

# Working Seniors in Mexico: Proposal for Effective Social Protection in Liquid Times\*

[English Version]

Las Personas Adultas Mayores Trabajadoras en México: Propuesta para una Protección Social Efectiva en Tiempos Líquidos

Adultos idosos trabalhadores no México: Proposta para uma proteção social efetiva em tempos líquidos

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## Abstract

**Objective:** the purpose of this document is to support the need to reform the Federal Labor Law in Mexico to provide the protection required to the Elderly Population (PAM by its acronym in Spanish), based on the theoretical position of Bauman (2004) on the liquidity of relationships, which implies the full exercise of their human and social rights, while achieving harmony between the international and domestic legal framework. **Methodology:** the research is of a theoretical-documentary nature; the proposal is of an analytical-argumentative nature based on the

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deductive and exegetical method. The first step of the procedure that follows is the identification of the subject under study based on the legal approach, which determines for whom the right to work should be recognized and protected. The next step seeks to draw the PAM in Mexico based on their characteristics, through official statistics, in order to establish the vulnerability that this age generates in relation to other age groups. Subsequently, a review of human rights legislation at three levels – universal, regional, and domestic – is carried out to determine which rights are recognized. This opens the door to demonstrate that the right to work is a human and social right enshrined and protected in the three normative spheres; thus, the analysis of the right to work in Mexican legislation is made possible, which produces the inputs to build the arguments of the conclusions. **Results:** among the results obtained are the lack of harmonization of Mexican labor legislation regarding the protection of the PAM as a worker, which produces a systemic transgression of their fundamental rights. **Conclusions:** one of the conclusions reached is that the neoliberal orientation of the rule of law in contemporary Mexico has led to the disarticulation between the right to work of PAMs and public institutions, which has resulted in their invisibility, precariousness, and violation.

**Keywords:** right to work; elderly person; vulnerability; human rights.

## Resumen

**Objetivo:** el propósito del presente documento es sustentar la necesidad de reformar la Ley Federal del Trabajo en México para otorgar la protección requerida por la Población Adulta Mayor (PAM), en base a la postura teórica de Bauman (2004) sobre la liquidez de las relaciones, lo que implica el ejercicio pleno de sus derechos humanos y sociales, al tiempo de alcanzar la armonía entre el marco jurídico internacional e interno.

**Metodología:** la investigación es de carácter teórico-documental; en consecuencia, la propuesta es de corte analítico-argumentativo basado en el método deductivo y exegetico. La ruta que se sigue encuentra en el primer peldaño la identificación del sujeto que se estudia a partir del enfoque legal, lo que determina a quién se le debe reconocer y proteger el derecho al trabajo. El siguiente paso busca dibujar a la PAM en México con base en sus características, a través de las estadísticas oficiales, a fin de establecer la vulnerabilidad que su propia edad genera en relación con otros grupos etarios. Posteriormente, se realiza una revisión de la legislación de derechos humanos en tres niveles –universal, regional e interno– para determinar qué derechos les son reconocidos. Ello abre la puerta para demostrar que el derecho al trabajo es un derecho humano y social consagrado y protegido en los tres ámbitos normativos; así, se posibilita el análisis del derecho al trabajo en la legislación mexicana, lo que produce los insumos para edificar los argumentos de las conclusiones. **Resultados:** entre los resultados

obtenidos están la falta de armonización de la legislación mexicana en materia laboral en torno a la protección de la PAM como trabajador, lo que produce la trasgresión sistémica de sus derechos fundamentales. **Conclusiones:** una de las conclusiones a las que se llega estriba en que la orientación neoliberal del Estado de derecho en el México contemporáneo ha producido la desarticulación entre el derecho al trabajo de las PAMs y las instituciones públicas, lo que ha arrojado como resultado su invisibilidad, precarización y vulneración.

**Palabras-clave:** derecho al trabajo; persona adulta mayor; vulnerabilidad; derechos humanos.

## Resumo

**Objetivo:** o objetivo deste documento é apoiar a necessidade de reforma da Lei Federal do Trabalho no México para conceder a proteção exigida pela População Adulta Idosa (PAM), com base na posição teórica de Bauman (2004) sobre a liquidez das relações, o que implica o pleno exercício de seus direitos humanos e sociais, ao mesmo tempo em que se alcança a harmonia entre a estrutura jurídica internacional e doméstica.

