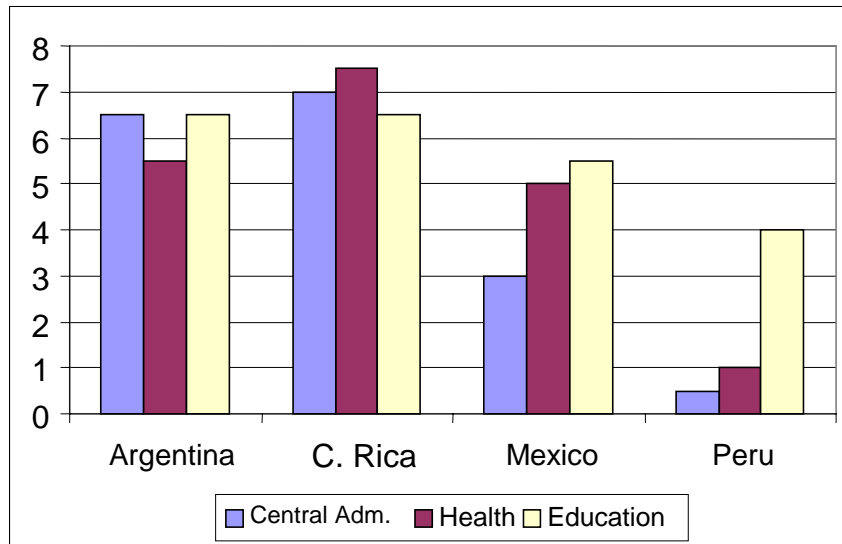
Joint responsibility for management, which entails labor sector involvement in management, is recognizable in Costa Rica's central administration and health sector, less strongly in the education sectors of Costa Rica, Peru, and Argentina, and also in Mexico's health sector. The positive values in the three sectors of Costa Rican administration are explained by the impact of the *Sistema Nacional de Evaluación* [National Evaluation System] and the management contracts.

Promotion of the professionalization of government employment is a positive variable in the central administration of Argentina, in the education sectors of Argentina and Mexico, and in Costa Rica's health sector. The value is moderate in the other cases and sectors, with the exceptions of the central administration of Mexico and Peru and the health sector in Peru. There are expectations in both Mexico and Peru for the development of projects aimed at structuring the administrative career path, in which professionalization is valued, but in both cases its achievement is an open-ended challenge.

Collective bargaining procedures are legally regulated only in the central administration and the health sector of Argentina, while in Mexico there is de facto negotiation in the three sectors (central administration, health, and education), through periodic agreements on demands. In the two Argentine cases, as well as in the Mexican health and education sectors, there is some degree of linkage of the general agreements at the sectorial level, with the possibility of positive impact on organizational performance.

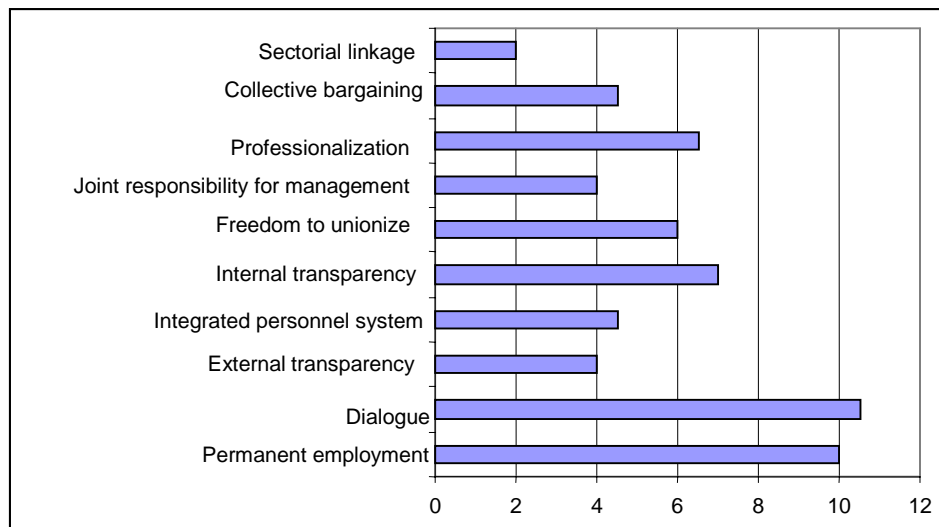
Table No. 3 summarizes the “index of labor relations development” values in each sector and country. Table No. 5 shows the details of the values assigned to each variable.³⁰

Table No. 3: Index of labor relations development



Source: Developed by the authors.

