PEOPLE-CENTERED JUSTICE:

Access to Formal, Alternative, and Community Justice in Colombia and Peru

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Foreword

The Justice Studies Center of the Americas (JSCA) is an inter-governmental agency of the Inter-American System. Its mission is to support justice system reform and modernization processes in the Americas. In accordance with its institutional mandate, JSCA maintains dialogue with and works on an ongoing basis with a wide range of stakeholders and institutions to improve said systems with a firm commitment to human rights, the rule of law, and democracy.

Similarly, the International Development Research Centre (IDRC) promotes research and innovation within and with developing regions to promote the design of more inclusive and sustainable public policies. This includes policies related to how people, the State, and their forms of connection address disputes and provide mechanisms for effectively resolving them in a quality and timely manner.

Given that JSCA and the IDRC share goals and have compatible interests, they have formed a strategic partnership to create a technical workspace focused on three dispute resolution paths. This partnership seeks to contribute useful information, improve institutional responses, socialize lessons, and share tools across regions, systems, stakeholders, and civil society.

The publication "People-Centered Justice: Access to Formal, Alternative, and Community Justice in Colombia and Peru" is part of this effort. It offers analyses of three paths to dispute resolution in the areas of family and housing in Colombia and Peru and their effectivity when it comes to the needs of Andean and Amazonian rural and urban justice system users.

The studies presented here are meant to: (i) analyze the barriers to access and operativity of three main approaches to addressing and managing disputes related to family and housing issues, that is, alternative dispute resolution (ADR) methods, community justice, and the judicial system; and (ii) formulate recommendations for strengthening and improving their operation.

The methodological design and fieldwork conducted in Colombia and Peru were overseen by a multidisciplinary team deployed by JSCA in both countries and in Chile. The territorial deployment covered 11 territories in Colombia and four in Peru. A total of 276 interviews with justice operators, conciliators, stakeholders, and those who use the various paths. Validation and feedback activities were also developed with officials and experts in both Colombia and Peru.

This study presents various interesting findings, several of which contribute new evidence on access to justice via the three dispute resolution paths. Special attention was paid to the situation of and opportunities for improvement of the conciliation path as an alternative dispute resolution method in both countries. This comes in addition to the exploration of the various forms of community justice, which have unique and rich manifestations in each territory. The analysis of the judicial path recognizes progress made in identifying challenges to creating justice that is closer to the people with a people-centered perspective.

We first highlight the analysis of the pathways that users follow when using these three methods, which contributes to the understanding of common types of disputes and the needs of those involved in them based on the unique aspects and inequities that exist in each territory. In this sense, one key finding of the study is that people who turn to these three paths are mainly women seeking solutions to disputes that impact their daily life, coexistence, or subsistence. This makes clear the need to promote public policies with a broad, integrating, and multidisciplinary perspective that articulate judicial and non-judicial mechanisms and resources available for effective dispute resolution in the territories with a human, territorial, and citizen involvement perspective on dispute resolution.

Second, we highlight the study's contributions to current empirical research on alternative dispute resolution (ADR) methods, particularly extrajudicial conciliation. The study thus provides ample evidence related to the topic and offers reflections meant to revitalize regulatory treatment of ADR methods and their implementation with a public policy perspective. We note that this project complements another publication that JSCA and the IDRC are developing to promote new public policy on ADR methods at the regional level.

Third, we highlight the need to build and develop information systems for decision-making focused on promoting the effectiveness of the three dispute resolution paths studied. This study analyzes the progress made gathering existing data on the three paths, particularly the judicial path and the extrajudicial conciliation path, and identifies opportunities to produce the new data that required to measure, monitor, and optimize the performance of each path.

We hope that this study helps to generate discussion and regional reflections on how to promote effective paths to access to justice in the context of evidence-based public policies with a comprehensive approach that is centered on people and disputes. This study shows that the implementation of approaches focused on law and gender and diversity approaches is a necessary condition for the construction of more egalitarian societies and justice systems.

Nataly Ponce Chauca,
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Introduction

The dispute resolution methods analyzed in this study address important challenges in terms of accessibility, efficiency, and equity, particularly for vulnerable populations. The ordinary justice system is facing challenges related to trust, access, and slowness of processes. Alternative dispute resolution (ADR) methods and community justice are valuable options, though they also have their own limitations and areas that require improvement.

The evolution of these systems and their capacity to adapt to the needs of the most vulnerable populations is fundamental to introducing more inclusive and effective justice services. Although the construction of peace is a long process and civil society efforts tend to be limited and focused, it is important to understand how the existence and effective operation of various channels for addressing and managing disputes bring people closer to the concept of justice. This justice does not only emerge through judicial systems but can also be produced through the active participation of people through mechanisms like ADR and community justice which serve as spaces for democratizing decision-making.

This process and the findings that it generated led to the presentation of fundamental recommendations for achieving justice that is closer to and centered on people.

Given all of this, the two objectives of the project are:

i) To examine the dispute resolution methods available in Peru and Colombia that ensure access to justice in family and housing disputes; and
ii) To examine how effective they are in terms of achieving the goals set out when they are implemented.

This study is designed to identify, analyze, and explore paths to access to justice in family and housing disputes through ADR methods, community justice, and the judicial system. Family disputes are understood to be those related to child support and the custody and care of children and adolescents.

For their part, the housing disputes addressed in this study are those linked to property ownership, property rentals, relationships between neighbors, and territorial borders, among others.

The study is based on two key aspects: the high prevalence of these disputes and the obstacles or limitations that vulnerable individuals face when they endeavor to access justice services.

To reach the aforementioned goals, semi-structured interviews and non-participant observation activities were conducted in Colombia and Peru with individuals who serve in a variety of roles in the respective judiciaries. In the case of quantitative information, we analyzed publicly available administrative databases and conducted a review of existing material.

This study consists of three large sections.

The first presents a comparative analysis of the two country reports produced by the Justice Studies Center of the Americas (JSCA) for the project "Paths to Judicial and Non-Judicial Solutions for Access to Justice in Family and Housing Disputes in Colombia and Peru" (which comprise the second and third chapters of this book). This chapter expands on the advantages and barriers presented by the different paths to justice, including the judicial route, alternative dispute resolution (ADR) methods, and community justice. It offers a broad visions of the challenges and opportunities that the two countries face in these areas.

The second chapter is focused on Colombia and offers an exhaustive study of the various paths available to address and resolve housing and family disputes in the country. This section examines the barriers to access and operativity that impact ADR methods, community justice, and the judicial path.

It also explores the effectivity of said paths to guarantee the fundamental right to access to justice in order to advance recommendations that contribute to its strengthening and improved implementation in the Colombian context.

Finally, the third chapter follows the same analytical structure as the second but is focused on the reality of Peru. In this chapter, the authors examine the judicial and non-judicial paths available to solve housing and family disputes as well as the barriers that stand as obstacles to access and operativity. As they did for Colombia, they offer a critical analysis that culminates in recommendations for improving the performance of these mechanisms in the Peruvian context, thus ensuring equitable and efficient access to justice.

Chapter 1

VARIOUS PATHS TO PROVIDING ACCESS TO JUSTICE IN CASES INVOLVING JUSTICIABLE FAMILY AND HOUSING PROBLEMS:

A comparative analysis based on two case studies

*This chapter was designed by and the research activities were led by the Justice Studies Center of the Americas (JSCA) with the support of consultant Ricardo Lillo, Doctor of Juridical Science (S.J.D.), UCLA.

1. Introduction

This article offers a comparative analysis of two country reports produced by the Justice Studies Center of the Americas (JSCA) in the context of the project "Judicial and Non-Judicial Paths to Access to Justice in Family and Housing Disputes in Colombia and Peru."

These two experiences are analyzed in light of the basic standards for the right to access to justice developed in international human rights law and, in particular, based on what has been called the principle of effectivity. According to this standard, States should not only abstain from standing in the way of access but should also create the conditions for and proactively eliminate barriers to access to effective protection of people's rights through the justice system. As such, access to justice must not only be enshrined in legislation but should also be endowed with practical effectivity.

From this perspective, this study analyzes various civil dispute resolution methods described in the Colombia and Peru reports, particularly for family and housing disputes. The reports examine three main paths that can be used in this type of case: the judicial process, alternative dispute resolution (ADR) methods, and community justice. In addition to describing each of these paths, the authors highlight the strengths and challenges that exist in the area of barriers to access to justice.

Both countries present significant barriers to access to justice, particularly for vulnerable populations. These barriers limit the effectivity of judicial mechanisms, alternative dispute resolution, and community justice. Although each of these paths to access to justice offers potential advantages, they also face common challenges such as a lack of resources, lack of coordination, and limited awareness or knowledge of the paths among members of the public.

The study also describes the importance of community justice mechanisms and alternative dispute resolution in order to expand access to justice for vulnerable people. However, in both countries, these

mechanisms face significant challenges related to their ability to serve as effective means of meeting legal needs and protecting rights. The main challenge is the lack of a public policy that would provide the resources necessary to provide justice services in a coordinated and integrated manner with other justice system institutions in both countries.

The findings point to the need for comprehensive reforms that address these obstacles and reinforce the integration and effectiveness of these methods. This includes investing in infrastructure, improving training and supervision, promoting public awareness, and encouraging a more integrative justice approach that is sensitive to different cultures. Finally, guaranteeing that members of the public have the right to access justice services requires a multifaceted approach that is centered on people, recognizes the connections between these challenges, and makes use of the strong points of formal and informal justice systems.

With these goals in mind, the first section of this study offers a brief discussion of its conceptual and regulatory framework, defining the right to access to justice and the main standards derived from international human rights law. The second describes and analyzes the three paths to access to justice covered in the report that are used to respond to civil disputes, particularly those related to housing and family matters. The study ends with brief reflections based on the main findings and recommendations offered in both reports.

2. CONCEPTUAL FRAMEWORK

According to Cappelletti and Garth's classic book on the topic (1978), access to justice is a right that has a complex definition but that essentially refers to a central element of any legal system: the opportunity to access the means by which individuals can claim their rights and/or resolve disputes under the general supervision of the State (p. 182). Similarly, the United Nations Development Program (UNDP) states that this right generally refers to the capacity of individuals to obtain a fair solution to justiciable problems and to exercise their rights through formal or informal justice institutions and in accordance with human rights standards (2005: 5).

The main standard that derives from international human rights law is that this right should be effective in practice and not merely theoretical. This principle is consecrated in the case law of the Inter-American Court of Human Rights and the European Court of Human Rights. It focuses on the idea that individuals should have a real opportunity to submit a claim or mount a legitimate defense in a forum that is appropriate for protecting their rights (Trebilcock, Duggan & Sossin, 2012: 3; Lillo, 2022: 157).

In the context of the American Convention on Human Rights, there are two key regulations in this area. The first, Article 8, guarantees that "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature." The second, Article 25, establishes that "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

It then states that, by virtue of this standard, "2. The States Parties undertake:

a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

b. to develop the possibilities of judicial remedy; and

c. to ensure that the competent authorities shall enforce such remedies when granted."

The two are closely connected, so much so that it is common for them to be analyzed together by the Inter-American Court of Human Rights (hereinafter IACHR). Furthermore, when a violation of one of these dispositions is found to have occurred, this almost automatically means that the other has been violated (Medina, 2016: 355; Lillo, 2022: 82). As such, for example, in the case of Barbani Duarte, the IACHR analyzed Article 8, stating that this right implies a formal aspect by virtue of which the State should ensure access to a competent agency in the determination of the substantive right involved and that States must guarantee that the decision produced by said agency should serve the purpose for which it was conceived. The latter aspect, it states, requires an analysis of effectivity based on the circumstances of that specific case (IACHR, 2011).

This principle of effectivity requires States to not only not stand in the way of access -a negative obligation, or one of omission-, but also to take positive steps to reduce or eliminate barriers that prevent people from accessing the justice system. This may include reducing judicial fees, providing free legal assistance to those who cannot afford it on their own, and other benefits that allow the subject in each case to obtain effective protection of their rights (IACHR, 2002). As such, the IACHR states in the thematic report on access to justice as a guarantee of the economic, social and cultural rights that inter-American standards in this area establish an important connection between the real possibility of access to justice, respect, protection, and assurance of the right to due process in these areas (Commission, 2007: 64).

The case of Cantos v. Argentina is probably the most important matter to be decided by the IACHR in this area. It is possible to identify several of the standards that comprise the regulatory framework of

the right of access to justice in the Inter-American system. Specifically, it addresses a complaint filed by Mr. Cantos against the Province of Santiago del Estero and the Argentinean national government for "charging pesos" to recognize a series of amounts owed. Ten years later, the country's Supreme Court rejected the claim based on formalities, in particular non-payment of a judicial fee that totaled approximately US$83 million (equivalent to a fixed rate of 3% of the total amount of the quantity involved in the lawsuit in accordance with national law) and a fine that represented 50% of that amount for non-payment of said fee within the prescribed timeframe (Lillo, 2022:94). As such, in addition to recognizing that this right comes from Articles 8 and 25, the IACHR stated that States must not create obstacles to people who seek justice in order for their rights to be established or protected and that the mechanism used cannot offer a decision that terminates the dispute within a reasonable timeframe. Instead, it found that those involved should have been able to turn to the justice system without fear of being forced to pay disproportionate or excessive sums. In this sense, while judicial fees or honoraria do not go against this right per se, measures must be taken to ensure that they do not become obstacles to the exercise of the right to judicial guarantees and the legal protection consecrated in the Convention (IACHR, 2002).

In other cases, the IACHR has developed basic standards, stating that violations of the right to access to justice do not only derive from legal dispositions that constitute breaches. Practices that generate obstacles may also constitute violations of this right. For example, in the case of Fernández Ortega v. Mexico, the Court determined that the right of the victim to access to justice was violated because he initially did not have a State-appointed interpreter to help him file his complaint. He did not receive information about the process that followed his complaint in his language. Rather, the situation of vulnerability that he experienced due to his language and ethnicity were not considered (IACHR, 2010).

As a fundamental right, access to justice is more than just a person's ability to utilize the services provided by the courts.

It also refers to a person's right to have their case heard and resolved in accordance with substantive standards of equity and justice (Francioni, 2017, p. 1). In other words, access to justice also involves ensuring that once the matter is taken to the appropriate entities, it is processed in accordance with certain minimum standards that translate into due process. In this sense, the Court has stated in the case of Claude Reyes v. Chile that the effective resource of Article 25 of the Convention should be processed in accordance with standards of due process per Article 8.1 of the same, all within the general obligation of the States themselves of guaranteeing full and free exercise of the rights recognized by the Convention for all of those under its jurisdiction. Under this same premise, in cases such as Fornerón and Daughter, the Court has bound other guarantees of Article 8.1 to the right to access to justice. In this specific case, it ruled that the latter must ensure the determination of the rights of the person within a reasonable timeframe (IACHR, 2012).

The Court has recognized that the right to access to justice is not absolute in nature. Rather, States may set limits or restrict its exercise. These are admissible from the perspective of international standards as long as the measures employed are proportional to their purpose. They may not contribute to the complete refusal of this right. As such, the criterion for evaluating these measures will be their proportionality and the reasonableness of the purposes sought.

The right to access to justice covers a wide range of applications in at least three areas. The first is related to the information and knowledge that individuals can access about their rights and the mechanisms available to them to make them effective. The second involves the need to obtain specialized assistance to navigate the complexity of today's legal systems. This assistance may be provided by legal professionals or others. The third involves the capacity to access and effectively use the appropriate forum for the protection of rights, resolution of legal disputes or handling of problems that can be resolved by the courts (Lucy, 2016: 234).

Based on a broad understanding of access to justice, this appropriate forum can be a court or any other public mechanism provided to effectively pursue the protection of rights, resolve or settle disputes, or meet legal needs (Lillo, 2024: 341). In this sense, for example, in Mutu and

Pechstein v. Switzerland the European Court of Human Rights recognized that this right does not necessarily refer to access to a traditional court. Rather, it is also compatible with litigation resolution mechanisms such as arbitration procedures (ECHR, 2018). For its part, the UNDP has stated that as a positive obligation of the State, this right implies creating or strengthening any government or community-based entity, whether centralized or decentralized, that helps guarantee the exercise of rights and provides a response to people's demands, particularly those of the most vulnerable (UNDP, 2005: 14).

The third area of the right to access to justice refers not only to the opportunity to access a court and advance a judicial process that concludes with a decision that resolves the issue, but also to the effective execution of that decision. This is quite clear in the European context, where the ECHR has stated that the right to the execution of a ruling issued by any court is an integral part of the right to due process for the purposes of Article 6 of the European Convention on Human Rights (ECHR, 1997).

Working with this multidimensional understanding of this right, we have identified barriers to access to justice that prevent individuals and groups from effectively exercising their legal rights and resolving their legal problems in a fair and timely manner. These barriers have several origins. They have been classified based on whether they stem from personal characteristics, social, and/or cultural origin, or are institutional in nature (OECD, Open Society Foundations, 2016:7).