**Metodologia:** a pesquisa é de natureza teórico-documentativa; conseqüentemente, a proposta é de natureza analítico-argumentativa com base no método dedutivo e exegético. O caminho seguido encontra na primeira etapa a identificação do assunto a ser estudado a partir da abordagem legal, que determina para quem o direito ao trabalho deve ser reconhecido e protegido. O próximo passo procura desenhar o PAM no México com base em suas características, através de estatísticas oficiais, a fim de estabelecer a vulnerabilidade que sua própria idade gera em relação a outras faixas etárias. Posteriormente, é realizada uma revisão da legislação de direitos humanos em três níveis - universal, regional e doméstico - para determinar quais direitos são reconhecidos para eles. Isto abre a porta para demonstrar que o direito ao trabalho é um direito humano e social consagrado e protegido nas três esferas normativas; assim, a análise do direito ao trabalho na legislação mexicana se torna possível, o que produz os insumos para construir os argumentos das conclusões. **Resultados:** entre os resultados obtidos está a falta de harmonização da legislação trabalhista mexicana em relação à proteção do PAM como trabalhador, o que produz a transgressão sistémica de seus direitos fundamentais. **Conclusões:** uma das conclusões alcançadas é que a orientação neoliberal do Estado de Direito no México contemporâneo produziu a desarticulação entre o direito ao trabalho dos PAMs e as instituições públicas, o que resultou em sua invisibilidade, precariedade e violação.

**Palavras-chave:** direito ao trabalho; adulto mais velho; vulnerabilidade; direitos humanos.

## Introduction

*"To be modern is to be part of a universe in which, as Marx said, 'everything solid vanishes into thin air'"*  
(Berman, 1982, p. 1).

One of the contemporary problems related to social rights is linked to the increase of the elderly population (PAM), given the emergence of new risks and social processes related to health, education, housing, work, and social security, which has exponentially increased the mismatch between the social protection system and reality. This has generated an impact on the social inclusion of this population that makes it necessary to address institutionally with appropriate legislation and relevant social policies, which means highlighting the importance of social rights and strengthening them through their natural intertwining with human rights (Campero, 2007, p. 69).

The current demographic transformation, visible thanks to the increase in life expectancy, has caused the inversion of the population pyramid; this change has become evident with a gradual but significant increase in PAM percentages.

In Mexico, the aging phenomenon is seen with the figures of the National Survey of Demographic Dynamics (ENADID) which reported that the number of people aged 60 years or older was 15.4 million, representing 12.3% of the total population (Instituto Nacional de Estadística y Geografía [INEGI], 2019). This figure is higher compared to 12.9 million in 2017, or 9.6 million in 2016; that is, 7.8% of the total Mexican population (Consejo Nacional de Evaluación de la Política de Desarrollo Social [CONEVAL], 2018). This shows that the gradual increase in the age group in question is also present in the Mexican population.

According to the ENADID, in 2018 PAMs living alone and economically active represented 41.4% of the total population (Instituto Nacional de Estadística y Geografía, 2019). Regarding the working conditions of PAMs inserted in the labor market, the Encuesta Nacional de Ocupación y Empleo (ENOE) indicated that for the second quarter of 2019, "21.7% of seniors who live alone and are employed do not receive benefits, 15.7% receive Christmas bonuses and only 13.4% have paid vacation" (Instituto Nacional de Estadística y Geografía, 2019). The main source of income for those living alone is "retirement or pension (36.7%), is followed by some governmental support (36.6%) and/or by their employment (34.4 percent)" (Instituto Nacional de Estadística y Geografía, 2019).

Montoya-Arce and Montes de Oca-Vargas (2010) argue that the low retirement or pension amounts and the absence of labor benefits cause the PAMs to remain in the labor market. This is consistent with the information provided by the National Survey on Discrimination (ENADIS), in which PAMs stated that the most frequent problems they face are: insufficient pension (28.5%) and lack of opportunities to work (22.5%) (Consejo Nacional para Prevenir la Discriminación [CONAPRED] *et al.*, 2017). In this last point, the economic reality of Mexico, as a result of the neoliberal policies promoted in the 80's, has forced the PAMs to be inserted or continue as active elements of the labor market. In 2017, of the economically active population of PAMs who were employed in a subordinate and remunerated manner, 60.8% did not have access to health institutions through their employment; 61.8% worked without having a written contract, and 47.7% did not have legal benefits (CONAPRED *et al.*, 2017).

Given the current trend in the increase of the senior population in the coming years, and in particular those who remain in the labor market, a revision of the legal framework is urgently needed. Thus, the main objective of this paper is to support the need to reform the Federal Labor Law (FLL) in order to grant the necessary protections to those individuals based on their characteristics from the theoretical position on the fluidity of relationships. In this regard:

It would be imprudent to deny or underestimate the profound change that fluid modernity has imposed on the human condition. The fact that the systemic structure has become remote and unattainable, combined with the fluid and unstructured state of the framing of the politics of life, has changed the human condition in a radical way and demands a rethinking of the old concepts that used to frame the narrative discourse. (Bauman, 2004, p. 14)

There are several studies that address old age and aging from different disciplines and approaches, the first investigations are in the area of gerontology and medical sciences, as aging generates a greater demand for health services (Osorio, 2006; Johnson, 2001). Similarly, sociology has dominated the aging scene with theories such as that of Cumming and Henry (1961) on the disengagement of personal relationships of those interacting with PAM. In economics, there are studies that analyze old age linked to variables such as poverty and vulnerability (Zuñiga and Vega, 2004).