Table No. 4: Sum of values achieved by each variable (12 cases)



Source: Developed by the authors.

³⁰ The index of labor relations development constructed with the ten selected qualitative variables was applied as follows: if the status of the variable is positive, that is, if it is institutionalized and is part of the administrative culture, it is equal to 1. But if it is negative, it is equal to 0, which means it does not exist. If the status is intermediate (partial or unstable existence), 0.5 is assigned, indicating low institutionalization but the presence of some value in the variable. The sum of the values constitutes the index of labor relations development, which is on a scale of 0 through 10.

The health sector in Costa Rica has the highest values on the proposed index, which means it has the best conditions for labor relations development of the twelve cases studied. Eight of the ten proposed variables are positive, the exceptions being those that confirm the existence of formalized procedures for general collective bargaining and its linkage with and adjustment to organizational level. Costa Rica also has the second highest values, in the area of central administration. In third place are Argentina's central administration and education sector, along with the same sector in Costa Rica. In Mexico and Peru, education has the highest value.

Considering the performance of the variables for the study as a whole, the predominance of permanent employment and the institutionalization of spaces for dialogue present the best conditions for the development of constructive labor relations, followed, at a definite distance, by internal transparency of personnel management, the promotion of professionalism, and freedom to unionize, in which case the numbers vary greatly by pairs of countries: Argentina and Costa Rica at one extreme, and Mexico and Peru at the other.

Formalization of collective bargaining procedures has very low values, as do external transparency vis-à-vis society and joint responsibility for management, so these need strengthening in order to make progress toward better conditions for labor relations in the public sector.

d) Emerging phenomena and good practices

Beyond application of the labor relations index and the conclusions that can be drawn from it with respect to the tendency toward dialogue and productivity in labor relations, some good practices (strengths) have been identified.

In Costa Rica, three results are noteworthy: a) the existence of an integrated, highly institutionalized human resources system that facilitates the development of labor relations and management; b) a process for negotiating salaries at the national level that reconciles public sector policy with what is agreed to in the private sector, through participative committees; and c) the experience in the health area, where the focus is on management by results.

In Argentina, the emergence of new rules of the game for labor relations is noteworthy, with collective bargaining in the national civil service and in the Government of the City of Buenos Aires, keeping negotiation in a specifically public arena and not that of an ordinary employment contract, and incorporating flexibility, polyvalence, and professionalism.

An emerging phenomenon in Mexico is the change strategy centered on the human resources system as driver of the professionalization process in order, by strengthening it, to address the reduction of policy discretion, reformulating the "trustworthy" civil service.

In Peru, the institutionalization of a space for dialogue on the National Labor and Security Council is noteworthy. Here, the public and private sectors participate to reach agreement on reforms, avoiding the risk of fragmentation in the establishment of new game rules. Also noteworthy is the social participation in the development of the rules for competition for teachers.

The combination of these experiences, some solidly based and others incipient, affords an institutional context conducive to constructive labor relations in the sense used in this paper.

The two parties in public sector labor relations are conditioned, in taking their relative positions in negotiation and conflict, to addressing the concerns of users and the general interest in order to obtain the support of public opinion and strengthen their respective legitimacy. That assumes that the strategies they adopt must necessarily anticipate the formation of alliances and consider the transparency of the demands in conjunction with the commitment to public administration. All these factors seem to be reinforced by the degree to which dialogue is institutionalized, but would be in a better position if freedom to unionize were assured and if joint management responsibility were increased within a framework of more transparent agreements.

The absence of a single legal framework for public sector employment combines with the fact that the State is often not a single employer, but that different entities act autonomously in personnel matters, preventing the achievement of a consistent human resources administration system. There should be no restrictions on the development of administrative systems and personnel policy systems more highly integrated than those currently available. These aspects, which are part of labor relations, have the potential to improve the efficiency of State machinery, and can favor or discourage joint dialogue in accordance with the contractual mode established.

More transparent labor relations can lead to a more professional civil service, by placing merit in its proper light: a requisite for access to public service employment and promotion, which is not a minor contribution to the strengthening of democratic institutions, because it gives them credibility with the citizens, reinforcing their legitimacy.