Barriers of social and/or cultural origin include economic factors related to the direct or indirect costs that people must incur to obtain protection of their rights. These include high costs associated with judicial proceedings -or other dispute resolution options-, including honoraria that must be paid to secure professional legal assistance and judicial fees, as well as the income lost due to participation in the dispute resolution process.

These economic factors can have a disproportionate impact on people and families living in poverty (Bocardo, 2018: 69). The lack of economic resources is exacerbated by other structural and social obstacles that are generally linked to poverty, such as limited access to literacy and information, limited political participation, stigmatization, and discrimination (Beqiraj and McNamara, 2014:14).

This group also includes other socio-cultural factors and obstacles derived from regulations, beliefs, and social practices that can dissuade people from using the justice system or create stigma around certain issues. These include such diverse situations as a person's gender, belonging to minorities that face discrimination, and being part of an Indigenous community or a community that speaks a different language, belonging to different ethnicities, or holding cultural or religious beliefs. All of this can lead to these groups being excluded from the justice system (Lillo, et al., 2023: 17; Beqiraj and McNamara, 2014: 16). This category also includes mistrust of the justice system, which can create a true gap that distances people for reasons such as corruption, discrimination, and abuse by authorities.

Barriers that have their origin in personal characteristics include factors such as a lack of education and literacy and special needs or diminished capacities. All of this can prevent people from understanding legal documents, communicating with attorneys, and participating in judicial proceedings. It is important to consider the fact that these barriers tend to be linked to others, such as poverty (Beqiraj and McNamara, 2014:17).

These institutional barriers also include variables related to the structure and operation of the justice system itself. For example, there is a lack of material, human, financial, and other resources. We also have identified administrative structures that lack the capacity to efficiently manage judicial offices, overload, and delays; the complexity of legal procedures; the lack of transparency and information on their operation; and even the geographic location and proximity of groups within the population to the dispute resolution mechanisms provided by the State, as well as the characteristics of the legal profession and market. All of these factors prevent the system from serving as an efficient and effective alternative for the protection of rights, particularly for individuals who are already experiencing social and cultural barriers (Bequiraj and McNamara, 2014: 21).

As the authors note in this section, effective access to justice implies that people can see their rights protected, their legally significant or legal disputes resolved, and their legal needs met. However, at the comparative level, today's justice systems are lacking in this area. Studies

have shown that the prevalence or experience of unresolved cases is at a critical level (Task Force on Justice, 2019: 64-66). In other words, the responses provided by the justice system cover no more than a small percentage of those conflicts.

Judicial reforms' focus on buildings, processes, and institutions has prevented them from addressing the crisis that justice systems are facing (Task Force on Justice, 2019: 62). As such, today we must focus on the people and communities that experience problems that can be solved by the justice system, empowering them to act when their legal needs arise. We must redesign judicial services, moving towards what has been called people-centered justice so that the alternatives available align with the needs of everyday users. Finally, we must allow them to obtain a decision that is perceived to be fair and effective in a measurable or quantifiable way (Task Force on Justice, 2019: 68-75; Lillo, 2023: 31-32).

3. ANALYSIS OF THE STATE OF ACCESS TO JUSTICE IN THE REGION BASED ON TWO CASE STUDIES

Using the standards described above, in this section the authors offer a comparative analysis of the national reports developed by JSCA in the context of the project "Paths to judicial and non-judicial solutions to access to justice in family and housing disputes in Colombia and Peru." This work is important because the authors offer an exhaustive analysis of the diverse dispute resolution methods used in their respective countries in matters related to civil justice -in a broad sense or, to put it differently, non-criminal justice-, which tend to be quite common. With regard to family issues that are subject to judicial proceedings, both documents mainly focus on those linked to child support, custody, and visitation. Civil matters tend to focus on disputes related to property rental and ownership, property lines, housing, and neighborhood coexistence.

Above and beyond the frequency or prevalence of these problems in society, they are matters that disproportionately impact vulnerable people or groups. For example, both reports state that women, particularly female heads of household and those responsible for dependent relatives, face specific difficulties in family and housing disputes due to the economic disparities and gender-based discrimination that they tend to face (JSCA, 2024). In the case of Peru, special attention is paid to how poverty, specifically the lack of income, seriously impacts individuals who experience more family conflict, particularly in regard to issues such as child support, visitation, and spousal support, as well as problems related to housing. This is especially important given the enormous level of informality that exists in that area in Peru (JSCA, 2024). The Colombia report reveals how certain civil disputes related to renting or neighborhood coexistence may impact the LGBTQ+ population. Furthermore, if those disputes are not resolved, they can escalate and lead to violence (JSCA, 2024).

As we have stated, these reports focus on three main paths to dispute resolution: the judicial process, ADR, and community justice. Each of these paths is analyzed from the perspective of the standards described above, highlighting positives and lacks based on commonly identified barriers to access.

3.1. The judicial path

In Colombia, formal justice as a dispute resolution method for family and civil matters is mainly governed by the General Procedure Code (*Código General del Proceso*, CGP), which describes procedural standards, and the Civil Code, which establishes applicable substantive law. In the area of family law, the Code on Childhood and Adolescence establishes specific regulations for cases involving children or teens (JSCA, 2024).

The Colombian justice system handles a wide range of family issues, including child support, custody, and visitation as well as others related to divorce and domestic violence. All such matters are generally heard in family courts in verbal summary proceedings (JSCA, 2024).

With regard to justiciable housing cases, Colombia's formal justice system tends to hear disputes related to rental contracts, acquisitive prescription, processes involving the division of property, and easement recognitions (JSCA, 2024). These normally follow special declarative proceedings or verbal summary proceedings, all of which are adversarial and adjudicative and regulated by the CGP (JSCA, 2024).

Beyond the regulation of these judicial proceedings for both types of issues, Colombia's CGP promotes the use of conciliation to amicably resolve disputes. Article 372 No. 6 of the Code orders that once the process has begun, and from "the beginning of the hearing and during any stage of it, the judge will diligently ask the parties to resolve their differences and may propose arrangements without that meaning that they prejudged the case." *["el inicio de la audiencia y en cualquier etapa de ella el juez exhortará diligentemente a las partes a conciliar sus diferencias, para lo cual deberá proponer fórmulas de arreglo, sin que ello signifique prejuzgamiento."*] (Our translation.) This judicial conciliation is legal conciliation and, as we discuss further later on with regard to a series of matters, it is a procedural requirement for filing a complaint (JSCA, 2024).

In Peru, judicial regulation of family and housing matters is described in the Civil Procedure Code. With regard to matters that impact young people (such as child support, custody, and visitation), there is a special regulation in the Code on Childhood and Adolescence that outlines a very brief procedure. In general, both codes regulate written proceedings except for child support cases, which are handled through a concentrated oral hearing under the recently passed Law No. 31.464 (JSCA, 2024).

Jurisdiction over family matters is distributed across professional peace courts, specialized courts, superior courts, and supreme courts. Child support cases are initially addressed in professional peace courts and in the specialized courts in the second instance. Custody and visitation cases are managed by the specialized courts and reviewed in second instance by the specialized chambers (JSCA, 2024).

Forms are available in the courts to open family cases in Peru, and legal representation is not required to complete and submit it. Based on the little data available in the area of family law, child support cases tend to be filed by women against men, and most of the latter fail to appear in court. In regard to duration, a tiny portion of cases are resolved in the first instance and within the legal timeframe of 30 business days. A significant percentage (47.5%) take more than six months. Sentences are mostly executed in a period of more than five months (JSCA, 2024).

Civil cases related to housing in Peru are processed before the professional peace courts or in specialized courts depending on the amount involved. Trials involving rentals come under the jurisdiction of civil courts in the first instance.

Eviction matters involving failure to pay or contract expiration are heard by a court assigned based on the amount involved. Finally, neighborhood disputes are heard in contentious-administrative proceedings heard by municipalities as oversight agencies (JSCA, 2024).

Like Colombia, Peru allows parties to cases to engage in intraprocedural conciliation. Article 323 of the Civil Procedure Code states that "the parties may engage in conciliation at any stage in the process as long as no second

instance ruling has been issued." [*"las partes pueden conciliar su conflicto de intereses en cualquier estado del proceso, siempre que no se haya expedido sentencia en segunda instancia"*] (Our translation.) For its part, Article 324 states that "judges may schedule a conciliation hearing prior to issuing a ruling ex officio or at the request of both parties with the exception of intrafamily violence cases." [*"los jueces, de oficio o a solicitud de ambas partes, podrán citar a una audiencia de conciliación antes de emitir sentencia, salvo en los casos de violencia familiar"*] (Our translation.) The interviews suggest that the parties opt for conciliation in more than half of family law cases, and an agreement is reached in one third of the cases. Judicial conciliation is used much more rarely to handle housing disputes (JSCA, 2024).

3.1.1. The advantages of the formal justice system

The documents highlight some advantages of the formal judicial system as a dispute resolution path compared to the other two paths analyzed. First, the reports for both countries state that the judicial process and courts, with all of their virtues and defects, enjoy greater legitimacy and have a greater capacity to provide solutions to disputes. In the case of Peru, the authors state that despite the widespread distrust in the judicial system, it continues to be the most widely recognized and legitimate option for final dispute resolution, particularly due to the country's dominant litigious culture (JSCA, 2024). In the Colombia report, the authors similarly observe that although people are aware of its slowness, the judicial path maintains high legitimacy and its decisions are considered valid (JSCA, 2024).

Second, the formal justice system offers a stable legal framework with shared procedures, which offers a sense of previsibility and due process that may be lacking in alternative dispute resolution methods or community justice. The authors note that Colombia has introduced technological advances and has digitized justice, improving transparency and accountability within the formal justice system. This enhances democratic practices such as procedure standardization, the previsibility of rules, and improved access from geographically distant locations (JSCA, 2024).

Third, one comparative advantage is the availability of resources, which improves performance and the likelihood that terms of the solutions reached will be followed. The Colombia report mentions the positive opinion of justice sector operators of the judiciary in municipalities like Medellín and Pereira Risaralda, where the availability of digital and physical tools is noted. In Peru, the formal justice system has the power to enforce its decision, at least with regard to matters in which voluntary compliance is unlikely. As such, in property rental matters, the effectiveness of judicial rulings is high because the police can be asked to enforce rulings if necessary (JSCA, 2024).

3.1.2. Analysis based on the barriers to access to justice identified with respect to formal justice

a) Negative perception of formal justice as a path to dispute resolution

As data that would allow us to assess the formal justice system have not been produced, both countries seem to have a negative perception of the courts as a dispute resolution path in the legal areas analyzed. This speaks to a series of institutional barriers: a lack of human, material, and financial resources; judicial delays; organizational problems with judicial offices; and a lack of training of officials responsible for user services.

In Colombia, negative opinions are mainly attributed to the slowness of the proceedings, the lack of specialized staff, and the perception of a lack of empathy and understanding on the part of judicial officials, particularly in regard to family matters. Some users, especially those from marginalized communities, attribute their distrust to a lack of impartiality of the formal justice system.

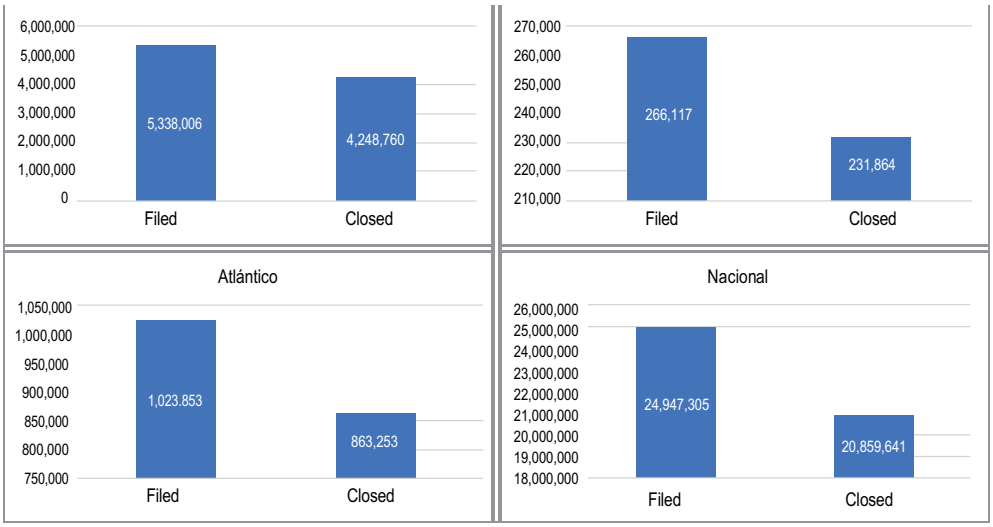
They believe that it tends to favor those with more resources or power. In this regard, for example, the Colombian Constitutional Court has recognized that formal justice is not always effective, especially when appropriate and insufficient resources have been allocated to approaches that facilitate peaceful dispute resolution. This also occurs when the complexity of the proceedings or conditions of time, mode, and

place required by the legislature restrict the capacity to achieve effective enjoyment of the rights that judicial entities are to protect (Honorable Constitutional Court of Colombia in JSCA, 2024).

Beyond users' perceptions, as we said, the existing data are insufficient to rigorously evaluate the effectivity of formal justice as a path to dispute resolution. However, the information reported did allow us to identify various challenges that the formal justice system must address.

In Colombia, the main causes of negative perceptions are linked to the duration of the proceedings, the lack of specialized family court staff, and the tendency to use procedures and formalities rather than focusing on the emotional and social aspects of disputes (JSCA, 2024). As such, at both the national level and within the jurisdictions presented in the country report, the number of cases filed is greater than the number of cases closed (Figure 1) (JSCA, 2024). This suggests that the system is overburdened and explains why so many matters are pending or delayed, which comprises an institutional barrier to access. Respondents mentioned the high level of congestion in Bogotá judicial offices, which creates delays. Some interview participants stated that it can take seven months to get to a simple acceptance of the filing (JSCA, 2024).

Figure 1
Cases filed and closed, 2013-2022



Source: Developed by the authors based on the Justice Studies Center of the Americas (JSCA) publication "Paths to Civil and Family Dispute Resolution in Colombia: Effectivity of the Approaches and Responses," *56.*

The authors also note that the lack of resources, particularly in jurisdictions further from the capital, results in the use of old buildings that lack the minimum services to required protect the wellbeing of system users and staff as well as technological infrastructure. There is also a lack of coordination between the institutions linked to the justice system, which also creates significant barriers to access (JSCA, 2024).

It is likely due to this that the formal judicial path is not only little known in Colombia (JSCA, 2024) but is also underutilized as a tool to address the most common justiciable problems, as noted in the USAID study on Justice Needs and Satisfaction in Colombia. The authors of that report state that 54% of people who experience a dispute take action, and only 4% of them turn to a judge (JSCA, 2024).

Similarly, in Peru, the negative perception of justice is mainly linked to judicial delays. According to the interviews included in the country report, this is due to the hearing scheduling stage, which produces significant delays due to case overloads.

Interview respondents stated that child support cases can last over two years, which far exceeds the legal deadline of five months. Eviction cases can take over four year (JSCA, 2024).

In addition to the negative perception that has developed due to the duration of the proceedings, the Peru report highlights a high level of distrust in the judicial system. Many people see it as corrupt and lacking in impartiality and independence. One example of this is the situation of short-term contract judges who are easy to remove (JSCA, 2024). Short-term contracts make judges more vulnerable to political pressure and the influence of special interests. Judges who know that their job can be taken away at any time may be more likely to make decisions that are politically convenient or that benefit powerful groups. This undermines public confidence in the judicial system and may lead to increased corruption and impunity.

At the level of institutional barriers, and as was also observed Colombia, there is a lack of specialized personnel in Peru along with a lack of sufficient training for family court judges to manage this type of dispute adequately (JSCA, 2024).

In regard to user-centered judicial office organization, the Peru report states that the main issues are the use of technical language that is hard for anyone who is not an attorney to understand; lack of adequate customer service, which would inspire confidence among system users; and limited availability of court staff who can provide information about the status of a file or recurring procedures (JSCA, 2024). Several interviews from the Peru report point to issues with how that people are treated in court, particularly those who are unfamiliar with the processes. They even mention that some may be subjected to discrimination due to their socio-economic status (JSCA, 2024).

Finally, the lack of oversight and systematic monitoring of compliance with judicial rulings is manifest in the sense that there are no data regarding their effectivity, delays, etc., all of which obviously stands in the way of evaluation of the effectiveness of judicial rulings in terms of achieving definitive solutions (JSCA, 2024).

b) ADR methods as procedural requirements

The authors of both country reports state that using ADR methods as a procedural requirement for legal action may constitute a barrier to access to formal justice. As such, although these mechanisms are designed to promote peaceful and non-litigation-based dispute resolution, particularly in contexts in which it is more appropriate than the adversarial process -and while having a positive impact on relieving congestion-, they constitute an additional step that may be especially problematic for people with limited resources.