Political science has also been present with social policies such as the Vienna Plan of 1982, which marked the turning point for States to integrate strategies focused on the protection of this vulnerable group into their agendas,

particularly employment policies and access to the labor market (Viveros, 2001; Pacheco, 2009). At this point, two studies are of interest due to their territorial scope; the first one by González *et al.*, (2015) who follow up on the public policy aimed at seniors in the context of the National Crusade against Hunger from a human rights approach; and the second one by Raccanello *et al.*, (2014) who explore the social integration policies in Mexico City for PAMs. Alternatively, gender studies linked to old age have gained importance since the 1990s with works such as that of Arber and Ginn (1996) and Montes de Oca (2010), in which the connection between aging and gender shows the unequal distribution of power, privilege, and access to well-being that men and women have.

The variable of education and old age has been studied by researchers such as Ham (2003) or Zuñiga and Vega (2004), as it is a relevant indicator for measuring progress, cause, and consequence of a country's development. In the field of law, one of the most important works is that of Huenchuan and Morlachetti (2007), who analyze the PAMs' rights, both at the universal and regional levels, as well as in the legislation of some Latin American states.

In this vein, Martínez (2015) analyzes the protection of PAMs from a human rights perspective, to conclude that the biggest challenge is the creation of a legal framework that takes into account their circumstances and characteristics. Similarly, Lathrop (2009) examines the legal situation of PAMs in Chile, and the discrimination to which they are subjected, to conclude there exists the need for an organic law aimed at establishing special protection measures. Finally, Araque and Suárez (2017), through a documentary methodology, expose key concepts and the evolution of the legal framework of PAMs with disabilities in Colombia, to conclude that promoting the voluntary and consensual responsibility of all the actors is necessary.

Although the study of seniors has been addressed in various disciplines, there is currently a significant gap regarding the analysis of the right to work of PAMs in Mexico. Hence the appropriateness of this document aimed at satisfying a real need for protection for this population, through a proposal based on the difference in the characteristics of the subject.

## Methodology

This document displays part of the results of a more extensive investigation in which the condition of multidimensional vulnerability of working PAMs is emphasized, aggravated by transgression and discrimination. The research question sought to be answered is: How to achieve legal protection of PAMs inserted in the formal labor market? For this, the following hypothesis is established: PAMs inserted in the formal labor market would have greater protection if and only if the FLL considered their particularities.

The research is theoretical-documentary; consequently, the methodological proposal is analytical-argumentative based on the deductive and exegetical method. The route that follows finds its first step in the identification of the subject that is studied from the legal approach, which will determine who should recognize and protect the right to work. The next step seeks to draw PAMs in Mexico based on their characteristics, through official statistics, to establish the vulnerability that their age generates in relation to other age groups. Subsequently, a review of human rights legislation at three levels –universal, regional, and domestic –is carried out to determine which PAMs rights are recognized. This opens the door for the next item to demonstrate that the right to work is a human right that also corresponds to PAMs. The foregoing enables the analysis of the right to work of the PAMs in Mexican legislation, which will generate the inputs to build the arguments of the conclusions aimed at providing legal mechanisms that protect the working PAMs. Finally, the list of references is presented.

## Results

### Who is a PAM in Mexico?

Throughout history, PAMs have been called in various ways: elderly, old, seniors, elderly person, among others. Elderly is: “Said of a very old person” (Royal Spanish Academy [RAE], 2001a, p. 147), while old is: “Said of the elderly person. It can commonly be understood that someone who turned 70 years old is old” (Royal Spanish Academy, 2001b, p. 2299). From this term derive the expressions: old age, maturing, aging; and wild phrases such as: old hag and old fart, used to refer derogatorily to an elderly individual.

The expression senior arose in the 20th century in France, coined by Doctor J.A. Huét, pioneer of gerontology. Thus, it is stated that: "...older adult has its strong point in the word older, which allows differentiating the young adult from the old one... its use was circumscribed to designate retirees and pensioners over sixty years of age" (Dabove *et al.*, 2017). Finally, elderly person, refers to the last stage of life that is distinguished by the decrease in physical and mental functions, it is said that it implies an: "Advanced period of people's lives in which normally active working life decreases" (Royal Spanish Academy, 2001c, p. 862).

To understand the expression from the legal approach, it is essential to approach the legislation to elucidate the appropriate word to refer to the subject under study, as well as the characteristics that allow their identification; essentially establishing the rights that correspond to them, their *quantum*, and the means for their protection.

The Inter-American Convention on the Protection of the Human Rights of Older Persons (CIPDHPM), in its second article, says that the older person is: "A person 60 years of age or older, unless domestic law determines a lower or higher base age, provided that this is not greater than 65 years. This concept includes, among others, that of older adult" (Organization of American States [OAS], 2015). This definition brings about two elements to be highlighted: first, the age limit, this is 65 years; although the treaty establishes a minimum (60 years) that can be modified by the States in accordance with their legislation, the maximum cannot be altered as it constitutes a transgression. The second element is the equivalence that the text makes of the older adult and older adult person concepts. It should be noted that the CIPDHPM is not the only instrument in the Americas; there are other conventions such as the Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights that within its *corpus* uses the concept "elderly," which infers the absence of consensus at a regional level regarding the legal denomination.