**Table N° 5: Chart for construction of the
index of labor relations development**

Variable	ARGENTINA			COSTA RICA			MEXICO			PERU			Σ
	Central Admin.	Health	Educ.	Admin. Central	Health	Educ.	Admin. Central	Health	Educ.	Admin. Central	Health	Educ.	
1) Predominance of permanent employment	1	1	1	1	1	1	0.5 *	1	1	0	0.5 **	1***	10
2) Institutionalization of dialogue	1	1	0.5	1	1	1	1	1	1	0.5	0.5	1	10.5
3) External transparency vis-à-vis society	0	0	1	0.5	1	0.5	0	0	0.5	0	0	0.5	4
4) Integrated personnel system	0.5	0	0.5	1	1	1	0	0	0	0	0	0	4.5
5) Internal transparency of personnel management	0.5	0.5	1	1	1	1	0.5	0.5	0.5	0	0	0.5	7
6) Freedom to unionize and free representation	1	1	1	1	1	1	0	0	0	0	0	0	6
7) Joint responsibility for management	0	0	0.5	1	1	0.5	0	0.5	0	0	0	0.5	4
8) Promotion of professionalism	1	0.5	1	0.5	1	0.5	0	0.5	1	0	0	0.5	6.5
9) Collective bargaining procedures	1	1	0	0	0	0	1	1	1	0	0	0	4.5
10) Linkage of levels of collective bargaining	0.5	0.5	0	0	0	0	0	0.5	0.5	0	0	0	2
Sum of positive variables	6.5	5.5	6.5	7	8	6.5	3	5	5.5	0.5	1	4	4

* In the central administration of Mexico, there are a very high percentage of political appointees in leadership posts whose positions are permanent.

** At this time, competition is being held for management positions in Peru's health system. There are other permanent positions filled through unstable contracts.

*** At this time, massive competition is being held for permanent positions (approximately 35,000) in the Peruvian educational system.

Source: Developed by the authors.

ANNEX: SOCIAL, ECONOMIC, AND LABOR INDICATORS FOR THE COUNTRIES. SIMILARITIES AND DIFFERENCES

The countries selected are heterogeneous in size, which is reflected in their economic social, and labor indicators.

With regard to economics, Mexico, the largest of the four countries, has a GDP exceeding US\$ 570 trillion, 38 times higher than that of Costa Rica. But the capacity for development in Latin America, strongly tied to foreign debt, shows that both countries (the largest and smallest in the sample) have a debt / GDP ratio, for the year 2000, of less than 30%, and debt service / exports ratios of 32% and 7.4%, respectively. Confirming this, Argentina, which has the highest per capita GDP of the sample, is being choked by the debt. The debt represents more than 50% of the year 2000 GDP, and the services exceed exports by 85%. This precipitated the current crisis, which caused Argentina, in late 2001, to stop paying its foreign debt.

Economic Indicators				
Indicator	Argentina	Costa Rica	Mexico	Peru
GDP, year 2000 (in billions of US\$)	285	15.9	574.5	53.5
Per capita GDP, year 2000 (in billions of US\$)	7,702.70	4,297.30	5,862.24	2,081.71
Total Debt / GDP, year 2000 (% of GDP)	51.4	28.2	26.9	53
Debt service / Exports (2000) (% of GDP)	85.5	7.4	32.7	44.9
Percentage of growth of the GDP for the year 2000 (% in relation to 1999)	-0.5	1.7	6.9	3.1
Percentage of growth of the per capita GDP for the year 2000 (% in relation to 1999)	-1.7	0	5.4	1.4
Public spending by the government, year 2000 (% of GDP)	13.8	13.4	11	11.2
Annual percentage of growth of public spending by the State, year 2000 (% in relation to 1999)	-0.4	2	3.5	5.1
Percentage of gross domestic investment for the year 2000 (% in relation to 1999)	-8.6	-9.3	8.8	-3.7

Source: World Bank.

Note: Year 2000 data are preliminary estimates.

Costa Rica's social indicators are in the best position. It has the lowest infant mortality of the four countries (12 per thousand, three times lower than that of Peru). Almost all of its population has access to safe water (98%). It enjoys a low rate of malnutrition and illiteracy, and the highest gross school enrollment rate. One of the reasons for this good position is that it spends more on health and education than the other countries in the sample. But Peru has the worst social indicators for life expectancy (less than 70 years) and infant mortality (4%).