In Peru, this occurs specifically with respect to civil disputes including matters related to housing. In these cases, the dominant perception is that conciliation is frequently viewed as a mere formality to access the courts instead of a true attempt at reaching a solution, which clearly raises concerns about its efficacy and potential to cause judicial delays (JSCA, 2024).

This occurs in both family and housing cases in Colombia. The country report states that Law 2.220 of 2022 orders the parties to attempt extrajudicial conciliation prior to turning to the courts. In civil matters, conciliation must be attempted prior to using judicial proceedings in declarative cases with the exception of a series of matters that include monitoring proceedings and restitution of the rented property. In the area of family law, this requirement applies to litigation over custody, child support, and marital assets (JSCA, 2024). All of this causes growing bureaucracy and regulation of the tool (JSCA, 2024).

c) Economic, social, and cultural barriers to formal justice

Both reports identify important barriers to accessing formal justice related to these factors. In particular, they mention that these obstacles disproportionately impact certain individuals or groups within the population.

In regard to economic barriers, both reports highlight the high costs of judicial proceedings as a significant obstacle for low-income individuals and families. For example, the Colombia report states that litigating a

child support case in the formal justice system could cost 20% of a year of support payments (JSCA, 2024). The Peru report indicates that the cost of legal representation in family law cases can range from S/500 to S/3,000 (JSCA, 2024), a substantial amount for many people, particularly those facing economic vulnerability. The main weakness of the formal justice system mentioned in Peru is the cost of family law proceedings. The authors state that while the plaintiffs are legally exempt from paying fees and from the duty to engage representation, most people continue to hire an attorney because the system continues to seem inaccessible to them (JSCA, 2024). As such, they argue that while the plaintiffs are legally exempt from paying fees and hiring an attorney, the majority still hire a professional given that the system still seems too inaccessible to them to navigate on their own (JSCA, 2024).

On the other hand, both country reports describe how the barriers created due to regulations, beliefs, and social practices can dissuade people from using the formal justice system or create stigma around certain issues. This occurs in the case of family matters, where violence and discrimination linked to gender can impact certain matters that go before the justice system. For example, the authors of the Colombia report explain that the reigning patriarchal culture and religious influence on the traditional understanding of family can constitute barriers to access (JSCA, 2024). The belief that violence against women is a private matter may prevent victims from reporting abuse or seeking help. The same occurs with LGBTQ+ individuals, who suffer discrimination and exclusion in the communities where they live and may hesitate before seeking help from the formal justice system (JSCA, 2024). In the case of Peru, the authors mention that certain deeply rooted stereotypes related to these groups may influence how family disputes are perceived and approached. For example, the authors state that some parents may refuse to pay child support because they believe the money will benefit the mother's new partner (JSCA, 2024).

The authors of the Colombia report also state that communities impacted by violence and organized crime may be afraid to report the crimes or seek justice because of fear of reprisals (JSCA, 2024). This may create a culture of silence and impunity, constituting an obstacle to access to justice for victims.

The personal characteristics or circumstances that may stand in the way of a person's ability to seek out and obtain justice may be, as we have seen, linked to others, such as institutional or economic circumstances. Both reports mention individuals with special needs and the issue of gender. For example, the Peru report highlights how poverty can lead to low levels of formal education (JSCA, 2024). This in turn may make it difficult for parties to a given case to understand legal terminology and proceedings. The authors of the Colombia report state that there is little knowledge of the legal framework with respect to the types of disputes analyzed because of a lack of coordination and collaboration vis-a-vis distributing information on rights and paths to exercising them and regarding reforms (JSCA, 2024).

When comparing the two countries, it is clear that although their legal frameworks and specific procedures may differ, Colombia and Peru face similar challenges when it comes to guaranteeing access to justice through formal judicial channels. Delays, inadequate resources, and the complexity of legal procedures are some of the factors that may disproportionately impact vulnerable groups. Furthermore, mandatory conciliation may be meant to promote amicable agreements but can also pose an additional obstacle and thus delay access to justice. These common challenges underscore the need for comprehensive reforms that address both structural barriers and procedures for accessing justice in both countries. Future efforts should focus on improving the efficiency and transparency of judicial proceedings, allocating sufficient resources to judiciaries, and simplifying legal procedures, but this should be done in a manner that places people -especially the most vulnerable- and their needs at the center of justice reform public policy.

3.2. Alternative or appropriate dispute resolution (ADR) methods

In Colombia, the legal framework for alternative dispute resolution (ADR) methods is described in Law 2.220 of 2022.

This law focuses on conciliation in its various forms, including conciliation performed as part of the judicial process -which we have analyzed- and extrajudicial conciliation, which occurs outside of the courts and can be conducted "in law" or "in equity" (*en derecho* or *en equidad*, JSCA, 2024).

Law 2.220 of 2022 describes the principles that govern conciliation, emphasizing its consensual nature, swiftness, confidentiality, informality, cost-effectiveness, and the conciliator's impartiality. It also establishes the role of the Ministry of Justice and Law in the supervision of conciliation centers. This entity has the authority to inspect, monitor, and fine these centers in order to guarantee compliance with legal and regulatory obligations (JSCA, 2024). As one of the paths to dispute resolution included in these reports, conciliation can be used in matters related to both housing and family.

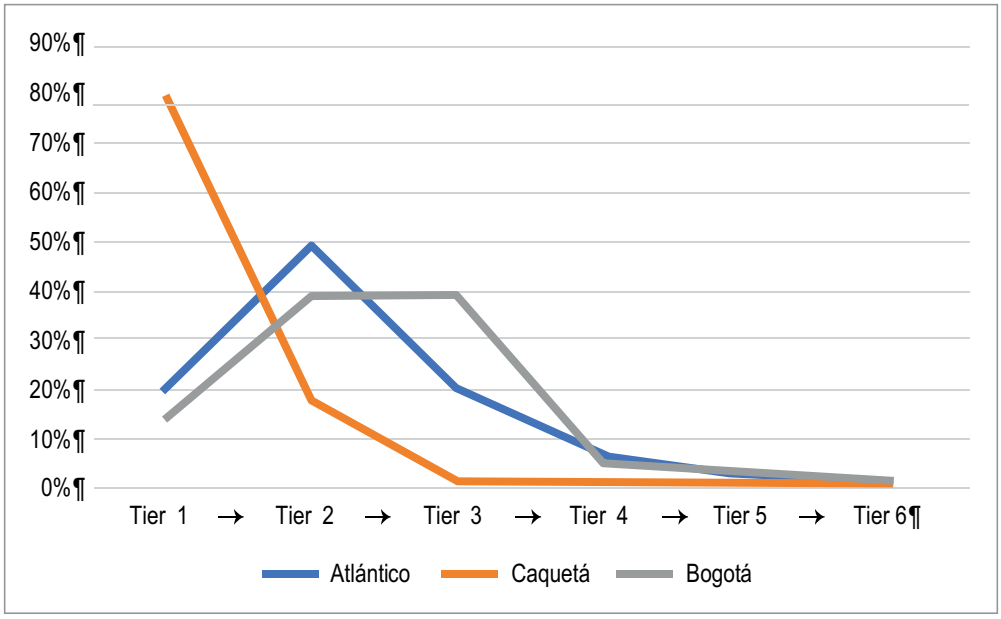
However, in the case of Colombia, operators who work with conciliation in law have observed differences in the type of civil disputes that tend to come into the system. Conciliation tends to be used to look at economic components of housing more clearly and with less emotion, though this is relative. The operators state that this sort of matter tends to be handled at a conciliation center with a high number of agreements because they are thought to present objective criteria for negotiation, which is not always the case in family matters (JSCA, 2024).

In that country, extrajudicial conciliation services can be free or paid. While the former services are offered in public conciliation centers and legal offices, conciliation in law tends to be handled in conciliation centers run by non-profit entities or before notaries public. The ministry sets a rate for such matters based on the amount of money involved in the dispute (JSCA, 2024).

Based on the data presented in the Colombia report, there are some key aspects to highlight in regard to conciliation in law. The first is related to the people who use the system. In both the Department of Caquetá and the Department of Atlántico, most are members of the middle or lower economic classes.

This is due to the fact that these regions have a higher poverty rate and more inequity. As such, many people do not have access to the same resources and opportunities enjoyed by members of the upper classes. It is likely that people from lower economic levels use ADR methods more because it is a more accessible path to dispute resolution. By contrast, the middle class dominates in Bogotá, which has lower rates of poverty and inequity (Figure 2) (JSCA, 2024)

Figure 2
Parties requesting conciliation by socio-economic tier in selected regions (2023)



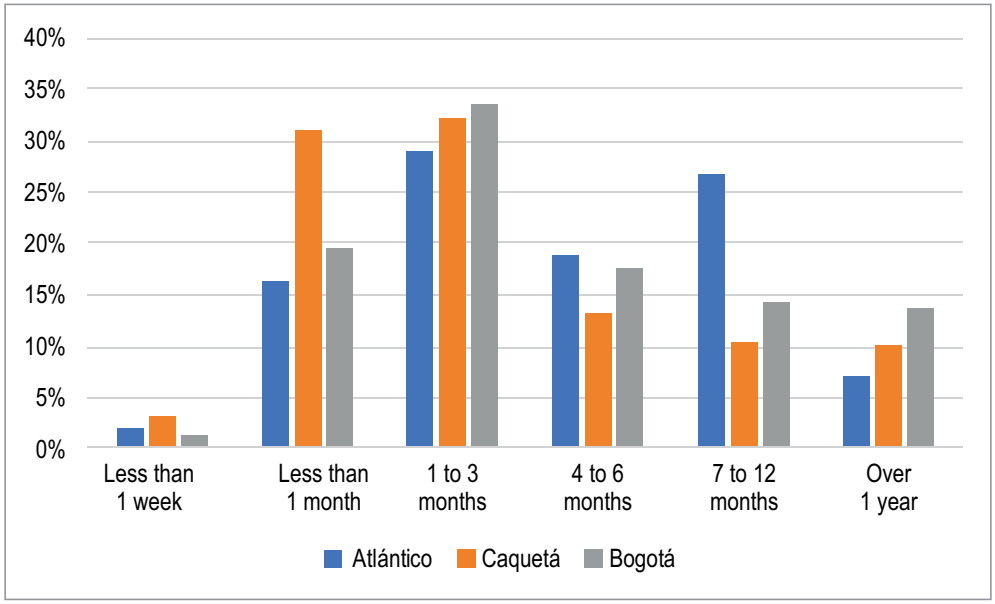
Source: Developed by the authors based on the Justice Studies Center of the Americas (2024) publication "Paths to Civil and Family Dispute Resolution in Colombia: Effectivity of the Approaches and Responses," pp. 41-9.

Both nationally and in the three regions analyzed in the report, civil and commercial and family matters are at the heart of most conciliation requests. However, the former represent over 60% of cases in Bogotá, while community matters are linked to very few requests (JSCA, 2022).

Most matters in these jurisdictions are closed in less than three months, though many matters in Atlántico take seven months to one year to resolve. The data on duration generally reflect fairly limited wait times. If one considers the negative perception of formal justice based on judicial delays, this points to an important advantage of ADR methods as a means of providing a response to the population's issues (Figure 3) (JSCA, 2024).

By contrast, the number of agreements reached is a challenging area to analyze. The Department of Atlántico alone reports that 58.5% of matters are terminated through conciliation. In Bogotá and Caquetá, a significant portion of matters end with no agreement (25.7% and 18.9%, respectively) or with a certificate of failure to appear (20.3% and 30.9%, respectively). The same occurs at the national level (38.6% between both types of termination) (JSCA, 2024).

Figure 3
Duration of conciliation in selected regions (2023)



Source: Developed by the authors based on the Justice Studies Center of the Americas (2024) publication "Paths to Civil and Family Dispute Resolution in Colombia: Effectivity of the Approaches and Responses," pp. 41-9.

Finally, in regard to the institutions or agencies in which conciliation is conducted, it is worth noting that the report on Colombia states that a high number of cases involve local officials or institutions like mayor's offices, legal counseling offices, or other non-profits. Meanwhile, other State institutions like courts and attorney general's offices do not seem to be attractive places to engage in conciliation for members of the public (JSCA, 2024).

The Colombian legal system also recognizes other forms of ADR, such as mediation, though these are not explicitly mentioned in Law 2.220 of 2022 and there is no systematic regulation on them. Mediation in Colombia is offered in specific contexts through special legislation, as occurs with school (Law 1620 of 2013), criminal (Law 906 of 2004), and police mediation (Law 1801 of 2016) (JSCA, 2024).

In Peru, the ADR mechanisms that have been regulated are conciliation (Law No. 26872) and arbitration (Legislative Decree No. 1071). Although there are bills that have sought to promote other mechanisms such as mediation, they have not met with success mainly due to the dominant legal culture. For its part, extrajudicial conciliation mainly operates in conciliation centers,

which can be public or private and must be authorized by the Ministry of Justice and Human Rights (MINJUSDH) through the Directorate of Extrajudicial Conciliation and Alternative Dispute Resolution Mechanisms. In the case of the latter, they are conceived of as non-profit entities and must also prioritize services for low-income individuals (JSCA, 2024).

Anyone who earns the appropriate accreditation may serve as a conciliator in Peru regardless of whether or not they are an attorney. However, centers must have at least one attorney responsible for supervising the legality of conciliation agreements. These conciliators are trained by extrajudicial conciliator training centers, universities, regional governments, local governments, and duly authorized professional associations. Their training is overseen by the National Academy for Extrajudicial Administration of MINJUSDH (JSCA, 2024).

In Peru, extrajudicial conciliation is a path to dispute resolution that is applied voluntarily in matters related to family justice, including child support, custody, and visitation, all of which can be subject to voluntary conciliation. For housing matters, rental and property dispute resolution must include conciliation prior to bringing the matter before a civil court with the exception of eviction cases (JSCA, 2024).

In contrast to the Colombia report, the Peru report does not include detailed information. However, it does state that the type of family matters most frequently resolved through conciliation are child support cases, most of which are filed by women. The housing matters that are most frequently handled through conciliation involve rentals. In these cases, most of the people who request extrajudicial conciliation do so without any intention of actually resolving the dispute. Rather, they are solely looking to secure the certificate required to meet the procedural requirement (JSCA, 2024).

3.2.1. Advantages of ADR methods over formal justice

A comparative analysis of the two country reports shows that the main advantages or virtues of ADR methods compared to formal justice are that the former tend to be perceived as more accessible and faster. In addition, they are thought to be especially appropriate for certain types of disputes and for some at-risk groups.

In both Colombia and Peru, respondents recognize the potential of ADR methods to offer more accessible, effective, and efficient solutions in a wide range of contexts. The Colombia report notes that ADR methods, particularly conciliation, have proven highly effective in family dispute resolution, especially in cases related to child custody and support. These mechanisms offer a faster and less contentious approach than judicial litigation, which may be beneficial to families who are seeking to maintain relationships and prioritize children's wellbeing (JSCA, 2024).

In the Peru report, the authors state that conciliation may be more efficient than turning to the courts because both public and private conciliation centers meet the legal deadlines. This is particularly true when both parties appear at the first hearing, as processes like second attempts at notification tend to cause delays. The authors further state that most users who are notified appear at the first hearing, which facilitates the process of reaching an agreement. Based on the above, the perception of the methods' users, especially those who use public and free conciliation, is positive due to the speed with which they receive an answer (JSCA, 2024).

The Colombia report's authors argue that this efficiency positively impacts the formal justice system, as it mitigates congestion by dejudicializing some disputes (JSCA, 2024). Similarly, the authors of the Peru report state that this path to dispute resolution, particularly conciliation, is more flexible and cost-effective than the formal judicial system. It is considered especially valuable for vulnerable populations because of its lower cost and the speed with which disputes are resolved (JSCA, 2024).

3.2.2. Analysis based on barriers to access to justice in the field of ADR

Just as both reports point to the potential and advantages of ADR methods over the formal judicial path, they also outline important similarities in the challenges that they face when serving as effective paths to expanding access to justice in Colombia and Peru. These challenges are institutional, social, cultural, and economic in nature.

a) Challenges related to institutional barriers of ADR methods.

The main challenges identified in the reports are related to the lack of efficacy of these mechanisms, the lack of knowledge of them and dissemination of information related to them, the litigious culture, especially among the regular system operators, and -even in these mechanisms- the related costs -particularly indirect ones- and the power differences between the parties.

All of this can also generate imbalances or barriers to entry.