In Mexico, the Law for the Rights of Older Adults (LROA) establishes, in its third article, the limits of the concept by stating that they are: "Those who are sixty years of age or older and who are domiciled or in transit in the national territory" (2002). Two characteristics emerge from this: age, which must be at least 60, and geographic location; that is, whether the resident is located in Mexico or is in transit. This leads to tacitly conceding the same rights to Mexicans as to foreigners – the latter regardless of whether or not they reside in the national territory – the conditioning factor is the age requirement. These criteria are relevant to determine what rights are recognized in respect to PAMs.

Perhaps at this moment the question is: is the denomination given to the subject important? In short, the concept used is transcendental due to the social



representations that help in the construction of a fragile and devalued social imaginary of a PAM. In the words of Gustavo Gewürzmann, the purpose of achieving a symbolic place has led to a multiplicity of proposals to replace the word “elderly” such as: “aged, senile, ancient, gray, veterans, seniors, great, retired, experienced, of mature age, of the passive class, among others” (as cited in Grosman and Herrera, 2011, p. 6.) However, the concepts referred to are not enough to define this sector exactly, and far from helping to form a more precise one, they encourage conceptual confusion.

The controversy unleashed within the World Health Assembly on May 25, 2019, due to the adoption of the International Statistical Classification of Diseases (ICD-11) that entered into force on February 11, 2022 is worth remembering. The main novelty was the replacement of the concept “senile” with “old age” (Pan American Health Organization [PAHO] and World Health Organization [WHO], 2022). The main concerted criticism by organizations, academics and the Transdisciplinary Network on Aging was that:

Old age is a natural and non-pathological stage of the life course, just like childhood or adulthood. Any other description would correspond to age discrimination or 'Old Age,' in which pathological conditions that are not inherent to it are associated with a certain age group. (León *et al.*, 2021)

Thus, the importance of concepts to avoid derogatory social constructs is ratified. Nevertheless, from a legal point of view, Sergio García Ramírez has maintained the irrelevance of the debate around the use of certain words based on the legalization that has been made of them in international treaties (Inter-American Court of Human Rights [IACHR], 2002), that is, the use of different words to refer to the same subject in international instruments should be unimportant as long as they concur under the same legal consequences. This position moves away from any social approach, with the latent possibility of impregnating the concept with a different character. However, since the work has a legal essence, the argument of the irrelevance of the word is then taken up again due to the equality of effects that are produced for the individual, together with the adherence of the position based on what is understood by “elderly person,” as it is a word that socially identifies the individual and their characteristics.

## Vulnerability of PAMs in Mexico

Vulnerability implies the possibility that a subject is susceptible to receiving some type of physical or moral harm (Royal Spanish Academy, 2001d). The condition of vulnerability is attributed to the existence of internal and external factors that, when combined, reduce or nullify the individual's ability to face an event or situation that causes an injury (National Human Rights Commission [CNDH], 1995, p. 70). In the case of PAMs, understanding their situation of vulnerability is possible if and only if their characteristics are known, for this, it is necessary to go to official statistics that allow an X-ray of PAMs to be made.

According to ENADIS, in 2017 there were 12.9 million PAMs in Mexico, of which 46.4% were men and 53.6% women. Due to nationality, there were 99.6% Mexicans and 1.0% foreigners. Regarding marital status, 54.6% were married, 7.3% lived with their partner and 38.1% were single. Regarding the level of schooling, 50.1% had basic education, 17.4% upper secondary education, 10.6% higher education and 21.5% had no schooling. Slightly more than 37% of the PAMs were part of the Economically Active Population (EAP), whose main source of income was their work or business (37.8%) and the support received from their children (37.0%) (CONAPRED et al., 2017).

The previous figures allow affirming that the natural deterioration of certain body functions and the presence of age-related pathologies become internal contributing factors for the increase in vulnerability; that combined with external components linked to the social context such as the absence of family networks, low income or lack thereof, lack of social security, among others, make up a breeding ground that tends to reduce or nullify the capacity of person to face an event that causes harm, which shows the demand for special attention and protection. Thus, it is stated that the PAMs per se are vulnerable, as they are likely to experience a situation of violation of their rights or discrimination.

Discrimination against PAMs is evidenced in ENADIS itself (2017), which provides interesting data on the perception of Mexicans in relation to respect for the rights of PAMs; the result was that 57% of those surveyed consider that they respect each other a little or not at all, against 43% who consider that they respect each other a lot or somewhat (CONAPRED et al., 2017). However, more interesting are the responses of the PAMs regarding the perception of respect for their rights, in which 44.9% consider that they are respected a little or not at all. The areas in which the PAMs have felt discriminated against are: in the street or on public transport (37.3%); within the family (33.3%); in regards to medical service (27.7%); by government

offices (17.4%); at work (13.1%); and in a business, shopping center or bank (5.8%) (CONAPRED et al., 2017).