Some 10% of the inhabitants are illiterate, and it has a school enrollment rate of 123%,* which reflects the low retention rate.

Social Indicators				
Indicator	Argentina	Costa Rica	Mexico	Peru
Estimated population as of July 2000 (in millions)	37	3.7	98	25.7
Average annual population growth, 1994-2000	1.3	1.9	1.5	1.7
Average annual workforce growth 1994-2000	2.1	2.4	2.5	2.9
Human Development Index, 2000	34	41	51	73
Life expectancy at birth	74	77	72	69
Infant mortality (per thousand born alive)	18	12	29	39
Infant malnutrition (% of children under 5)	2	5	8	8
Access to drinking water (% of the population)	79	98	86	77
Illiteracy (% of population over 15)	3	4	9	10
Government expenditures on education, 1995-1997 (% of GDP)	3.5	5.4	4.9	2.9
Government expenditures on health, 1998 (% of GDP)	4.9	5.2	unk.	2.4
Gross rate of enrollment in primary education (% of school aged population)	111	104	114	123 ^(*)

Source: World Bank.

Note: Year 2000 data are preliminary estimates.

With reference to the labor indicators, all the countries except Argentina have shown stable open urban unemployment levels over the last decade, given their populations' diverse survival strategies. Mexico and Costa Rica have kept their unemployment rates relatively low. But in Peru they have been high throughout the decade. The sour note is Argentina, whose unemployment rate doubled over the last decade, and is now 16%.

^(*) The gross rate of primary school enrollment is the total enrollment regardless of age divided by the official tally of the school aged population in accordance with the official guidelines for primary education. The estimates are based on the (ICSED) [International Centre for Social and Economic Development] Clasificación Educativa Estándar [Standard Educational Classification]. Numbers exceeding 100 indicate a discrepancy between the theoretical entry age according to the standards and the actual values. The higher the value, the less effective the educational system in attracting the population as intended. Hypotheses could also be developed regarding repetition of the first level of education.

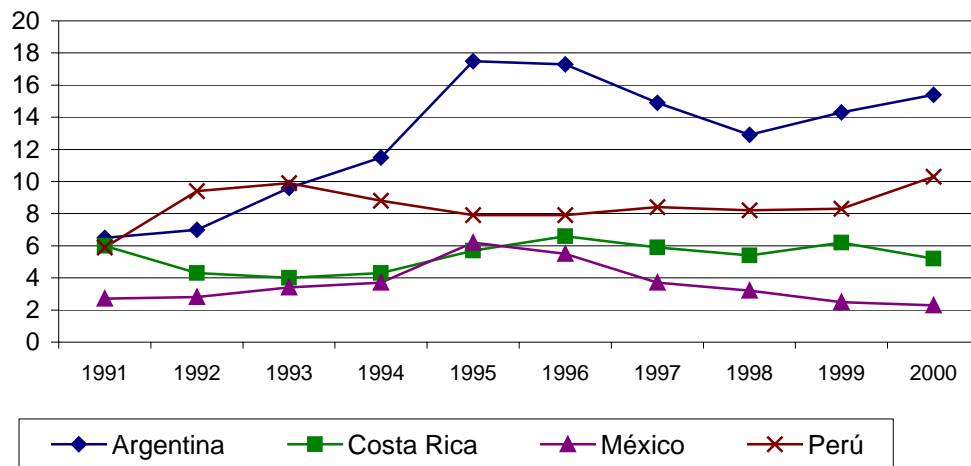
Labor Indicators					
Indicator		Argentina	Costa Rica	Mexico	Peru
Open urban unemployment	Third quarter, 2000	15.40	5.20	2.30	10.30
	1990	7.50	5.40	2.80	8.30
	Difference 1990-2000	7.90	-0.20	-0.50	2.00
Rate of urban employment	2000	35.90	50.60	55.10	60.00
	1990	37.60	50.30	50.30	54.7*
	Difference 1990-2000	-1.70	0.30	-0.20	5.30
Structure of urban employment 1999**	Informal Sector	49.30	46.80	40.10	53.70
	Government employment	12.70	15.10	14.50	7.20
	Private Employment	38.00	38.10	45.40	39.10
	Total Formal Sector	50.70	53.20	59.90	46.30
	Difference in government employment 1990-1999	-6.60	-6.90	-4.90	-4.40

* 1998.