In regard to the efficacy of ADR methods, both country reports state that this depends on various factors. These include the availability of qualified conciliators, the quality of the conciliation process, and the willingness of the parties to engage in good faith negotiations. If these factors are not addressed adequately, the requirement of conciliation could become an institutional barrier that delays proceedings and may dissuade people from seeking justice through the formal legal system. In the case of Peru, there is a perception that extrajudicial conciliation presents lower levels of efficacy in civil judicial processes, which slightly improve in family law cases. The latter mainly depend on conciliators with more experience directing the process (JSCA, 2024).

One problem related to this point is that in many cases, extrajudicial conciliation in Peru has become just one more task to be completed because it is now a procedural requirement for filing a claim (JSCA, 2024). The report authors state that the percentage of conciliation processes that result in an agreement is low (between 10% and 40% of cases based on information provided in the interviews). If an agreement is reached, compliance tends to be limited or even null due to deficiencies in the agreement documentation (JSCA, 2024).

In both cases, the authors state that one of the main challenges of ADR methods is the lack of familiarity with them among operators and users. As such, in the case of Colombia, ADR continues to be perceived as a relatively innovative path to providing justice on the part of operators. Meanwhile, the public seems to have no knowledge of mechanisms like

mediation (JSCA, 2024). The Peru report states that the justice system users interviewed were not familiar with extrajudicial conciliation. Most said that they learned of its existence only after needing to pursue justice in the civil or family law system prior to going to court (JSCA, 2024).

There is also a lack of training and adequate institutional design, which would directly impact the quality of the dispute resolution work.

In Colombia, for example, the authors note that officials must engage in conciliation in law in police agencies without any support or resources in some areas (JSCA, 2024). The Peru report states that one of the main weaknesses of extrajudicial conciliation is the perception that conciliators are under prepared and the State fails to provide adequate supervision (JSCA, 2024).

Another key challenge in both countries is the lack of a policy for systemically coordinating ADR methods. Colombia's Law 2.220 of 2022 created the National Conciliation System and refers to the creation and implementation of conciliation public policy, leaving aside mechanisms like mediation and other expressions of community justice. The country report authors conclude that it is necessary to establish a clear public policy that promotes more cooperation and coordination between community justice and the national legal system (JSCA, 2024).

Adequate ADR public policy should include implementation that offers national coverage. The Peru report indicates that one significant institutional barrier has been generated by the lack of national coverage of public conciliation centers. The authors state that there are 0.25 centers per 100,000 inhabitants, and that the centers that are available are congested. This reduces the opportunity available to many people, particularly those who face the greatest risk, as they tend to lack the economic resources and information necessary to navigate the formal judicial system (JSCA, 2024). The Colombia country report states that there is low coverage nationally and that there are geographic areas in which ADR methods are not available. Furthermore, when such services are available, the operators lack the infrastructure and human resources required to operate, particularly in rural areas (JSCA, 2024).

Finally, from the perspective of institutional barriers, both country reports note the lack of data and information on the real operation of the system, which is clearly an issue from the management perspective. In Peru, ADR services are provided by private entities.

The authors state that there is a registry for those centers, but the report does not contain reliable information on the number of agencies offering the services or the quality of their work. This translates, for example, into a perception that the agreements reached in these centers tend to be of low quality, which means that the agreements cannot be executed, leading to a new judicial filing (JSCA, 2024). On the other hand, and due to the lack of centralized information, there is no database that records the conciliation processes that might help identify prior conciliatory processes or determine whether the respondent has engaged in the behavior repeatedly, which would allow operators to use additional conciliation strategies (JSCA, 2024).

b) Challenges related to social, cultural, and economic barriers of ADR methods

Although ADR methods are generally perceived as more accessible than formal justice, this does not mean there are no economic hurdles to overcome. The Colombia report states that the conciliation in law services provided at private centers are costly due to the legal rates regulated by law. The authors also observe that economic inequality between the parties plays an important role cases that end without an agreement. This occurs, for example, in disputes over rentals or child support cases. The digital gap also has an impact, as was evident during the COVID-19 pandemic, when the exchange of documents and appearance at hearings was conducted using technological tools such as electronic documents or video conferences (JSCA, 2024).

The Peru report states that although public conciliation centers are free, users continue to incur transportation and document certification costs and lost income due to the time they must dedicate to their case. All of this may represent a significant burden for lower income individuals, especially women, the main users of these services (JSCA, 2024).

In regard to cultural barriers, the Colombia chapter authors mention the country's litigious culture.People generally prefer to bring their legal needs to the courts to ensure that the counterpart is punished (JSCA, 2024). For its part, the Peru report recognizes that despite the generalized distrust that the populace has of the judicial route, it continues to be the preferred option for solving disputes. This is due in part to how culturally integrated litigation or adversarial dispute is in the country (JSCA, 2024).

Both reports stress the need to consider gender and diversity factors in dispute resolution processes and ADR. Women, children and teens, and other marginalized groups face challenges and unique vulnerabilities when accessing justice and resolving disputes using these channels. For example, in the case of Colombia, the authors state that a differentiated approach that is not always present in ADR is required for individuals who have special needs due to disabilities or who face gender-based and age-related barriers (JSCA, 2024).

As we have seen, ADR methods have the potential to offer more accessible, efficient, and adequate solutions than formal judicial proceedings, particularly for vulnerable populations. However, challenges remain, including a general lack of familiarity with these methods, a lack of resources, inadequate training for conciliators, and concerns regarding the applicability of the agreements, among other institutional, social, cultural, and economic barriers. In both countries, there is a clear need for more investment in ADR infrastructure, better training and supervision, and specific efforts to promote ADR as an effective path to the protection of rights.

3.3. Community and Indigenous justice as a path of access to justice

Community justice plays a fundamental role in both Colombia and Peru in terms of providing access to justice, particularly in places where formal justice is absent, as occurs in peripheral or more rural areas (JSCA, 2024).

Colombia's regulatory framework of community justice is set out in its Constitution and specific laws.

Article 246 of the Constitution recognizes the right of Indigenous authorities to exercise judicial functions in their territories based on their own

rules and procedures as long as these do not go against the legal order. This rule also requires that coordination mechanisms be established between this special jurisdiction and the national judicial system. Furthermore, and especially with regard to other diverse communities, various laws regulate and provide support for community justice in relation to its diverse cultural and group manifestations.

Community justice in Colombia is used by a wide range of communities. These human groups generally include Indigenous communities or other groups that tend to be on the periphery of the State and are recognized as deserving of special protection. Afro-Colombian, Raizal and Palenquero groups also are part of this collective, which also incorporates expressions of urban organizations that also have community dispute resolution systems and the different levels of the communal movement in that country (JSCA, 2024).

This regulatory framework recognizes the rights of Indigenous and Afro-Colombian communities to engage in their own forms of justice within their territories while establishing how they should coordinate and integrate with the national legal system.

However, the country's community justice system is not limited to the existence of the legal systems of groups that form part of its culturally and ethnically diverse population. Rather, it is also a conceptual criterion for the operation of conciliation in law, community mediation, and even intercultural mediation.

In this sense, it is recognized as a valid form of justice apart from the judicial process or formal justice as well as institutionalized ADR methods. It is focused on change in territorial application and on people-centered justice (JSCA, 2024). There is a clear connection between them and community justice, as the latter approaches are developed alongside various dispute resolution methods, including ADR.

Municipal Action policy is particularly important in Colombia. It plays a crucial role in citizen organization and participation, especially in areas where the presence of the State is limited, through a wide range of entities

such as municipal action boards or community housing boards. It seeks to empower communities and to promote peaceful dispute resolution through various levels of services, thus contributing to social development and the construction of a more just and equitable society (JSCA, 2024).

The people who operate community justice vary across the different communities based on their leadership structure, which may be based on tradition, symbols, or other organizational forms depending on the territory. The Colombia report offers the example of Indigenous communities from Sierra Nevada de Santa María, whose spiritual leaders handle most family and civil disputes in each settlement (JSCA, 2024).

Community justice can be used to resolve both family and housing-related disputes in Colombia. In regard to the former, this path stands out because of its ability to identify innovative solutions that align with the specific needs of each community. This in turn highlights its importance in the promotion of social cohesion and the wellbeing of local communities (JSCA, 2024).

The Colombia report states that in civil matters, community justice is a very important resource for managing housing and property disputes, particularly in areas where the State has a more limited presence. For example, the authors highlight its use in regions like Caquetá, where there are high levels of conflict over rural matters because the area is home to municipalities with a high level of rural cultural traditions. These permeate both rural issues and interpersonal relationships in urban areas. In this sense, the great majority of disputes are related to the movement and maintenance of fences, easements, and other elements. The role that these services play for migrant populations, who tend to face serious barriers to access to formal justice due to their legal status, has been noted (JSCA, 2024).

The main disputes that arise in municipalities like Barranquilla are related to family disputes, abandonment of the home, gang activity, drug use, abandonment of older adults, and neighborhood issues such as trash and pet waste disposal and the use of public spaces for parties as well as for addressing the presence of sex workers (JSCA, 2024).

The authors of the Peru report highlight the longstanding tradition of community justice in that country, especially in rural areas and among members of Indigenous communities. Community justice plays an important role in dispute resolution based on local traditions and values (JSCA, 2024). Specifically, the report analyzes the figures of peace judges. Peace justice is regulated by Law 29.824 as an entity that forms part of the judiciary whose operators resolve disputes, preferably using conciliation and in accordance with the criteria of community justice and the country's Constitution. In other words, they act on the basis of their own definitions of justice, and do not have to base their decisions on the law. Their services are provided free of charge and they receive assistance from other public institutions and the communities. The people who work in this capacity in professional peace courts are elected based on their role as respected figures at the local level even if they are not legal professionals (JSCA, 2024).

These judges have jurisdiction over family law and property-related cases, though the latter are less frequent because, according to the report, users prefer to use the ordinary justice system for such matters. These judges also work in various existing areas of dispute resolution (JSCA, 2024).

According to the Peru report, as of 2019 there were approximately 6,000 professional peace courts distributed across the country's various regions, most of them in peripheral urban areas (JSCA, 2024). In the case of Iquitos, they have an additional component because a significant number of system users in that community identify as Indigenous. This means that their values and customs are incorporated into the process. (JSCA, 2024).

The other community justice mechanism that is mentioned briefly in the Peru report are the *rondas campesinas* (literally, "rural patrols"), community organizations with constitutional recognition that provide security, justice, and interaction with the State in areas characterized by the absence or weakness of government agencies. The rondas are widely accepted in the areas where they exist. In fact, according to Article 149 of the Constitution, the rondas campesinas can exercise their jurisdictional functions within their territory in accordance with common law as long as they do not violate the fundamental rights of

the person. The law establishes how said special jurisdiction coordinates with the peace courts and other judiciary entities. [*"…pueden ejercer las funciones jurisdiccionales dentro de su ámbito territorial de conformidad con el derecho consuetudinario, siempre que no violen los derechos fundamentales de la persona La ley establece las formas de coordinación de dicha jurisdicción especial con los Juzgados de Paz y con las demás instancias del Poder Judicial"*]. (Our translation.) For its part, Article 60 of Law 29.835 mandates that *rondas campesinas* work with the formal judicial system (JSCA, 2024).

3.3.1. Advantages of community justice as a path to providing access to justice

In both Colombia and Peru, the main advantage of community justice compared to formal justice is that in both nations it is used as a path for the resolution of disputes and for meeting vulnerable groups' legal needs. This is particularly true in areas where formal justice is less accessible or where culturally appropriate and sensitive solutions are required for certain types of disputes. It is a mechanism that has enormous potential to generate legitimacy and the perception of fair treatment, as well as empowerment with respect to communities that are generally comprised of individuals in situations of vulnerability.

In the case of Colombia, community justice is highlighted, particularly in geographic areas in which formal justice has a more limited presence. Community justice methods such as community mediation or peace judges are used to provide essential dispute resolution services. For example, in Florencia, Caquetá, the Municipal Action Boards address disputes related to land, property lines, and community disputes. The authors also mention the increasingly frequent use of police mediation to intervene in community disputes in that jurisdiction. This methods uses police agents to serve as mediators and settle disputes among neighbors and community members. Indigenous communities can use these methods to seek guidance from their traditional authorities regarding disputes related to land or resource used based on their own justice systems, which are recognized by the Colombian government.

They are frequently based on law and common law, providing culturally relevant solutions to disputes within Indigenous communities (JSCA, 2024).

Community justice can also be particularly important for the resolution of disputes and satisfaction of the legal needs of members of vulnerable groups. The Peru report states that 49% of system users are women from the Peruvian Andes whose cases are related to criminal disputes and violence against women, which highlights the importance of these mechanisms for addressing matters of great social and personal sensitivity (JSCA, 2024). The authors also note that they tend to be highly effective, especially with regard to minor disputes, and that those who use this path tend to report that they received quality services. In this sense, they state that although an agreement is not reached in all cases, participants at least receive guidance regarding their rights and report that the individuals who serve as judges are helpful (JSCA, 2024).

Another important advantage of these community justice initiatives reflected in the analyses conducted is that they are paths that empower individuals and communities, encouraging them to take ownership of dispute resolution processes. This may lead to more sustainable solutions and could promote a sense of collective responsibility for maintaining peace and harmony within the community. In this sense, for example, the Colombia report states that this path allows communities to autonomously manage disputes, giving their more control over the matters that impact them (JSCA, 2024).

At the level of economic barriers, scholars observe that community justice is more accessible than other paths. The authors of the Peru report observe that it is a valued mechanism because it is a free service that does not require attorneys and in which other related costs tend to be low due to the territorial proximity that they tend to have with the communities they serve (JSCA, 2024).

3.3.2. Analysis based on the barriers to access to justice in the area of community justice

Like the other paths analyzed, community justice faces significant challenges when it comes to serving as an effective alternative for expanding access to justice.

a) Common challenges in the area of institutional barriers

From the institutional perspective, the main barriers are related to the lack of resources and, more generally, public policy that seeks to integrate or coordinate these mechanisms with government-run dispute resolution paths (JSCA, 2024).

In regard to the lack of resources, the Peru report authors argue that community justice lacks the budgetary and logistical support required to adequately perform its duties (JSCA, 2024). For example, they explain that peace courts lack their own physical spaces in many regions, often operating out of judges' homes. In other cases, they use spaces owned by neighborhood boards or the local municipality. Furthermore, the office space required to operate them tends to be provided by the community itself as a loan or donation (JSCA, 2024). For its part, the Colombia report authors state that some community justice mechanisms like municipal action boards and community housing boards are not as effective as they could be in practice. This is due to the lack of training provided to operators on community and neighborhood disputes and the lack of recognition and compensation offered to community justice operators.

In some cases, this lack of resources translates into excessive delays. The authors of the Peru report mention that community justice processes tend to be delayed due to a lack of State support. In many cases, the officials issue notifications personally, and these processes are frequently unproductive. They are also the main cause of the aforementioned delays (JSCA, 2024).

The Colombia report authors also mention that design issues pose a significant challenge. For example, they explain that appointments in these communities tend to be made outside of the community justice system due to political party-related reasons or other interests. This undermines the trust that community members have in the leaders who are part of the boards or commissions. Another institutional barrier is the lack of training required to adequately manage the disputes that come before these entities (JSCA, 2024).

The authors also mention that the lack of clear distribution of skills poses a challenge, as this is necessary for coordination and integration of community and formal justice (JSCA, 2024).

From the institutional perspective, scholars observe that there is a lack of dissemination and awareness among potential users, a lack of information gathering, and a failure to develop diagnoses regarding the entities' operation. The Peru report authors state that training and dissemination have dropped in the wake of the COVID-19 pandemic. This has caused a decrease in residents' interest in requesting services (JSCA, 2024).

b) Common social and cultural barriers

One of the barriers to access identified in the community justice realm is related to the dominant cultural notions held by certain communities regarding, for example, gender. As we noted in regard to ADR method, one widely held belief in Colombia is that gender-based violence is a private matter and should be addressed as such. In some cases, the dominant patriarchal culture stands as an obstacle to understanding gender-based violence as a collective issue that requires a response, particularly in the context of community justice (JSCA, 2024).

On the other hand, the Colombia report states that members of certain vulnerable groups such as the LGBTQ+ community face discrimination that frequently prevents them from seeking help through this dispute resolution path due to a fear of rejection. The lack of knowledge and awareness of gender and sexual diversity issues among system operators further exacerbates this issue. The authors mention that in some cases, community justice practices can even exclude members of the LGBTQ+ community because they are not recognized within dominant cultural and social contexts (JSCA, 2024).

The authors of the Colombia report also report that instability and the persistence of violence constitute barriers that impact community justice. As a result, the people who are part of community justice work may feel intimidated when intervening in certain social disputes because they are afraid of facing reprisals from armed actors who operate outside of the law (JSCA, 2024).

4. Final reflections: Analysis of the recommendations developed in the reports covered in the study

Both reports describe significant institutional barriers to formal justice and other methods of community justice or paths aside from adjudication. They pay special attention to the need for a public policy that would harness the potential of these three paths to dispute resolution if they functioned in a coordinated manner.