### **The PAM as a Subject of Human Rights**

The concept of Human Rights has been approached by different writers. For the purposes of this work, the definition of the Dictionary of Human Rights is taken as a reference: "Fundamental freedoms and guarantees of the human person, which derive from their eminent dignity, which oblige all Member States of the international community, and that mark the border between barbarism and civilization" (Valencia, 2003, p. 137). In a sense, human dignity is the basis of human rights, which are recognized for all human beings by the simple fact of being human. This applies to PAMs in particular.

There is a range of international instruments that, in attention to the characteristic of age, protect PAMs; therefore, those treaties of soft<sup>1</sup> or hard<sup>2</sup> law applicable to Mexico will be considered for dealing with PAMs and they will be divided according to the scope of application in universal, regional, and internal issues.

#### ***Universal***

Hard law instruments are non-existent in this area. In terms of soft law, there exist the Vienna International Action Plan on Aging and the Madrid International Action plan on Aging, which are focused on designing an international policy to change attitudes and practices to take advantage of the potential of PAMs (World Health Organization, 2015, p. 29). Alternatively, the United Nations Principles in favor of PAMs establish five basic principles: independence, participation, care, self-realization and dignity (Huenchuan, 2013, p. 10).

In this area, the first limitation in the effective protection of human rights, including the right to work, of PAMs is evident, as PAMs lack a coercive document obliging the States to adopt legislative, administrative or judicial mechanisms that protect them.

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1. International texts that are not coercive for States.

2. International coercive conventions for the States that sign and ratify them.

## *Regional*

On the American continent, protection for PAMs is much more complete, with the integration of treaties and rulings of the IACHR. In 2015, the CIPDHMP was adopted, a hard law text, whose objective is: "... to promote, protect and ensure the recognition and full enjoyment and exercise ... of all human rights and fundamental freedoms of PAMs, in order to contribute to their full inclusion, integration and participation in society" (Organization of American States, 2015). Its corpus recognizes various guaranteed rights through a series of obligations for member countries, which lie in: adopting legislative, administrative and judicial mechanisms, promoting affirmative actions, promoting labor policies, and certifying knowledge for access to labor market. The strength of the CIPDHMP lies in the follow-up of the periodic reports delivered by the States; however, its weakness lies in its signature and ratification. In the case of Mexico, the IACHR has not been signed or ratified, therefore, its content is not applicable.

In terms of sentences, the IACHR has issued two to date in which the victim is a PAM:

1. The *Poblete Vilches vs. Chile* case is considered emblematic as it is the first in which the IACHR has ruled specifically on the rights of PAMs. In this regard, its importance consists of:
  - a) Putting an end to the debate on the jurisdiction of the IACHR to hear the justiciability of economic, social and cultural rights.
  - b) Recognize that PAMs "... have the right to enhanced protection and, therefore, require the adoption of differentiated measures" (Inter-American Court of Human Rights, 2018, paragraph 127).
2. *Muelle Flores vs. Peru* case of March 6, 2019, in which the Court recognizes the old-age pension for PAMs, who are in a particularly vulnerable situation (Inter-American Court of Human Rights, 2019, p. 56). In this way, the IACHR ratifies its competence to hear controversial cases in which the violation of economic, social, and cultural rights is removed; while confirming its position regarding the special protection that must be provided to PAMs as a vulnerable group.

## ***Internal***

Since 2011, the Mexican Constitution (1917) recognizes, in its first article, the entitlement of human rights of any person who is in Mexican territory, regardless of characteristics such as age. This provision constitutes the basis of the rights of PAMs, from which the LROA emerges, which guarantees the exercise of PAMs' rights based on principles such as: autonomy and self-realization, participation, equity, co-responsibility, and preferential attention. (Law on the Rights of Older Adults, 2002, fourth article). It collects the rights divided into nine blocks: integrity; dignity and preference; legal certainty; protection of health, food, and family; education; social assistance; participation; popular complaint; and access to services, work and economic capacities (Law on the Rights of Older Adults, 2002, fifth article).

At this level, the jurisprudence emanating from the Supreme Court of Justice of the Nation [SCJN] (2020) is of interest. It is a body that has issued, during the period from 2013 to 2018, eleven resolutions on controversial matters related to the violation of the right to a dignified life, equality and non-discrimination, property, security and legal certainty, access to justice, and work, where the complainant has been a PAM.

From the foregoing, it follows that depriving a person of their human rights because of their age is not possible; neither is making them invisible because in the social imaginary there is a belief that they are not a productive being for society. Thus, an imperfect triangle is built based on discrimination by social stereotypes, the denial of rights recognized in the regulations, and the invisibility product of social blindness. The imperfection lies in the convergence of the points of said triangle that in turn prevents the formation of the figure itself translated into the non-materialization of rights, while reinforcing social stigmas towards PAMs.

## **Right to Work**

Work as a right is the result of the class struggle supported by socialist thought that began with the industrial revolution, and later spread throughout Europe. England was the first scenario where collective freedoms were achieved. The cause behind this was multifaceted. Perhaps the main elements were the dehumanization of the bourgeoisies and the abuse of one class over another (bourgeoisie/proletariat), which generated large-scale labor movements that sought to achieve a just social transformation to recover freedom and dignity at work. Thus, the right to work, as a social right, was recognized for the first

time in the Mexican Constitution of 1917, and two years later in the German Constitution of Weimar of 1919 (De la Cueva, 1980, pp. 11-25).