** The data for Peru and Argentina are from 1998.

Two items from the above table deserve clarification. The first is open urban unemployment. The following table charts data for the last decade. Thus, it shows detail on the Argentine situation to which reference was made. Argentina has shown the most change in its increase. In this respect, it is stressed that its peak unemployment exceeded 17.5% in 1995.

Evolution of Urban Unemployment



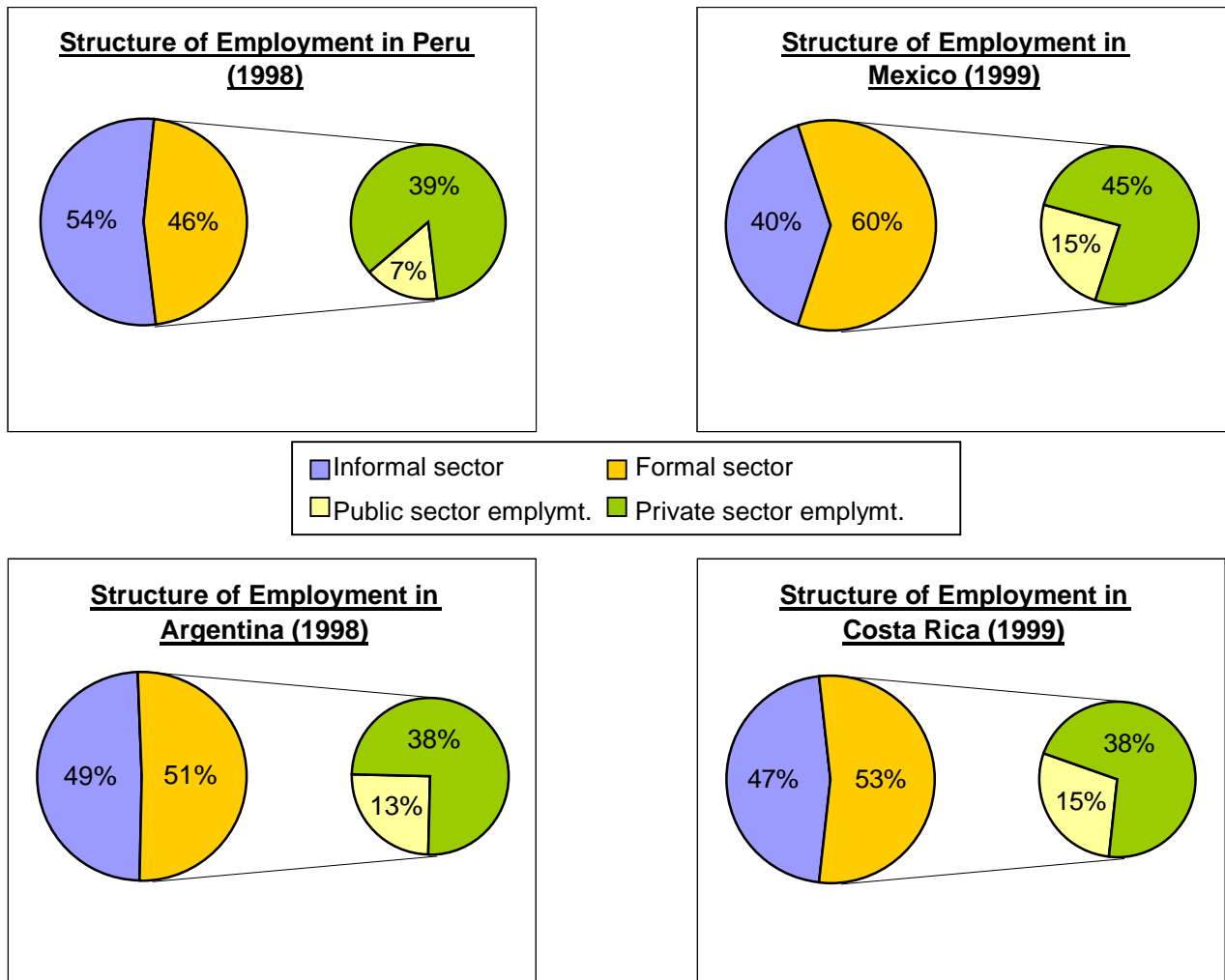
The second item refers to the employment structure, since the percentage of government employment is derived from that. Within the employment structure, over the last decade, the amount of government employment has decreased in all four countries.