The first path analyzed is the judicial route and how it is used to resolve civil and family disputes in Colombia and Peru. This is based on the conceptual and regulatory framework described in Section 1, which emphasizes the fact that access to justice does not only refer to the ability to go to court, but also the efficacy of the judicial process in terms of issuing fair and timely rulings. The authors identify various barriers to accessing formal justice. Both reports describe the slowness of judicial proceedings as an important issue that causes dissatisfaction among users and may dissuade people from turning to justice. Second, they note that the lack of adequate human and material resources and presence of antiquated infrastructure may undermine the efficacy and accessibility of the formal justice system. For example, both country reports describe a lack of specialized and trained personnel, particularly in the family courts, as an obstacle to the effective resolution of the matters handled in those spaces.

The authors of both reports mention the use of conciliation as a prerequisite for litigation. Although the purpose of tools like conciliation is to promote amicable resolutions and reduce caseloads, this requirement may become an additional obstacle because it delays access to justice and can be a barrier to those seeking timely solutions. This reflects the discussion in Section I on possible limitations to or restrictions on the right to access to justice, which must be assessed in function of its proportionality or reasonableness.

It is clear that mandatory extrajudicial conciliation may represent a barrier in both countries even though its initial objective may be to promote amicable outcomes and reduce the burden on the judicial system.

In the case of Peru, the authors highlight the high proportion of interim judges or professionals with short-term contracts. In addition to the issues identified in the selection process, this situation makes judges vulnerable to termination and may compromise their independence and impartiality. This in turn creates public distrust in the judiciary and distances the public from the justice system. The authors also mention the excessive workload in Peruvian courts, which is aggravated by a lack of adequate resources, including staff and infrastructure. This makes it even more difficult for the courts to impart timely and effective justice.

Office and staff management are identified as important obstacles to accessing justice in both cases. The authors mention the need for specialized training on dispute resolution and interpersonal skills for court staff, including judges and administrative personnel. This could improve the overall experience of court users and could lead to more amicable resolutions in certain cases.

In regard to the various methods' barriers to the judicial process, the Colombia report describes a lack of investment in physical and operational infrastructure in public conciliation centers, particularly in rural areas. Specifically, the report suggests that the conciliation process has become increasingly bureaucratic and legalistic in Colombia, which may undermine its efficacy as an accessible and easy-to-use dispute resolution method. In the case of Peru, the report describes the lack of governmental support for community justice approaches, particularly the use of peace judges. This lack of support is manifested in a lack of resources such as office space, equipment, and training. Again, these hurdles may limit the effectivity of these mechanisms when it comes to providing accessible justice to local communities. In the case of conciliation centers, the authors state that mandatory supervision is limited in practice due to budgetary restrictions, which contributes to questions regarding the quality and impartiality of the centers' services. Yet given the absence of a centralized database for monitoring conciliation processes and the lack of exchanges of information, both these centers and formal justice lack key information about prior attempts to resolve disputes, which could lead to inefficiencies and potential delays that present access.

Finally, both reports also highlight the intersectionality of these barriers. This means that people may face multiple barriers simultaneously, further exacerbating their difficulties accessing justice. For example, a low-income woman in a rural community may face economic, social, institutional, and individual barriers at the same time. The authors of the Colombia report note how certain geographic barriers -related to limited access to justice services in rural and remote areas- and economic obstacles -such as attorneys' fees and judicial fees- disproportionately impact individuals and families who live in marginalized and resource-strapped communities.

Both reports also mention various community justice mechanisms, which are recognized as vitally important, each their own way. While the report on Peru emphasizes the role of peace judges as arbiters of community disputes, the Colombia report focuses more broadly on various forms of community justice, including Indigenous and Afro-Colombian systems.

The specific challenges related to dispute resolution method implementation vary from country to country. In Colombia, the challenges include limited geographic coverage of ADR centers and the need to better train conciliators. For its part, in Peru, the challenges include a lack of knowledge of ADR mechanisms among members of the public and the need for better supervision of private conciliation centers.

In both cases, there are structural societal issues that must be addressed. In the case of Colombia, the authors identify the violence and armed conflict that impact the country, as well as corruption and lack of effective prosecution of the same as obstacles. The authors of the Peru report mention the persistence of a litigious culture that prevents other peaceful dispute resolution mechanisms from penetrating society.

The Colombia report states that each of the paths analyzed present specific institutional coordination difficulties. In regard to the relationship between Indigenous justice and ordinary justice, it is not always simple, and it is the right to access to justice that could generate a connection between the two. As such, it is important to strengthen Indigenous

institutional structures and respect for the paths to dispute resolution used by Indigenous communities in order to guarantee access to justice that aligns with their world views. The ordinary jurisdiction should also incorporate institutions that are sensitive to Indigenous diversity through, for example, expert witnesses, "amicus curiae," translators, and processes, practices, and institutions that align with Indigenous communities' needs. All of these measures could be incorporated into the ordinary justice system in order to ensure that access to justice is truly possible (Ramírez, 2021:21).

One of the main difficulties related to adequately integrating the various paths to access is the lack of empirical information on their operation and a system for monitoring and implementing improvements in order to evaluate their impact on the issues impacting access to justice (JSCA, 2024). There is no question that this is a major prior challenge for people-centered justice reform that must be addressed so that States can meet their obligations, reducing barriers and generally bringing justice closer to those who need it, particularly the most vulnerable members of society.

Both documents offer recommendations for each of the paths to access to justice. In regard to ADR methods, the Colombia report suggests that information campaigns should be developed to clearly explain the processes, benefits, and accessibility of ADR, particularly in rural areas and among marginalized populations. In this sense, the authors recommend promoting early education for students and public officials on the skills necessary to manage ADR methods. To promote collaboration among and the integration of the various paths to access, the authors suggest encouraging strategic partnerships between courts and other entities, such as community justice centers and university legal clinics. This would expand the scope and improve the efficacy of ADR services. They also propose increasing the participation of law students in the provision of ADR services in these places. Along these same lines, the authors recommend decentralizing ADR methods by empowering local and regional stakeholders to implement and promote these methods using approaches that address the diverse needs of the different territories, particularly in rural areas. Finally, the authors suggest expanding the field of application of conciliation in legal areas that cannot be heard using that

approach and providing more resources, both in terms of infrastructure and with respect to personnel (JSCA, 2024).

At the level of formal justice, the authors of the Colombia report mention ideas such as providing more resources and support for rural municipal judges so that they can address the backlog of cases and improve the overall efficiency of the justice system. This would also allow them to increase investment in specialized personnel, particularly in the family courts; integrate technology and improve training and support for judges in order to enhance office management; establish feedback systems in order to allow system users to evaluate the justice system's performance; and address the use of informal practices as well as excessive formality (JSCA, 2024).

With regard to community justice, the authors of the Colombia report state that it is necessary to promote scenarios of citizen communication and dialogue in the context of community justice spaces, encourage the promotion and recognition of multicultural societies in rural areas, and strengthen training of community leaders in dispute management, community mediation, and/or intercultural mediation (82-3).

In the Peruvian case, the recommendations focus on the need for the government to conduct a rigorous assessment of issues of access to justice in the judicial and extrajudicial processes that are the subject of this research. Specifically, there is a need to evaluate the implementation of ADR legislation, especially laws on conciliation. The report also highlights the importance of using and strengthening community justice systems, particularly in rural and multicultural areas, providing the necessary resources and support. It also suggests improving the process of training and accrediting the individuals who engage in conciliation, reinforcing supervision of conciliation centers and ensuring that budgetary allocations consider these initiatives. The recommendations also mention specialized training for officials who handle family cases with a focus on both legal and extra-legal aspects and improving how system users are treated, especially vulnerable people like low-income women (JSCA, 2024).

In conclusion, the two reports underscore the existence of important barriers to access to justice in Colombia and Peru, particularly for at-risk

populations. These barriers include institutional, economic, social, and cultural factors and affect the efficacy of judicial, alternative dispute resolution, and community justice methods. Although these diverse paths to access to justice offer potential advantages, they also face common challenges such as insufficient resources, a lack of coordination, and limited public awareness.

The reports' recommendations highlight the need for comprehensive reforms that address these obstacles and reinforce the integration and efficacy of these mechanisms. This includes investment in infrastructure, improved training and supervision, the promotion of public awareness, and the advancement of a more integrative justice approach that is more sensitive to cultural differences. Providing access to justice requires a multifaceted and people-centered approach that recognizes the interconnectedness of these challenges and draws on the strong points of both formal and informal justice systems.

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Chapter 2

PATHS TO FAMILY AND HOUSING DISPUTE RESOLUTION IN COLOMBIA:

*Effectivity of the Approaches and Responses**

*****This study was designed and led by the Justice Studies Center of the Americas, JSCA.
The research team that worked in Colombia in partnership with the Bogotá Chamber of Commerce
Center for Conciliation and Arbitration were Mateo Vásquez, Andrés Pacheco, and Samed Vargas with the support of
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Lorena Espinoza, Matías Sucunza, and Javiera Domange also contributed to this study.

1. EXECUTIVE SUMMARY

The purpose of this study is to: (i) analyze the different paths used to address and resolve civil and family disputes in Colombia through the lens or matrix of alternative dispute resolution (henceforth, ADR) methods[1], community justice, and the judicial path, and their barriers to access and operativity; and (ii) to explore the aforementioned paths and their effectivity in terms of guaranteeing the fundamental right of access to justice in order to formulate recommendations that contribute to their strengthening and operation.

The research is based on various lines of inquiry. The first is the prevalence of these disputes in the country due to the impact of limitations on access to justice[2] for vulnerable individuals and their disproportionate impact on certain historically disadvantaged groups (such as women and children). The authors also consider the importance of determining how the paths to access to the administration of justice operate, the barriers to their use, and opportunities for improvement.

1 The most modern developments in the area of public policy encourage the use of the term "dispute resolution methods" (DRM) to refer to the set of non-litigation-based and mixed tools that exist for addressing and resolving disputes. However, these tools are called "alternative dispute solution methods" (métodos alternativos de solución de conflictos, MASC) or "alternative dispute resolution (ADR) methods" (métodos alternativos de resolución de conflictos, MARC) in Latin America. Based on this premise and given that the decision to choose one over the other is due to linguistic and axiological concerns that go beyond the purpose of this document, the authors of this report used the term MASC in the Spanish version of the document. We use the term ADR in this English translation.

2 2 In this document, we will use the concept of access to justice even though Article 229 of the Colombian Political Constitution refers to "access to justice administration" (acceso a la administración de justicia). There are two reasons for this. First, this concept better aligns with this study, which does not focus on judiciary-centered paths to access, but on the various mechanisms available to resolve disputes. Second, this is a universal concept, which facilitates regional comparison, analysis, and discussion.

The project involved gathering, validating, and analyzing qualitative and quantitative data in Colombia, as well as broad dissemination and methodical discussion of the findings with various groups of experts. This led to the formulation of recommendations that include public policy proposals designed to improve access to and the operation of justice in both types of disputes.

The main findings in relation to each path are:

1) The fact that ADR methods are the most appropriate way to address and resolve disputes with effects that go beyond the strictly legal, with high rates of success reaching agreements in all service requests. However, they are a path to access to justice that is not familiar to the public or private sector, and their operators lack training on soft skills and negotiation, particularly in cases in which public servants provide conciliation services.

2) Community justice seems like a highly diffuse concept to members of the public, who are generally unfamiliar with its channels or protocols for addressing and resolving disputes. However, it is the social space and democratic practice that is most closely connected to the daily lives of members of the public and can be used to address their issues.

3) The judicial path presents significant barriers to access related to congestion and delays in case processing. In spite of this, when people consider the options available to them to resolve disputes, the judicial path continues to enjoy a great deal of legitimacy.

2. WHAT IS THE PURPOSE OF THIS RESEARCH?

The purpose of this study is as follows:

2.1. General objective

To identify, analyze, and explore existing paths to access to justice for family and housing-related disputes in the area of ADR, community justice, and the judicial path. This is understood to include: (i) family disputes related to child support, custody, and the personal care of children and teens; and (ii) housing disputes related to real estate rights, rentals, neighborhood relationships, and property lines, as well as other types of disputes that may arise.

2.2. Specific objectives

1. To identify the paths to access to justice for addressing family and housing disputes in the area of ADR, community justice, and the judicial path as well as barriers to access and operativity.

2) To describe the target audience of paths to access to justice in these types of disputes.

3) To recognize and classify satisfaction criteria for paths to access to justice.

4) To examine the issue of access to justice from the perspective or position of the service user as well as that of the justice operator.

5) To offer public policy proposals designed to strengthen paths that offer access to justice from the perspective of legal needs and people-centered justice.

3. HOW WAS THE WORK ORGANIZED AND CARRIED OUT?

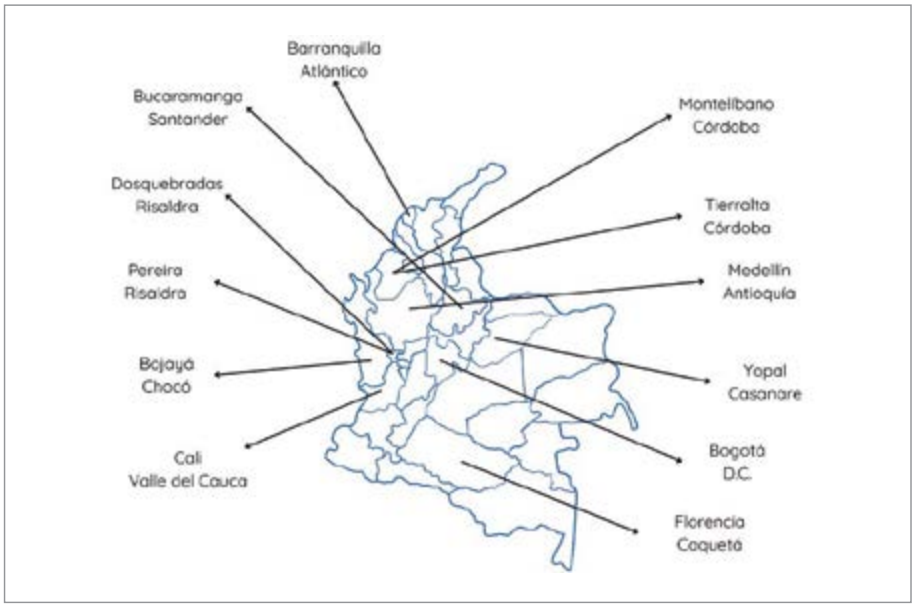
The methodological process of gathering and validating the data implemented to execute this project was structured as follows:

3.1. Information gathering

The information gathering process ran from September 25, 2023 to January 12, 2024. During that time, the researchers interviewed 146 people with different backgrounds. These include judges, court clerks, complainants, litigators, conciliators in law or in equity, directors and coordinators of conciliation centers, community mediators, Municipal Action Board Coexistence and Conciliation Commission conciliators, members of Municipal Action Boards, members of municipal associations, members of departmental federations and the National Municipal Movement Confederation of Colombia, international cooperation consultants, public officials who work at the national and territorial levels, justice house coordinators, family court police stations, police stations and municipal ombudsperson's office delegates.

The information was gathered in the following municipalities:

Image 1
Municipalities where information was gathered



3.2. Information validation

Once the information gathering stage was complete, an information validation process was conducted. This allowed the authors to confirm and technically develop the hypotheses presented to design the project and gather data. In general, they addressed the democratization of access to justice using the channels under study, the capacity of those channels to address family and civil disputes, and/or some key observations regarding the application of diversity- and gender-based approaches.

The information was validated using two approaches: (i) a focus group; and (ii) three in-depth interviews conducted with experts on the judicial path, ADR, and community justice.

3.3. Information analysis

When the collection and validation processes were complete, the researchers proceeded to analyze the information. This process was structured around an inter-disciplinary perspective that aligned with the formation and description of the team. As such, the study was based on the knowledge gleaned from the field of law as well as analytical tools from disciplines like political science, sociology, administration, and psychology. The researchers viewed law as a reflexive practice and also created tools for scrutinizing information, the experiences of specific members of the team in the administration of justice, ADRs, and community justice.

4. COLOMBIA IN CONTEXT

4.1. Diversity, inequality, and armed conflict

Colombia is a country located in the northern part of South America. It is rich in biodiversity due to the presence of thermal floors in its territory. This has allowed the population to develop a unique sense of territorialization in the various regions of the country, which led to different types of social and environmental relationships that have a direct impact on community dynamics and the types of conflicts that arise.

According to the most recent census conducted by the National Administrative Department of Statistics (DANE), the country has 52,215,503 residents, 51.2% of whom are women. The same data suggest that 68.2% of the population is between the ages of 15 and 65 (DANE, 2023).