This made possible "the appearance of a catalog of human rights, also known as labor rights, which are inherent by the mere fact of being a person and working" (National Human Rights Commission, 2016, p. 3). In this way, the right to work became a fundamental and essential right for the realization of other rights, as it is an essential element to achieve better living conditions.

If human dignity is the core of human rights, where the latter are governed by the principles of universality, indivisibility and interdependence – because they cannot be understood or enjoyed separately – then it must be preserved against any type of attack by third parties. Work constitutes an inseparable and inherent part of human dignity, because every individual has the right to work in order to live decently. Thus, work is, in the context of the Federal Labor Law (1970), a "dignified or decent activity in all labor relations" (Second Article). Dignified or decent work is understood to mean that "it is one in which the worker's human dignity is fully respected; there is no discrimination...; you have access to social security and you receive a remunerative salary" (Federal Labor Law, 1970, second article).

In this way, the recognition and validity of work as a human right has been printed in various international instruments such as:

### ***Universal***

The Universal Declaration of Human Rights of 1948 (United Nations, n.d.) in its article 23 recognizes the right to work that includes: Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. The International Covenant on Economic, Social and Cultural Rights (1966) in the sixth article states the right to work and adds the obligation of States to guarantee its exercise. And also, General Comment No. 6 (The Office of the UN High Commissioner for Human Rights [OHCHR], 1995) of the Committee on Economic, Social and Cultural Rights, refers to the work of PAMs. It fosters countries to take actions to avoid discrimination, to employ senior workers based on experience and knowledge, to implement programs to prepare for retirement, and safeguard trade union rights after retirement.

The International Labor Organization (ILO) is the specialized agency in the field of labor and generates various Conventions. Mexico has signed

and reaffirmed the eight fundamental conventions.<sup>3</sup> In Recommendation 162 concerning Older Workers, 1980 (International Labor Organization, 1980), the International Labor Organization encourages the States to promote policies based on equal opportunities and treatment for workers regardless of age, to improve working and environmental conditions, and to take actions aimed at ensuring the progressive transition from professional life to voluntary retirement.

### *Regional*

In this area, the American Declaration of the Rights and Duties of Man (Organization of American States, 1948) in article 14 recognizes the right of every worker to receive a salary in relation to the capacity that ensures a decent standard of living. The Additional Protocol to the American Convention on Human Rights of 1998 (Departamento de Derecho Internacional and Drug Enforcement Administration, n.d.), in its sixth and seventh articles, recognizes, the causes of separation, compensation, reinstatement for dismissal, and security, among others. The IACHR has issued a single resolution on the matter of August 31, 2017, called the Case of Lagos del Campo v. Peru (Inter-American Court of Human Rights, 2019). In PERU is condemned for violating the right to job stability and association.

### *Internal*

The Mexican Constitution of 1917 includes the right to work in its fifth article as the freedom that every person within the national territory has to engage an activity if it is legal. This was the main limitation of the right, as a condition of its exercise. Article 123, paragraph "A" regulates personal, subordinate and remunerated activity in general, and list the rights, obligations and benefits that any person in work shall enjoy (Constitution, 1917).

In a second stage the Law on the Rights of Older Adults (2002) is found which in a delayed form established with its reform in 2018, the right to work. This was a major step forward in expressly recognizing the right to work of PAMs as part of their human dignity; however, this fact was not replicated in

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3. The conventions are: C-029 on forced labor; C-087 on freedom of organization and protection of the right to organize; C-098 on the right to organize and negotiate collectively; C-100 on equal remuneration; C-105 on the abolition of forced labor; C-111 on discrimination (employment and occupation); C-138 on minimum age, and C182 on the worst forms of child labor.

the FLL, that means this rule did not undergo a modification that tended to the protection of a PAM as a worker based on its characteristics, as it is done with other vulnerable subjects.

This fact of late recognition and legislative responsibility for the failure to harmonize the rules, especially the labor law, reflects the thinking and vision of the legislator regarding PAMs, as incapable of carrying out a remunerated activity. It seems paradoxical when the content of the legislation does not grant protection based on the individual's own vulnerability. It directly violates the human dignity, the human rights and, consequently, the delayed recognition of the right to work.

The above statement is demonstrated by the text of the LROA, in its added section V, that states:

V. Of work and its economic capacities:

To have same opportunities in access to work or other options that allow the workers to earn their own income and to perform productively for as long as they wish, as well as to receive protection from the provisions of the Federal Labor Law and other labor laws. (Law on the Rights of Older Adults, 2002, article five, section V)

Then, reaffirmed that it has existed since 2018, the LROA contains an express recognition of the right of work access for PAMs, as well as, their protection under law, and that they are subject to public policies by different orders of government. However, the discourse embodied in this rule does not correspond to the content of the FLL, by excluding PAMs from comprehensive protection based on their particular issues and condition.