In Peru, government employment represents just 7% of total employment, the lowest percentage of any of the four countries under consideration. Mexico and Costa Rica have the

highest rates of government employment, approximately 15%, or a little more than double the level in Peru. But the percentage of government employment in Argentina is not very different from the percentages in Mexico and Costa Rica. Also, the data for Peru and Argentina are for 1998, while the data for Mexico and Costa Rica are for 1999.

Peru has the highest level of informal employment, 54% of all employment. Mexico has the highest level of formal employment, with just four of every ten employees engaged in informal employment.

This is shown in detail in the following graphs on the structure of government employment for each of the four countries.



It is very difficult to obtain reliable information on the amount of public sector employment in the Latin American countries, and the group of countries under consideration is no exception. The data for three of the countries (Argentina, Costa Rica, and Mexico) are presented, because the consistency of the sources is reliable. Also, comparison with the total population and the economically active population (EAP) or total employment show their relative magnitude.

Population and Employment

Total population and amount of government employment in Argentina

	1991	1992	1993	1994	1995	1996	1997	1998	1999
Total population	32,973,784	33,421,200	33,869,407	34,318,469	34,768,457	35,219,612	35,671,894	36,124,933	36,578,358
EAP	13,326,575	13,581,691	13,842,789	14,109,942	14,383,215	14,664,809	14,954,676	15,249,519	15,546,045
Provincial civil service	1,097,764	1,109,932	1,154,629	1,164,520	1,213,118	1,201,483	1,240,651	1,270,986	1,324,613
National civil service	776,332	620,007	526,984	509,512	517,979	496,109	482,099	464,677	435,081

Source: Developed by the authors. Data from the Argentine Republic: Secretariat of Finance, National Institute of Statistics and Census, and Secretariat of Civil Service.

Total population and amount of government employment in Mexico

	1990	1991	1992	1993	1994	1995	1996	1997	1998
Total population	83,226,000	84,811,000	86,396,000	87,983,000	89,571,000	91,145,000	92,712,000	94,275,000	95,830,000
Total personnel employed	25,957,661	26,723,916	27,160,072	27,467,478	28,165,783	27,347,482	28,270,286	29,346,956	30,623,772
Central government	2,659,183	2,683,316	2,631,837	1,541,968	1,559,514	1,555,715	1,545,791	1,467,464	1,459,580
State governments	899,272	935,484	964,211	2,022,596	2,076,759	2,117,402	2,162,346	2,321,130	2,394,182

Source: INEGI [Mexican National Institute of Statistics, Geography, and Information], Statistical yearbook 1999.

* The Central Government includes enterprises under direct government control and excludes Mexico DF, which is counted under the State governments. The total population data were taken from the "Anuario estadístico de América Latina y el Caribe 2000 [Statistical Yearbook of Latin America and the Caribbean 2000];" CEPAL; March 2001 (data for 1991 and 1992 were estimated)

Total population and amount of government employment in Costa Rica

	1995	1996	1997	1998	1999	2000
Total population	3,136,020	3,202,440	3,270,700	3,340,909	3,412,613	3,486,048
Total workforce	1,231,572	1,220,914	1,301,625	1,376,540	1,383,452	1,390,560
Central and decentralized administration	130,835	126,961	129,302	129,967	132,695	unknown
Local or municipal administration	7,169	7,169	9872	7,536	7,509	unknown