According to available information, poverty in rural and urban areas presents highly variable behavior. The JSCA-IDRC Canada report (2023) states that in rural areas, poverty, though high, tends to be more stable, even in response to crises like the pandemic. On the other hand, in urban areas, poverty is more susceptible to economic changes and significantly increases during periods of crisis [*"(e)n las zonas rurales, la pobreza, aunque elevada, tiende a ser más estable, incluso frente a crisis como la experimentada en pandemia. Por otro lado, en las áreas urbanas, la pobreza es más susceptible a cambios económicos y aumenta significativamente durante periodos de crisis."*] (Our translation.)

Table No. 1
Types of poverty and incidence

Variable	Colombia
Urban Poverty (2021)	32.7%
Rural Poverty (2021)	44.6%
Extreme Poverty-National (2021)	15.0%

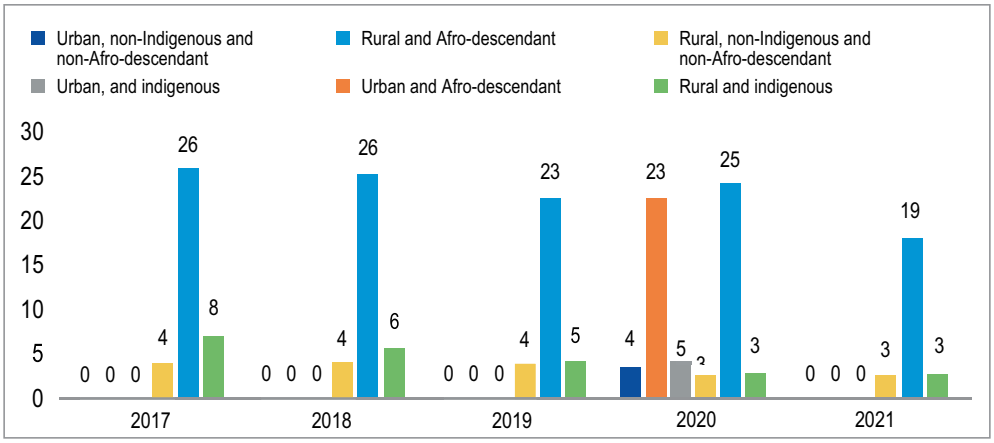
Fuente: Elaborada por CEJA -IDRC Canadá (2023)

In Colombia, the situation of poverty in general and extreme poverty in particular continues to pose a significant challenge for the country. According to the latest data, in 2022, the poverty rate was 39.3%, which means that nearly 19.5 million Colombians were living under the poverty line. Even more concerning is the extreme poverty rate of 12.2%, equivalent to 6 million people (DANE, 2023).

One example that illustrates this is that although the population generally has access to electricity in Colombia, there are notable disparities in rural areas that mainly impact Afro-descendants and members of other marginalized groups. This situation underscores the need to focus

on these groups to ensure access to basic services. [*"existen notables disparidades en áreas rurales, afectando principalmente a comunidades afrodescendientes y otros grupos marginados. Esta situación destaca la necesidad de enfocar la atención en estos grupos para garantizar el acceso a servicios básicos"*] (JSCA-IDRC Canada, 2023; our translation.)

Figure 1
Ethnic groups



Source: Developed by JSCA-IDRC Canada (2023).

These numbers reflect the persistence of the inequality that characterizes Colombian society. According to the World Bank, Colombia's Gini index -an indicator that measures equality in income distribution- was 0.527 in 2022, one of the highest in the region (2023). This shows that the benefits of economic growth have been distributed inequitably, leaving wide swaths of the population in a situation of poverty and vulnerability.

In addition to low income, multidimensional poverty -a measurement that evaluates various dimensions such as education, healthcare, work, and housing- is also concerning. In 2022, 8.7 million people (17.5% of the population) was experiencing need in multiple areas of their lives (DANE, 2023b). This reflects the complexity and multifaceted nature of poverty in the country.

In addition to these levels of poverty and inequality, there is a significant gap in access to justice between high- and low-income groups. Those living in poverty and extreme poverty face more obstacles when exercising their rights and resolving disputes due to factors such as the high costs of judicial proceedings, geographic location of the courts

(distance), and the lack of awareness of their rights (UNDP, 2023). On the other hand, citizens with more economic resources have considerable advantages within the judicial system because they can engage the services of specialized attorneys and impact the institutions.

At the level of presence of disputes, it is important to mention the armed social and political conflict that Colombia experienced beginning in the first half of the 20th century. This has created a deep tear in the social fabric, giving way to social orders based on force, weapons, and violence. The internalization of these elements within the Colombian population is reflected in the dispute resolution modes available: most people choose ADR to resolve their day-to-day disputes. This shapes how Colombians related to the right to access to justice (enshrined in Article 229 of the Colombian Political Constitution), how it is exercised, and, as such, the way the parties to a given case interact.

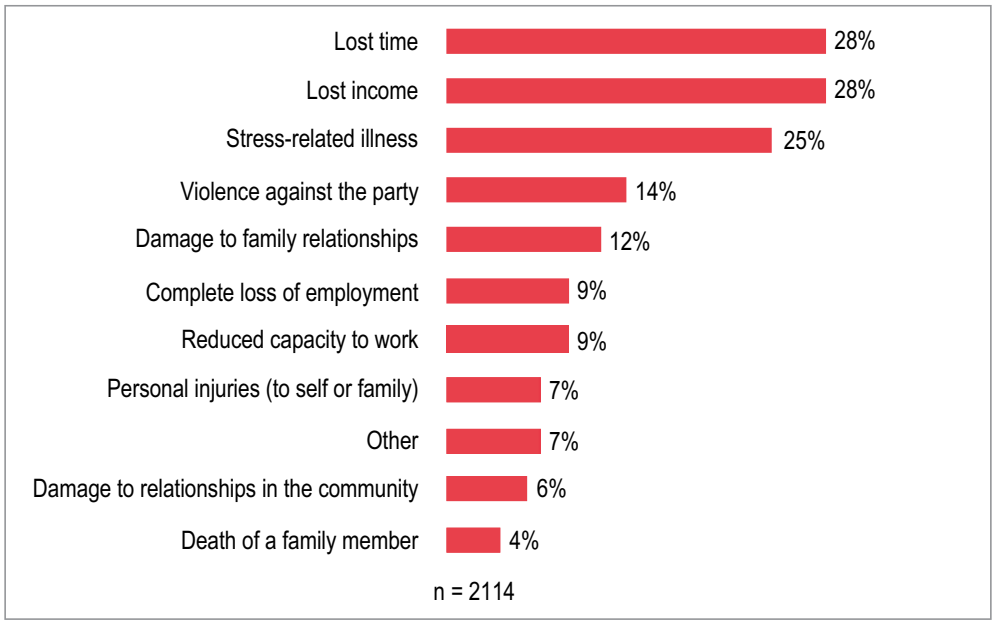
The Needs and Satisfaction with Justice in Colombia Report issued by USAID Colombia in 2024 states that in the past four years, 55% of people surveyed faced at least one serious legal issue that was difficult to resolve (11).

In this sense, the study notes that these hurdles are mainly related to neighborhood disputes, but people also report issues with crime, government services, and property, and displacement played a key role in them. The types of issues that people face varies across the sub-samples. Women face more intrafamily violence disputes and issues with government services while men experience more issues related to crime and employment; the displaced population faces more land-related issues than the general population; and issues related to health and other government services are more prevalent among older adults in vulnerable situations, such as members of the displaced population, people with low levels of education, and low-income individuals." [*estos [inconvenientes]se asocian principalmente a las disputas vecinales, pero las personas también reportaron problemas de crímenes y delitos, de servicios estatales y con tierras, en los cuales el desplazamiento [ocupó un lugar central]. Los tipos de problemas a los que las personas se enfrentan varían entre lass ubmuestras: las mujeres enfrentan más disputas de violencia intrafamiliar y de servicios estatales, mientras que los hombres experimentan más problemas de*

crimen y empleo; la población desplazada sufre más problemas de tierras que la poblaión no desplazada; y los problemas relacionados con la salud y demás servicios estatales tienen mayor prevalencia entre los grupos en mayor estado de vulnerabilidad, como la población desplazada, las personas con bajos niveles educativos y aquellos con bajos ingresos.] (2024:11, our translation)[3].

In a context like Colombia, we must pay special attention to how disputes impact people's lives. The aforementioned research includes the following figure:

Figure 2:
Effects or consequences for people and their rights



Source: Prepared by USAID Colombia (2024:15)

3 3. It is important to mention that the study in question states that the most common disputes involve: disputes with neighbors (25%), public services (14%), crimes (14%), land (10%), employment (9%), family disputes (8%), commerce (7%), intrafamily violence (7%), money (6%), housing (5%), traffic issues (4%), public order (3%), and corruption (1%) (2024:12).

Over the course of its recent history, Colombia has made multiple attempts to promote peace using different tools and initiatives. These include, for its chronological proximity and renown, the Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace (2016). However, there is no question that the efforts made to promote peace and peaceful coexistence must be plural, heterogeneous, and multicausal. This is especially true of those that strengthen channels for attending to, approaching, and resolving disputes among private entities in order to promote a culture of dialogue, social understanding, and peace. A critical perspective on paths to access to justice is necessary for providing such opportunities.

In addition to the armed conflict, the situation in Colombia has been shaped by other issues including: (i) socio-environmental issues. These mainly impact rural communities, and mining is the main factor (Institute for the Study of Development and Peace, INDEPAZ, 2022); (ii) disputes related to gender in regard to the armed conflict, where women were violated differently based on their gender (Vargas Rivero, 2018); and/or (iii) discrimination and social inequity, which has placed the country very low on the social mobility index. In regard to the latter, the authors note that it would take 11 generations (an average of 300 years) for a poor family to achieve at least the average national income level (UNDP, 2023).

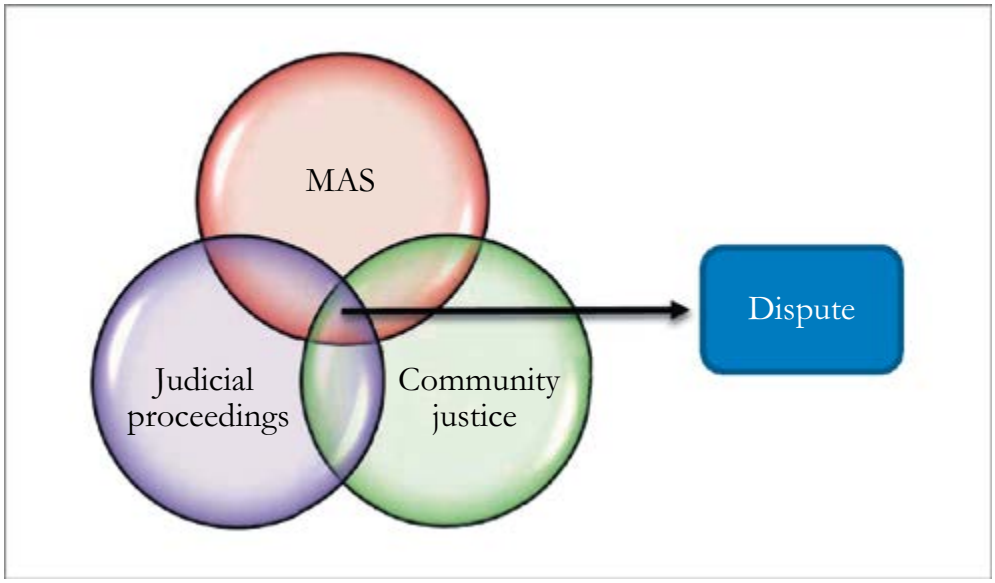
These disputes complicate how Colombians interact socially. Starting from the premise of the principles of indivisibility and interdependence of human rights, the accumulation of conflicts and their connections make it even more difficult to address them and identify how they can be deactivated. It is clear that there is no single path to dispute resolution and that all forms of justice framed by the parameters of human dignity are valid and necessary for addressing them in a diverse and plural country.

In this sense, though the path to peace is a long one and civil society's efforts tend to be limited and focused, it is important to understand the way in which the existence and efficient operation of the various dispute resolution and management channels allow the public to be closer to what is called justice, which materializes through the judicial system and also through real participation of private entities through channels like ADR and/or community justice as scenarios of citizen democratization in daily personal and public decision-making.

4.2. Which family and housing disputes?

This document presents the results of research on access to justice in Colombia in disputes related to family and housing. The authors address three means or mechanisms for addressing them, the gaps that exist in access and operativity, opportunities for improvement, and the ways that they are connected.

Figure 2
Conflict and interrelation of solution paths



Source: Developed by the authors.

The findings presented in this report explore how the Colombian population attempts to resolve disputes related to family and civil matters using the aforementioned paths. The authors focus on the functioning, operativity, best practices, and opportunities for improvement presented by those paths to justice.

The research conducted in each phase or stage has gradually impacted the types of disputes that are presented in family and housing law, revealing that socio-legal diversity and sociological information are key elements for understanding the complexity of these matters, how they are addressed, and the paths to managing and resolving them.

The process created by the team allowed them to think through, conceive of, and understand the family and housing disputes in their specificity and singularity.

The team found that family disputes in Colombia are characterized by regional idiosyncrasies produced by social relational structures associated with the patriarchy,[4] conservatism, and Catholic values, which are held by the majority of Colombians. As such, gender-based violence,5[5] discrimination-based violence,6[6] intrafamily violence, child abandonment, infidelity, and related issues are key to the family disputes handled by the various levels of justice addressed in this study. Furthermore, as we will discuss later, these issues are also impacted by factors such as gender, sexuality, race and ethnicity, age, or socio-economic level.

Housing conflicts tend to be associated with the right to domain or other rights such as easements, use of properties, and phenomena linked to community relations with a low or invisible legal component.

In Colombia, it is common for disputes to start over land ownership and the connection that exists between: (i) rural populations and neighbors; and (ii) people who own land, its use and vocation, legal elements that mold the development of the dispute as a social phenomenon.

It is necessary to note that disputes over land ownership have been a key element of Colombia's armed conflict, which was the longest in the Western hemisphere. As such, information on this topic continues to be sensitive and difficult to access.

In neighborhood disputes -the other part of civil conflict related to housing- there is more accessibility. However, it receives more attention in

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4 The patriarchy is a cultural system of subjugation and control that perpetuates the lack of recognition and inequality of women and anything seen as 'feminine' compared to men and that which is considered 'masculine,' thus generating a structural disparity based on belonging to a certain 'biological sex.'

5 According to the United Nations, gender-based violence is comprised of harmful acts directed at a person or group of people based on their gender (UNIRC, 2023). One of its unique elements is that it is based on roles, stereotypes, and beliefs that devalue the feminine. These forms of violence may be psychological, physical, sexual, economic, patrimonial, and institutional and exist in the public and private spheres (UNFPA, 2022).

6 According to the IACHR, discrimination-based violence is violence that is exercised against people who are perceived as transgressing traditional gender norms, the male/female binary, and whose bodies differ from 'standard' 'male' and 'female' bodies [***"ejercida contra las personas que se perciben como trasgresoras de las normas tradicionales de género, del binomio hombre/mujer, y cuyos cuerpos difieren de los cuerpos 'femeninos' y 'masculinos' estándar"***] (IACHR, 2015:37-8, our translation.)

These acts of violence emerge from the negative perception of a person's sexual orientation, gender identity, gender expression, or sexual characteristics. One unique aspect of these acts of violence is that they tend to have a high level of social support given that may be people believe that they are legitimate approaches to "punishing" or "correcting" the behaviors of those who transgress the gender and sexuality norms that are considered to be "normal" or "appropriate" by society (Regional Information Network on LGBTI Violence, Red Regional de Información sobre Violencias LGBTI).

social and institutional life because these disputes tend not to be revealed in community dialogue and are addressed directly by the affected parties -often violently- and do not involve legitimation spaces such as territorial entities and institutions created to resolve them.