## **The Right to Work in a Liquid Mexico**

Labor rights in Mexico take as a frame of reference the Constitution (1917) in its article 123, section "A" for workers in general, and "B" for public servants. The first – which is the one of interest – recognizes different rights from which others derive. This happens because among the characteristics of labor laws are progressivity, inalienability, vindication, expansion, and a minimum of social guarantees. It allows for protection of subordinate activity with the incorporation of jobs that were not previously regulated; but that, from the dynamics and constant transformation of society, are emerging as a result of new needs. At the same time, a minimum of rights is established, which serves as a platform



for improvement by labor contracts, without ever being reduced or denied by following the maxim: "on labor standards everything, below them, nothing" (Dávalos, 1994, p.17).

From article 123, section "A" of the Constitution (1917) from FLL, a norm of application throughout the Mexican territory establishes the working conditions, defined by De la Cueva (1980) as "... standards ... state the requirements for the defense of the health and life of workers on sites and workplaces and those which determine the benefits to be received by men for their work" (p. 266). At this point, it is necessary to mention that FLL grants a specific safeguard depending on the subject and the activity being carried out.

In relation to the subject, Title Five and Five Bis of Federal Labor Law (1970), refer to the work performed by women and minors respectively. Thus, the law provides special protection for work carried out by women, because even though there is legal equality between men and women, there is an undeniable physical and psychological difference between them, that necessarily has an impact on the development of work. These differences are what have historically motivated the creation of provisions aimed at protecting the integrity of women, to the extent that Title Five is available today to protect maternity. Accordingly, extraordinary pre- and postpartum breaks are established, unhealthy or dangerous work, industrial night work are allowed as well as work in commercial or service places after ten o'clock at night, and overtime or when the health of the woman or the baby is endangered.

Regarding the work of minors, their entry into activities of industry was initially tolerated as an exception, but progressively worsened until it became a chronic issue (Dávalos, 1994).

From an emergency of the factory owners, it became a vital necessity of proletarian families, who were forced to use labor power of their little members in order to survive (Dávalos, 1994, p. 294).

The convenience of replacing adult labor with minors turned into the exploitation of preschoolers, and that led to minors becoming the main subjects of protection in the first attempts at international labor regulation (Dávalos, 1994). This was reflected in the Mexican Constitution (1917) and in the Federal Labor Law (1970), Title Five Bis, which stipulated the minimum working age, reduced working hours, extended holidays, and the prohibition of performing certain dangerous or unhealthy work or activities, among other elements.

Both women and minors are part of vulnerable groups, who require special protection due to their condition and characteristics, as they can be objects of labor exploitation or can be hurt. This is what the law tries to prevent with both its sections.

The regulation results from the changes society has experienced over the years; it is unthinkable that the social organization and technology are the same as they were decades ago. The changes necessarily affect the law to include, based on their expansive nature, specific labor standards required to regulate the subordinate service differently – from those standards already existing – according to their peculiarities, mostly to benefit the worker. Title Six of the FLL regulates "special jobs," understood as: "activities that, although give rise to relationships with fundamental characteristics of an employment relationship, some of characteristics require adequate norms for their better development" (De la Cueva, 1980, p. 449). The last works incorporated to the FLL were the residents' training work in 1977, and the universities and autonomous institutions of higher education in 1980 (Dávalos, 1994, p. 314).

The specialty of the work does not refer to a mutation of the legal nature of a worker-employer relationship; the employment relationship arises between the individuals, the conditions and characteristics that the FLL itself indicates for the standard work relationships. The concurrence of modalities in the development of work are linked to the workers' and employers' conditions, rights and obligations. Therefore, the incorporation of special jobs obeys the expansion of the law that is intended to regulate the particular circumstances of the service provided.

However, with his theory on liquid modernity, Bauman (2004) explains that society ceased to be solid, as human relationships became fickle and liquid, tied to an ephemeral moment based on utility, the result of consumerism driven by big business. This liquidity has been exacerbated by another permanent and constant characteristic: fear, rendered into the insecurity felt by individuals at the possibility of losing their economic status, job, or relationship to another person, as if that other person were the source of the loss. Today, we are living in liquid times characterized by the fragility of human bonds and of relationships of all kinds, including labor relationships.

Globalization has turned people into human waste, where the individual who is unable to contribute to the economic system is easily excluded. In Bauman's words (2010): "It is exclusion, rather than the exploitation suggested by Marx ..., that currently underlies the most manifest cases of social polarization, of deepening inequality, of growing volumes of human humiliation, suffering and poverty" (p. 92). Beveridge (1946), the creator of the foundations of the "Welfare State," believed that:

The term Social Security ... means to ensure an income adequate ... to overcome poverty while maintaining income. But income security alone is not enough.

Freedom from poverty is just one of the fundamental freedoms of mankind (p. 259)

However, this idea of a "Welfare State" is now in crisis, crumbling thanks to forces of globalization that have shifted the exploitation of labor toward the exploitation of consumers, making human relationships disposable and ephemeral, and thus reifying people.