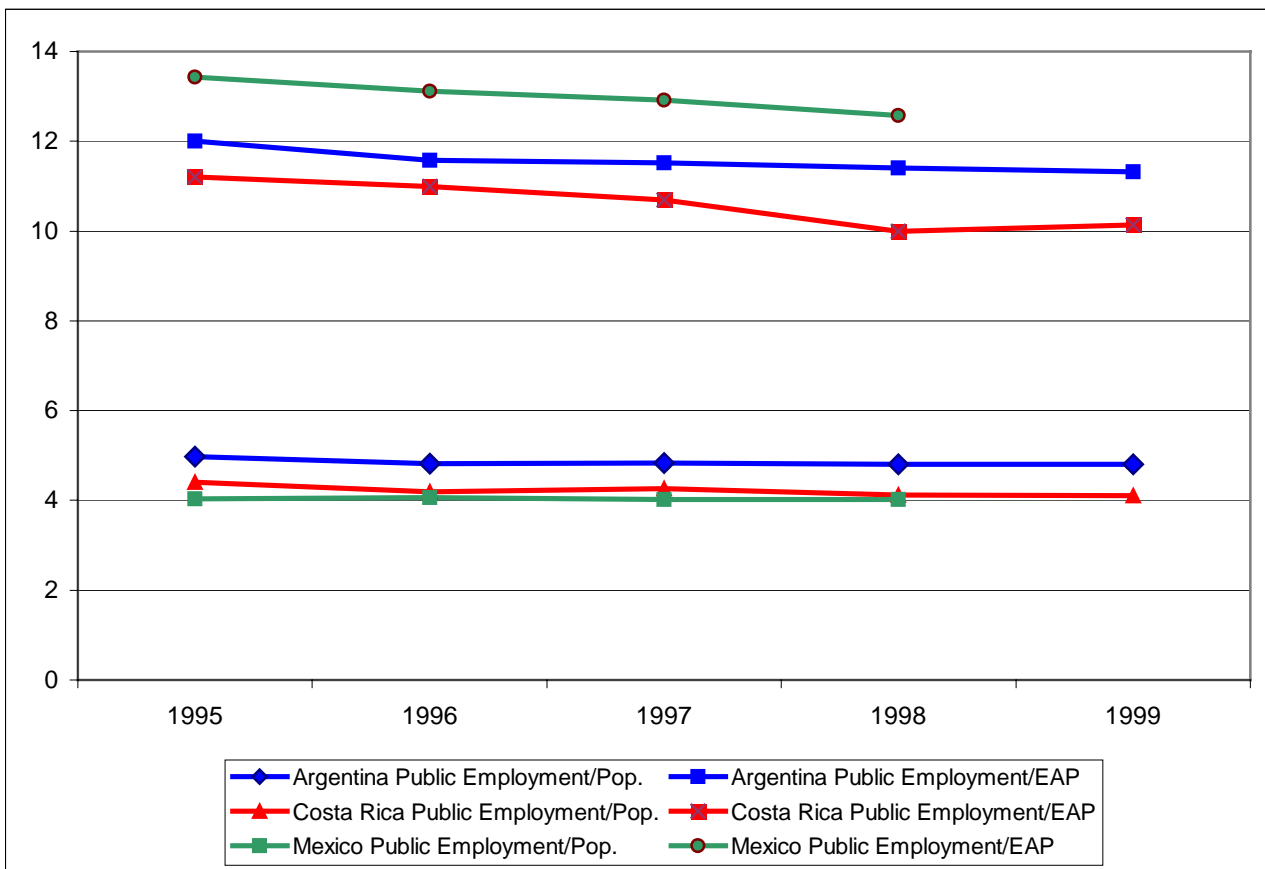
Source: Developed by the authors based on the *Encuesta de Hogares de Propósitos Múltiples* [Multi-purpose Survey of Households] and Secretariat of Finance, *Secretaría Técnica de la Autoridad Presupuestaria* [Technical Secretariat of the Budget Authority]. Tables of information on numbers of positions in institutions under the purview of the Budget Authority. San José, Costa Rica.

In Argentina and Mexico, both federal countries, employment in the national administration has markedly decreased throughout the decade, while employment in the subnational governments has increased. Thus, the consolidated values show a growth trend in Mexico and a decline in Argentina. Costa Rica shows small fluctuations during the shorter period (1995-1999).

It would be appropriate to highlight the result of the comparison of the three countries, taking into consideration the consolidated amount of government employment in relation to the economically active population or the labor force, as the case may be, and the total population. From 1995 to 1999, the highest amount of government employment occurs in Argentina in 1995, with 4.98%, while the lowest is in Mexico in 1998, with 4.02%, so the difference is less than 1%.

Regarding government employment vis-à-vis the workforce, the small difference among the three countries is also noted: Mexico shows the highest percentage, 13.43, in 1995, and Costa Rica shows the lowest percentage, 10.03, in 1999.

Total government employment vis-à-vis the economically active population in Argentina, Costa Rica, and Mexico (1995-1999, in percentages)



Source: Developed by the authors based on the previously shown tables for each country.