4.3. How are the paths regulated in order to address and resolve disputes?

The right to access to justice is established in the Colombian Political Constitution (Article 229). Through Sentence T-799 of 2011, the Honorable Constitutional Court of Colombia developed case law on the concept, defining its scope using the following parameters:

This right has been understood as the opportunity recognized for all people to be able to turn to the entities that exercise jurisdictional roles under equal conditions. Those entities have the power to impact one way or another in the determination of the rights that the legal order recognizes in order to promote the integrity of the legal order and proper protection or reestablishment of their legitimate rights and interests with strict adherence to the procedures previously established and in full observance of the substantial and procedural guarantees provided for in the Constitution and under the law. ["*(…)Este derecho ha sido entendido como la posibilidad reconocida a todas las personas de poder acudir, en condiciones de igualdad, ante las instancias que ejerzan funciones de naturaleza jurisdiccional que tengan la potestad de incidir de una y otra manera, en la determinación de los derechos que el ordenamiento jurídico les reconoce, para propugnar por la integridad del orden jurídico y por la debida protección o restablecimiento de sus derechos e intereses legítimos, con estricta sujeción a los procedimientos*] (Our translation.)[7]

7 The sentence adds that: The exercise of these powers is meant to ensure the jurisdictional provision of services to all through the use of the defense mechanisms provided for in the legal system. As such, the right to access to administration of justice constitutes an indispensable condition for the materialization of other fundamental rights because, as this Corporation has stated, it is not possible to comply with substantial guarantees and the procedural forms set forth by the Legislature if said access is not adequately guaranteed. As such, the right to access to justice administration is established as one of the pillars that sustains the model of the Social and Democratic Rule of Law, as it opens the doors to individuals airing their disputes before judicial officials, thus protecting and exercising their rights. ["Por medio de su ejercicio se pretende garantizar la prestación jurisdiccional a todos los individuos, a través del uso de los mecanismos de defensa previstos en el ordenamiento jurídico. De esta forma, el derecho de acceso a la administración de justicia constituye un presupuesto indispensable para la materialización de los demás derechos fundamentales, ya que, como ha señalado esta Corporación 'no es posible el cumplimiento de las garantías sustanciales y de las formas procesales establecidas por el Legislador sin que se garantice adecuadamente dicho acceso'. Por consiguiente, el derecho de acceso a la administración de justicia se erige como uno de los pilares que sostiene el modelo de Estado Social y Democrático de Derecho, toda vez que abre las puertas para que los individuos ventilen sus controversias ante las autoridades judiciales y de esta forma se protejan y hagan efectivos sus derechos"."] (Our translation.)

The reading of this paragraph could lead one to (erroneously) believe that access to justice can only materialize through the judicial path in Colombia. However, that is not the case. Access to justice can also be provided through ADR methods and the various manifestations of community justice, as explained below.

4.3.1. ADR methods: Constitutional recognition, (dis)regulation, and dispersion?

According to Mera, Colombia is one of the Latin American countries with the most varied and sustained experience with ADR method implementation. It also was the first country in the region to grant conciliation Constitutional rank and to have legislation on such matters. [*"Colombia es uno de los países latinoamericanos que muestra una experiencia más variada y sostenida en cuanto a la implementación de MASC. Además, fue el primer país de la región en otorgar rango constitucional a la conciliación, como también en contar con legislación en la materia"* (2016:11).] (Our translation.)

Article 116 of the Colombian Political Constitution states that certain people or entities other than judges can administer justice, clarifying that justice can be accessed through ADR methods:

Private parties may temporarily be invested with the authority to administer justice as jury members in criminal cases, conciliators in arbitration where the parties authorize them to offer rulings in law or in equity under the terms that the law establishes [*"(…) Los particulares pueden ser investidos transitoriamente de la función de administrar justicia en la condición de jurados en las causas criminales, conciliadores o en la de árbitros habilitados por las partes para proferir fallos en derecho o en equidad, en los términos que determine la ley"*] (Our translation.)

The infraconstitutional regulation of ADR methods in Colombia is focused on the figures of conciliation in law and in equity. Since 2022, this regulation is contained in Law No. 2.220, which is known as the "new conciliation statute."

Other ADR methods are not regulated under this law. In fact, as of the writing of this report, Colombia's legal system does not contain a single regulation on the figure of mediation and its various forms.[8] However, there are various rules that establish variations on mediation:

8 Law No. 2.220 does not regulate other ADR phenomena such as arbitration or amicable settlement, legal tools that Colombia's legal system makes available to people to manage disputes but that are not the focus of this project.

- *School mediation*, introduced by Laws No. 1620 of 2013, No. 115 of 1994, No. 1098 of 2006, and No. 2025 of 2020.
- *Criminal mediation*, regulated under Law No. 906 of 2004, Book 6 (Restorative Justice), Chapters 1-3.
- *Police mediation, regulated by Law No. 1801 of 2016, Article 154.*

It is important to mention here that the absence of comprehensive and systematic regulation of mediation and its various manifestations have not been barriers to the implementation of training and sustainability plans regarding this matter. In fact, major efforts are underway by the

Ministry of Justice and Law and international cooperation agencies to train community and intercultural mediation operators in various municipalities of the country, even if said variants are not legally regulated.[9]

Article 3 of Law No. 2.220 defines conciliation as a dispute resolution method by which two or more people manage the resolution of their differences with the help of a neutral and qualified third party called a conciliator who proposes arrangements for resolving the case and attests to the agreement, which is mandatory and final for the parties. [*"un mecanismo de resolución de conflictos a través del cual dos o más personas gestionan por sí mismas la solución de las diferencias, con la ayuda de un tercero neutral y calificado denominado conciliador, quien, además de proponer fórmulas de arreglo, da fe de la decisión de acuerdo, la cual es obligatoria y definitiva para las partes que concilian".] (Our translation.)*

The purposes of conciliation in its various modalities are: (i) to facilitate access to justice; (ii) to create appropriate conditions for dialogue and peaceful coexistence; and (iii) to serve as a tool for building peace and the social fabric (Article 3, Law No. 2.220).

The principles that inform the tool based on legal frameworks are being non-litigation-based; guaranteeing access to justice, celerity, confidentiality, informality, and low cost; the temporary nature of the role of justice administration; the independence of the conciliator; legal security; neutrality and impartiality; and the presumption of good faith (Article 4, Law No. 2.220 and Article 2 of the Political Constitution).

9 For more information on training processes, see the ADR Toolbox developed in Colombia (2018, see https://www.minjusticia.gov.co/programas-co/caja-herramientas-MASC).

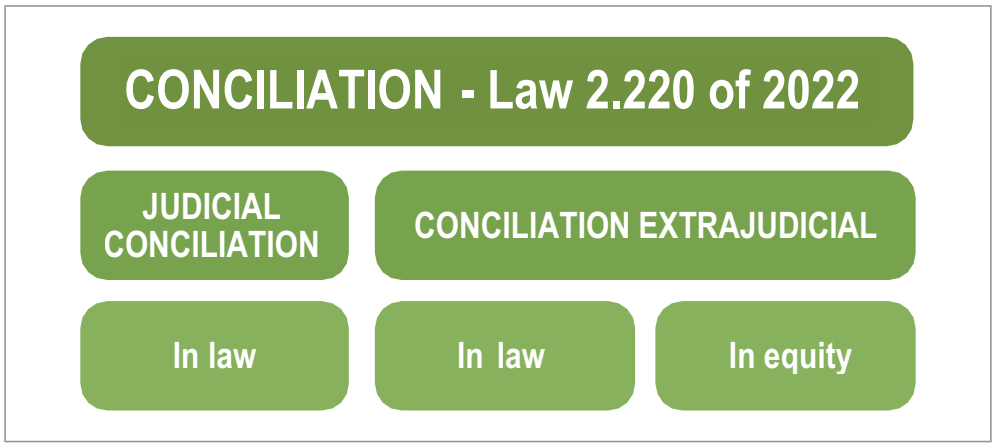
The aforementioned principles allow the figure to function properly. In Sentence C-1195 of 2001, the Honorable Constitutional Court of Colombia stated that conciliation contributes to the achievement of peaceful coexistence, explaining that:

The fact that it is the parties with the support of a conciliator who seek out solutions to a dispute is clear evidence of their ability to moderate

social relationships. Conciliation takes dispute resolution out of the sphere of litigation, paving a way for disputes between individuals to be resolved by mutual agreement. [*"El hecho de que a través de la conciliación sean las partes, con el apoyo de un conciliador, las que busquen fórmulas de acuerdo para la solución de un conflicto, constituye una clara revelación de su virtud moderadora de las relaciones sociales .La conciliación extrae, así sea transitoriamente, del* ámbito *litigioso la resolución de los conflictos, allanando un camino para que las disputas entre individuos se resuelvan por la vía del acuerdo"] (Our translation.)*[10]

Once we have established the importance of conciliation as a mechanism for facilitating access to justice, we must highlight the fact that there are various types of conciliation in Colombia. All of them are duly recognized by the law.

Figure 4
Types of conciliation regulated



Source: Developed by the authors.

10 The sentence adds that conciliation encourages dialogue, reduces adversarial culture, and keeps the dispute from worsening as a result of litigation. ["(…) la conciliación estimula el diálogo, reduce la cultura adversarial y elimina la agudización del conflicto como consecuencia del litigio".] (Our translation.)

By legal definition, judicial conciliation is an approach that is provided and/or administered in the context of judicial proceedings, generally during the initial hearing. Article 372, numeral 6 of the General Procedure Code states that the judge will diligently encourage the parties to resolve their differences at the beginning of the hearing and at any stage of it. To that end, they must propose arrangements, without this representing a prejudgment. ["el inicio de la audiencia y en cualquier etapa de ella el juez exhortará diligentemente a las partes a conciliar sus diferencias, para lo cual deberá proponer fórmulas de arreglo, sin que ello signifique prejuzgamiento".] (Our translation.) This form of conciliation must always be practiced in law, which means that it is implemented by an authority in the performance of their conciliatory duties with the law as their margin of operation (Article 5, Law No. 2.220).

By contrast, extrajudicial conciliation is practiced outside of the judicial process. It may be conducted (i) in law, when it is offered by conciliation centers before authorized private entities in accordance with their public role before officials in accordance with conciliatory duties; or (ii) in equity, when it is conducted before conciliators in equity, applying principles of community justice as established by law (Article 5, Law No. 2.220). The difference between conciliation in law and conciliation in equity in terms of operation -that is, the law itself and community justice criteria- is not addressed in Law No. 2.220.

Mera states that the first important distinction is that which separates conciliation in law from conciliation in equity. In the case of the former, the Law states that the conciliator must be an attorney with ADR training unless they are a public servant or notary, in which case there are no additional requirements, though the law states that they should be trained in such matters. For its part, conciliation in equity functions on a completely different basis and is mainly developed in the community space. The reference to equity is related to both the procedure and the substantial content of the conciliation. The conciliator in equity is a person recognized by the community who incorporates these characteristics and customs in their handling of the case. ["la primera distinción relevante es la que separa la conciliación en derecho de la conciliación en equidad. En el primer caso, la Ley exige que el Conciliador sea abogado y tenga

formación en MASC, a menos que sea servidor público o notario, en cuyo caso no se contemplan exigencias adicionales, aunque la Ley promueve que se les brinde formación en estas materias.(…) La conciliación en equidad funciona sobre una base completamente distinta y se desarrolla primordialmente en el espacio comunitario. La referencia a la equidad dice relación tanto con el procedimiento como con el contenido sustancial de la conciliación. El conciliador en equidad es una persona reconocida por su comunidad, que incorpora las características y costumbres de esta en la forma de llevar adelante el proceso" (2016: 16).] (Our translation.)

The legal nature of the parties notwithstanding, operators who are authorized to conduct extrajudicial conciliation in civil matters are conciliation center staff, regional and sectional delegates of the Ombudperson's Office, prosecution agents in civil matters, and notaries public. If a municipality has no such individuals, the conciliation can be conducted by civil judges or municipal agents as long as the matter to be heard falls within their jurisdiction (Article 11, Law No. 2.220).

The individuals recognized as extrajudicial conciliation operators for family matters include conciliation center staff, public defenders, and family court officials when they exercise subsidiary jurisdiction per Law No. 2126 of 2021. Other authorized individuals include regional and sectional delegates of the Ombudperson's Office, prosecution agents before judicial and administrative officials in family matters and before notaries. If they are not available, the same rule established for civil matters applies (Article 12, Law No. 2.220).

From a procedural perspective, it is important to note that Law No. 2.220 -and its legal framework- establishes conciliation as a "procedural requirement" of the civil claim. In other words, it establishes a requirement that the parties to the conflict use extrajudicial conciliation in law prior to filing a claim before a judge. The requirement is regulated in Chapter III of Law No. 2.220 (Articles 67-71).

In regard to civil matters, the procedural requirement is that conciliation be attempted prior to using the civil jurisdictional specialty in declarative processes with the exception of partitions, expropriation, monitoring undertaken in any jurisdiction, and cases in which unidentified

parties are asked or required to appear. In the restitution of a rented asset addressed in Article 384 and the cancellation, replacement or claim of securities addressed in Article 398 of Law 1564 of 2012, the claimant is not required to request and hold the extrajudicial conciliation hearing as a requirement of the claim or corresponding process in cases in which the interested party may file the claim directly before the judge (Article 68, Law No. 2.220). ["*intentarse antes de acudir a la especialidad jurisdiccional civil en los procesos declarativos, con excepción de los divisorios, los de expropiación, los monitorios que se adelanten en cualquier jurisdicción y aquellos en donde se demande o sea obligatoria la citación de indeterminados. Igualmente en la restitución de bien arrendado de que trata el artículo 384 y en la cancelación, reposición y reivindicación de títulos valores de que trata el artículo 398 de la Ley 1564 de 2012, el demandante no estará obligado a solicitar y tramitar la audiencia de conciliación extrajudicial como requisito de procedibilidad de la demanda, ni del trámite correspondiente, casos en los cuales el interesado podrá presentar la demanda directamente ante el juez*" (Art.68, Ley No. 2.220).] (Our translation.)

In the area of family law, the procedural requirement applies to the following cases: (i) disputes over custody and visitation of minors and disabled individuals under Law No. 1996 of 2019; (ii) matters related to child support obligations; (iii) declaration of common law spousal status, dissolution of common law relationships and the liquidation of the partnership; (iv) withdrawal from the division in inheritances and partnerships between permanent spouses; (v) disputes regarding marital agreements; (vi) disputes between spouses in regard to joint household administration and between parents in the exercise of parental authority or responsibility; (vii) separation of assets; and (viii) any cases that are not expressly identified as not subject to such rules under the law (Article 69, Law No. 2.220).

The procedural requirement will be understood to be met under Law No. 2.220 when: (i) the conciliation hearing is held without reaching an agreement and the respective certificate of non-agreement is issued; (ii) one of the parties fails to appear at the conciliation hearing and the certificate of failure to appear with no excuse is issued; or (iii) three (3) months have passed since the conciliation hearing was presented or an extension was issued without the hearing being held.

Finally, it is worth mentioning that the parties cannot oppose the procedural requirement in labor matters when protective measures are requested, the whereabouts of the respondent is unknown, or the entity sued is a public entity.

In regard to the effects of the conciliation certificate, Law No. 2.220 establishes that they are equivalent to a judicial ruling. That is, it establishes res judicata and is enforceable. In this regard, Article 64 states that the conciliation certificate that contains the agreement with provide enforceable merit and will have the status of res judicata. If the proceedings are conducted in writing, the conciliation certificate will take effect once the parties and conciliator sign it. If it is handled a different way, it will take effect once the parties express their acceptance of the outcome. [*"El acta de conciliación contentiva del acuerdo prestará mérito ejecutivo y tendrá carácter de cosa juzgada. De realizarse por escrito, el acta de conciliación surtirá sus efectos jurídicos a partir de la firma de las partes y del conciliador, o si consta por cualquier otro medio desde la aceptación expresa de las partes"*.][11] (Our translation.)

For its part, mediation has the same status as a private agreement between the parties. In general, it is associated with the creation of a transaction contract through which the parties -in the exercise of their personal autonomy- end a dispute. However, reducing the effects of a mediation agreement to a transaction contract is imprecise. As such, in practice, this sort of agreement can take whichever form the parties require. They can sign a payment agreement or the issuing of public apologies depending on the nature of the conflict and needs of the parties to it.

From an institutional perspective, ADR methods come under the umbrella of the Ministry of Justice and Law through the Vice Minister for the Promotion of Justice. This entity has an ADR Methods Directorate that is comprised of justice house and citizen coexistence working groups; the justice in equity group; the extrajudicial legal conciliation, arbitration, and amicable resolution group; and the local justice systems group.

11 It is important to clarify this point as follows: (i) In the context of the Colombian legal system, the conciliation certificate in family matters has the effects of formal res judicata but no material effects based on the recognition of the dynamic nature of family relationships; (ii) the regulation states that any means of acceptance of will other than the signatures of the parties is acceptable given the use of virtual conciliation hearings, which became popular during the COVID-19 pandemic, or agreements reached with individuals who cannot sign the document for any reason.

According to current regulations (Articles 36-40, Law No. 2.220), the Ministry of Justice and Law is responsible for inspecting, overseeing, and monitoring conciliation centers. To meet its responsibilities, it may,

ex officio or in response to a complaint: (i) request the information that it deems appropriate; and (ii) visit the facilities to monitor their performance in order to procure, request and verify that they are complying with the legal and regulatory obligations imposed. At a minimum visits must be conducted every two years following the authorization of the conciliation center. If the conditions established are not met, the Ministry of Justice and Law may take various measures based on the entity involved. For example, it may issue written warnings, impose fines of up to 200 current monthly legal minimum salaries, or revoke the authorization of the conciliation center permanently or temporarily.