The basis of the "Welfare State" is the materialization of the postulates of law, which comprise human dignity, in equal conditions to achieve a longed-for social justice. Then, as Hurtado-Maya and Heredia-Ríos (2022) state.

The elderly is in a state of defenselessness because of their physical or cognitive disability and the stigmatization, abandonment, mistreatment, and dependence in the working and family environment. Human dignity as a principle or postulate implies that the person has the capacity for choice and autonomy, to ... choose without intruding upon the freedom of others. The State, therefore, plays a role of support and guarantor of these freedoms (p. 226)

However, when this last premise is not fulfilled, then the existence and content of any legal system is questioned, to the extent of violating and weakening the justification of its own existence.

To this respect, the ease with which people are reified allows them to be encapsulated as an underclass. "The 'underclass' may be 'in' society, but it is clearly not 'of' society: it does not contribute to anything that society needs for its survival and well-being, indeed, society would be better off without it" (Bauman, 2011, p 12). This marginal class is represented by internal migrants, illegal immigrants, women, minors, people with disabilities and, of course, PAMs, who, as vulnerable groups, have their condition intensified by the globalizing forces of the labor market. As a result, these vulnerable groups experience decreasing employment opportunities, generating consumerism under the auspices of an economy and politics oriented toward such direction, and increasing the number of poor people due to the absence of expectations of avoiding or overcoming poverty.

In this line of argument, the existence of jobs, whose conditions may well be assumed as a modern slavery, also represents a violation of employment rights in liquid times. However, it is not only the precarious condition of jobs that produces and reproduces new forms of slavery, but also the invisibility of the individuals and the absence of regulations that comprehensively protect their activity. Thus, this protection manifests their fundamental rights, in addition to giving value to the work performed, strengthening the principle of job stability

and, of course, crystallizing universal human dignity. Therefore, the importance of integrating PAMs as individuals of protection, by means of a Title Five Ter, with provisions focused on meeting their needs because of their singularities, where their labor challenges and difficulties are addressed with a globalizing key from a human rights perspective.

## Conclusions

Work per se is a right that contributes to the dignity of individuals; therefore, its recognition as a fundamental human right by international and domestic legislation of the States, without distinction of any kind. This implies that PAMs hold this right, to the extent of a broader spectrum of human rights addressing the progressive aging and their cognitive decline. However, protection at a universal level is meager, as there is no coercive treaty obliging States to implement specific rights for PAMs, or to adopt safeguarding mechanisms, as at the regional level.

Protection mechanisms for PAMs are being diluted in a liquid modernity that dissolves the social rights of this population, and of others such as women, indigenous people, youth and migrants. The point to consider is to identify why social rights, and the right to work of senior populations, are rights without social rights. This suggests a discussion on the context in which social rights occur today; that is, neoliberalism (understood as an extreme capitalism that destroyed the social welfare state and the values of its social justice) creating a world dominated by exclusion, exploitation, inequality, and discrimination of broad population sectors, such as PAMs.

If it is accepted that the right to work is pre-existent to the emergence of the labor relationship, since it is part of the framework of human rights, and not a contractual bond that gave rise to these rights, then, the worker possesses them only by the fact of being a person, while the contractual bond only adds new rights. In this logic, the PAM "nominally" holds the right to work; therefore, when an employment relationship is created as a result of subordination and remuneration, new derived rights theoretically arise and must also be respected. However, these rights are not "empirically" validated. In neoliberalism, people move from being citizens to consumers, from individuals of rights to objects of supply and demand, where the dominance of instrumental rationality is hegemonic (Piketty, 2015).

From the neoliberal hegemony, an efficient legal protection scheme necessarily requires an amendment to the FLL with the purpose of inserting a Title Five Ter focused on the PAM, in which the provisions take into account their conditions and singularities. The proposal is not to reform the chapter on "special jobs" because it is not a new job that deserves to be regulated, instead an individual who needs to be protected. This does not suggest a probable violation of the principle of equality; on the contrary, the justification of the existence of human rights over and above market-centric logic is reinforced, and therefore the content of the Mexican regulatory system, since there is an international mandate for States to strengthen the protection of PAMs and adopt differentiated measures based on their singularities.

The previous arguments suggest, firstly, the PAM's right to work is unstructured in relation to the political institutions in charge of crystallizing the enforcement of such rights through public policies. This unstructured right is due to the neoliberal position of the rule of law in contemporary Mexico; therefore, the need for redirecting the State toward the values of hard modernity: solidarity, equality, and fraternity/sorority.

Secondly, a conclusion on the general level of social citizenship, (the right to work is a core part of it). What happens to social citizenship in times of liquid modernity? The answer is evident, social rights have been privatized, an example is the public retirement funds, whose responsibility and administration are in the hands of private fund administrators (Administradoras de Fondos para el Retiro (AFORES)), institutions created under the Zedillo government in 1997.

Finally, these transformations take place in the field of the elderly population within a larger civilizing process, that of "liquid modernity," because it allows for linking and updating human and social rights from a relevant perspective, where everything that was previously considered *solid vanishes into thin air*, including social rights.

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