By contrast, conciliators in law and equity are not subject to the oversight of the Ministry of Justice and Law because Article 35 of Law No. 2.220 states the following regarding conciliators in the exercise of their justice administration duties:

The conciliator's disciplinary regime will be set forth in Law 1952 of 2019, the Single Disciplinary Code, Law 2094 of 2021 or the regulations modifying them, complementing them, or replacing them, which will be handled by the respective Judicial Discipline Commission Complaints filed against public servants or notaries when they act as conciliators under the terms of this law applying the principle of the autonomy of the judicial function must be transferred to the National or Sectional Judicial Discipline Commission in accordance with Law 2094 of 2021 or the regulation that modifies, complements or replaces it unless public servants with a special regime are involved. [*"El régimen disciplinario del conciliador será el previsto en la Ley 1952de2019 Código Único Disciplinario, la Ley 2094 de 2021 o las normas que las modifiquen, complementen, o sustituyan, el cual será adelantado por la Comisión de Disciplina Judicial competente. Las quejas que se presenten en contra de los servidores públicos o notarios cuando actúan como conciliadores en los términos de la presente ley, aplicando el principio*

de la autonomía de la función jurisdiccional, deberán ser trasladadas a la Comisión Nacional o Seccional de Disciplina Judicial, de acuerdo con lo previsto en la Ley 2094 de 2021, o la norma que lo modifique, complemente, o sustituya, a menos de que se trate de servidores públicos con régimen especial".] (Our translation.)

Conciliators may also face consequences if they engage in any of the following behaviors: (i) using their power to secure economic benefits for themselves or a third party; or (ii) asking the parties to pay for conciliation services when conciliation in equity is used (Article 35, op. cit).

In regard to financing and conciliation costs, there are two ways to access services: (i) free services In this case, conciliations are conducted by a public official who is authorized to do so, public conciliation centers, legal offices and conciliation in equity; or (ii) onerous. These services are not free. Paid services can be offered by non-profit conciliation centers or notaries, and there is a fee set by the Ministry that is linked to the amounts discussed in the context of the dispute. [*"Centros de Conciliación de personas jurídicas sin ánimo de lucro, o ante notarios, para los cuales existe una tarifa fijada por el Ministerio que se vincula a los montos debatidos en el conflicto"* (Mera, 2016:17).] (Our translation.)

In closing, it is important to note that the initial differentiation between the criteria for conciliation in law and conciliation in equity leads us to consider the concept of community justice developed through conciliation in equity and the relationship that it establishes between ADR methods and other expressions of community justice.

This is key because the lack of clarity of the *Conciliation Statute* is due to its failure to define the scope of application of each tool and differences between them, blurring the line between the categories analyzed in this project. This has two outcomes: First, it makes clear the lack of systematic regulation of the phenomenon. Second, it helps to explain its unique manifestations based on local idiosyncrasies given that it responds more to the social realities of each territory.

4.3.2. Community justice as a broad and complex (socio-cultural) phenomenon

In regard to the existence of community-specific approaches to justice, Article 246 of the Colombian Political Constitution states:

The authorities of Indigenous communities shall be able to exercise their jurisdictional roles in their territory in accordance with their rules and procedures as long as they do not go against the Constitution and laws of the Republic. The law will establish how this special jurisdiction is coordinated with the national judicial system. [*"Las autoridades de los pueblos indígenas podrán ejercer funciones ju-risdiccionales dentro de su ámbito territorial, de conformidad con sus propias normas y procedimientos, siempre que no sean contrarios a la Constitución y leyes de la República. La ley establecerá las formas de coordinación de esta jurisdicción especial con el sistema judicial nacional".*] (Our translation.)

The constitutional disposition does not refer to other types of community justice such as Afro-descendant justice, Roma justice or rural justice. This does not mean that they do not exist or are not recognized, as Colombia's laws regulate and support community justice in its diverse cultural and group manifestations.

The following should be considered in regard to Indigenous communities:

- Articles 63, 286, 287 and 329 of the Political Constitution of Colombia
- Law No. 21 of 1991 approving Agreement 169 on Indigenous and tribal peoples in independent countries adopted by the 76th Meeting of the ILO General Conference in Geneva in 1989.
- Decree No. 4633 of 2011 issuing assistance, service, comprehensive reparations, and the restitution of territorial rights to victims who belong to Indigenous communities and towns.

In order to understand the importance of Indigenous community justice, it is crucial to revisit Articles 286 and 287 of the Constitution. In the former, Indigenous territories are recognized as territorial identities at the same level as departments, districts, and municipalities in Colombia. The latter consecrates the scope of their territorial autonomy, which is exercised in accordance with the Constitution and the law.

This allows us to conclude that the existence of Indigenous territories is key to the functional autonomy of the various Native communities and to protecting their memory and customs. These include their own ways of addressing and resolving disputes and the subsistence of their world view over time.

The institutionalization of Indigenous protections as legal and socio/political expressions of the collective right to territory and life in community[12] has allowed the country to ensure connectivity across the different protected areas within the national territory. While the protected areas have their own autonomous legislation, this should not undermine the fundamental rights of those that inhabit them.

The following are important with regard to Black communities:

- Law No. 70 of 1993, which develops temporary Article 55 of the Political Constitution. Its purpose is to recognize Black communities that have occupied vacant spaces in rural areas along the Pacific Basin rivers.
- Decree No. 1745 of 1995, which regulates Chapter III of Law No. 70 of 1993. Its dispositions include the decree adopting the procedure for recognizing the collective right to "The Lands of Black Communities."

12 Article 21 of Decree No. 2164 of 1995 states that Indigenous protections are collective property of Indigenous Communities constituted for them under Articles 63 and 29 of the Political Constitution, which states that they are unalienable, permanent, and cannot be embargoed.

The protections are a special legal and socio-political institution comprised of one or more Indigenous communities that enjoy the guarantees of private property under the regime of collective property and are governed by it to manage the property and their internal life through an autonomous organization authorized by the Indigenous exemption and its own regulatory system.

Paragraph. Members of the protected Indigenous community may not sell any title, rent independently, or mortgage the land that constitutes the protection. ["los resguardos indígenas son propiedad colectiva de las comunidades indígenas en favor de las cuales se constituyen y conforme a los artículos 63 y 329 de la Constitución Política,tienen el carácter de inalienables,imprescriptibles e inembargables. Los resguardos son una institución legal y sociopolítica de carácter especial, conformada por una o más comunidades indígenas, que con un título de propiedad colectiva que goza de las garantías de la propiedad privada, poseen su territorio y se rigen para el manejo de éste y su vida interna por una organización autónoma amparada por el fuero indígena y su sistema normativo propio. Parágrafo. Los integrantes de la comunidad indígena del resguardo no podrán enajenar a cualquier título, arrendar por cuenta propia o hipotecar los terrenos que constituyen el resguardo".] (Our translation.)

For Ekobio Neil Alfonso Quejada Mena of the National Conference of Afro-Colombian Organizations, Afro-Colombian Justice refers to processes through which the Afro-Colombian community, which is organized as a Community Council, applies dispute resolution methods in its territories in their own way and in their relationship with the world.

Starting from that premise, both Indigenous Protections and Community Councils are configured in a specific territory where their ancestral practices and customs are deployed. This allows the inhabitants to live well and to be legitimately authorized to manage their territories. This increases their level of responsibility in regard to supporting and/or working with municipal and departmental institutions on a wide range of issues. These include access to justice administration and local justice committees that reflect their culture and serve as various spaces of social participation.

The existence of these collective approaches implies recognition of collaborative systems as appropriate means of guaranteeing adequate and effective responses to the needs and demands of Indigenous and Afro-Colombian communities, be they general or specific (i.e. justice).

Community Councils and Indigenous Protections use traditions and practices to address the recognition of the spirituality or ancestral nature as a tool for intercultural dialogue and the implementation of their own justice mechanisms. These are deployed in post-agreement, reparations, and reconciliation contexts at the national level, thus producing an inclusive and participatory approach to the construction of peace and reconciliation in Colombia.

In regard to Municipal Action, they can be recovered:

- Law No. 2166 of 2021, which repeals the similar law No. 743 of 2002, regulates Article 38 of the Colombian Political Constitution regarding municipal action agencies and establishes guidelines for the formulation and implementation of public policies developed by municipal action agencies and their affiliates.[13]

13 It is important to mention that community justice and its various manifestations are not limited to ethnic or racial groups. On the contrary, various groups beyond those mentioned may have access to such mechanisms, and the exercise of their civil rights is recognized and supported through other regulations. These include Laws No. 134 of 1994 (Citizen Participation Law); No. 270 of 1996 (Justice Administration Statutory Law); No. 1395 of 2020 (Judicial Relief Measures); No. 1437 of 2011 (Contentious-Administrative Code); No. 1448 of 2011 (Victims of Armed Conflict); No. 1453 of 2011 (Public Safety Law); No. 1801 of 2016 (National Code for the Police and Coexistence); and Decrees No. 1069 of 2015 (Single Decree for the Justice and Law Sector); No. 979 of 2017 (Ten-year Plan for the Justice System, 2017-2027); No. 893 of 2017 (Development Programs with a Territorial Approach); No. 660 of 2018 (Mobile Access to Justice Activities); and No. 1477 of 2000 (National Justice Houses Program).

Colombian Municipal Action originated as an extension of rural political manifestations. It emerged in the 1950s during disputes between liberals and conservatives. The first such organization in the country was the Saucio Neighborhood Council in Chocontá (Cundinamarca) in 1958.

Municipal Action is legally conceived of and defined as the organized, autonomous, multi-ethnic, multicultural, solidarity-based expression of organized society. It is meant to defend human rights, the community, the environment, and civil society. Its purpose is to promote peaceful co-existence, reconciliation, and the construction of peace as well as comprehensive and sustainable development of the community based on the exercise of participatory democracy (Article 5, Law No. 2166).

This mechanism is organized and/or structured as follows:

Table 2

Organization of Municipal Action

Municipal agency	Level	Territorial representation
Municipal Action Boards	First level	Neighborhood, street or municipality
Community Housing Boards	First level	Neighborhood, street or municipality
Municipal Association of Municipal Action Boards	Second level	Municipal - comprised of at least 60% of the Municipal Action Boards in the territory
Departmental Federation of Municipal Action Boards	Third level	Constituted at the department level with the affiliation of various associations
National Confederation of Municipal Action Boards	Foutrth level	This is the only agency that represents the entire nation.

Source: Developed by the authors.

Under the premise that anyone can access community justice, this approach is defined as an alternative response to formal State justice for certain sectors of the population that may experience significant difficulties accessing the official justice apparatus due to their limited resources, difficulties physically accessing judicial offices or for being

involved in disputes that lack importance for the formal State justice apparatus. [*"una respuesta alternativa a la justicia formal estatal para ciertos sectores de la población que pueden experimentar grandes dificultades para acceder al aparato de justicia oficial, bien por escasez de recursos, por dificultades para acceder físicamente a los despachos judiciales, o ya sea por encontrarse inmersos en controversias que carecen de relevancia para el aparato de justicia formal del Estado"* (Constitutional Court of Colombia, Sentence C-631/12).] (Our translation.)

As the previous section notes, community justice is not only the existence of legal systems that reflect the characteristics of cultural and ethnically diverse groups. It is also a conceptual criterion of the operativity of conciliation in equity, community mediation, and even intercultural mediation.

In this sense, via Sentence C-1195 of 2001, the Honorable Constitutional Court of Colombia stated that it is clear that formal state justice is not always effective, particularly when appropriate and sufficient judicial resources that facilitate the peaceful resolution of disputes have not been provided, or when the complexity of the proceedings or conditions of time, mode, and place required by the legislature restrict the capacity to achieve the effective enjoyment of the rights the parties seek to protect by turning to judicial entities. Alternative dispute resolution mechanisms do not represent distrust of the formal government justice system, but recognition of the fact that less formal proceedings and consensual alternatives are also some of the options that people can choose to solve their disputes. As such, mechanisms like mediation and conciliation are more than just judicial decongestion methods. They are tools for guaranteeing effective access to justice to promote peaceful dispute resolution. [*"resulta claro que la justicia estatal formal no siempre es efectiva, en especial cuando no se han previsto recursos judiciales idóneos y suficientes que faciliten la solución pacífica de los conflictos, o cuando la complejidad de los procedimientos o de las condiciones de tiempo, modo y lugar exigidas por el legislador restringen la capacidad de alcanzar el goce efectivo de los derechos cuya protección se busca al acudir a las instancias judiciales. Los mecanismos alternativos de resolución de conflictos no representan una desconfianza hacia la justicia estatal formal, sino un reconocimiento de que procedimientos menos formales y alternativas de*

justicia autocompositiva complementan las opciones a las cuales pueden acudir las personas para resolver sus disputas. Por ello, mecanismos como la mediación y la conciliación, más que medios para la descongestión judicial, son instrumentos para garantizar el acceso efectivo a la justicia y promover la resolución pacífica de los conflictos".] (Our translation.)

As such, one can conclude that the difference between ADR methods and community justice -including both of its dimensions- is not clear. and that it would be reductionist to believe that addressing said paths separately for academic or research purposes is appropriate. The same are perfectly differentiated. Examples of this include:

(i) The criterion of operativity of conciliation in equity is community justice.

(ii) Indigenous and Afro-descendants' legal systems recognize various forms of approaching and resolving disputes that are similar to ADR in the central legal system; or

(iii) There is a variation of mediation called police mediation, which seeks to include institutional structures in neighborhood and community disputes using the mechanisms selected in each territory.

In regard to institutional design, community justice is characterized by its dispersion and/or desegregation. The government entities that have jurisdiction in this area include: (i) the Justice in Equity Group of the Alternative Dispute Resolution Methods Directorate; and (ii) the Ethnic Justice Strengthening Group, which is part of the Formal Justice Directorate. Both of those entities are part of the Vice Ministry of Promotion of Justice.

One important piece of information is that Colombia does not have dispositions that give the Ministry of Justice and Law the authority to inspect, oversee, and monitor Community Justice mediators. There are no legal precepts that could hold them responsible in terms of discipline.

To understand community dispute resolution as a mechanisms, it is necessary to define the term community in the context of this study. We will thus limit the concept to human groups which (generally) belong to the periphery of the state and are recognized as groups that merit special

protection. These include Black, Afro-Colombian, Raizal and Palenquero communities, Indigenous peoples, members of the Roma collective, and residents of rural areas. This group also includes -outside of the legislation- expressions of urban organizations that have community dispute resolution systems, such as Colombia's municipal movement.

In regard to Indigenous and Black, Afro-Colombian, Raizal and Palenquero groups, there is no single dispute resolution approach because there is no unified legal system for ethnic communities.[14] The ways that cases are handled are shaped by territorial dynamics, historical, and cultural dynamics that define courses of action for dispute resolution.

The Roma people have a legal structure that is recognized by the government. It is called *Kris Romaní,* and it is used as the main dispute resolution approach within the Roma community in Colombia. Rural and urban community organizations also have the Municipal Action Boards. They have taken on a leading role in the regulation of social relations in rural and urban groups, and are the main space available for dispute resolution, particularly conflicts derived from social interactions.

The understanding and analysis of the application of community justice based on cultural traditions and expressions is clearly broad and complex. Any detailed study of one of its expressions would go beyond the subject and scope of this project. Our goal is more modest: to emphasize its institutional importance as an approach used alongside the judicial path and ADR methods, rebuilding its condition as valid, structured justice that is built from the territory and focused on people.

4.3.3. The judicial path: Rules, organization, and bureaucracy

Judicial mechanisms for managing civil and family disputes are regulated by both procedure and substantive law. Law No. 1564 of 2012 established the General Procedure Code,[15] which introduces various mechanisms for handling disputes that fall within the scope of this study.

14 In spite of this, those towns have confirmed that multiple forms of justice exist.

15 Colombia's General Procedure Code is the regulatory body that governs procedural activity in civil, commercial, family, and agricultural matters.

The following list is not exhaustive, and is meant to serve as an example:

Table 3
Types of family proceedings regulated in the CGP

Family disputes	Regulatory dispositions
Summary verbal proceedings for establishing, expanding, decreasing or suspending child support and restitution of family support.	Article 390 of the General Procedure Code - Numbers 2 and 3
Summary verbal proceeding for disputes that arise regarding the exercise of parental authority	
Summary verbal proceeding for differences that arise between spouses regarding establishing and managing the home	
Summary verbal proceedings involving the spousal right to be received in the home and the obligation to live together	

Source: Developed by the authors.

Table 4
Types of civil proceedings regulated in the CGP

Family disputes	Regulatory dispositions
Special declarative proceedings regarding borders and demarcation	Article 400 and following of the General Procedure Code
Special dividing declarative process	Article 406 and following of the General Procedure Code
Summary verbal proceeding for matters of horizontal ownership	Article 390 of the General Procedure Code - Numeral 1
Summary verbal proceeding for removal due to squatting on rural property	Article 390 of the General Procedure Code - Numeral 8

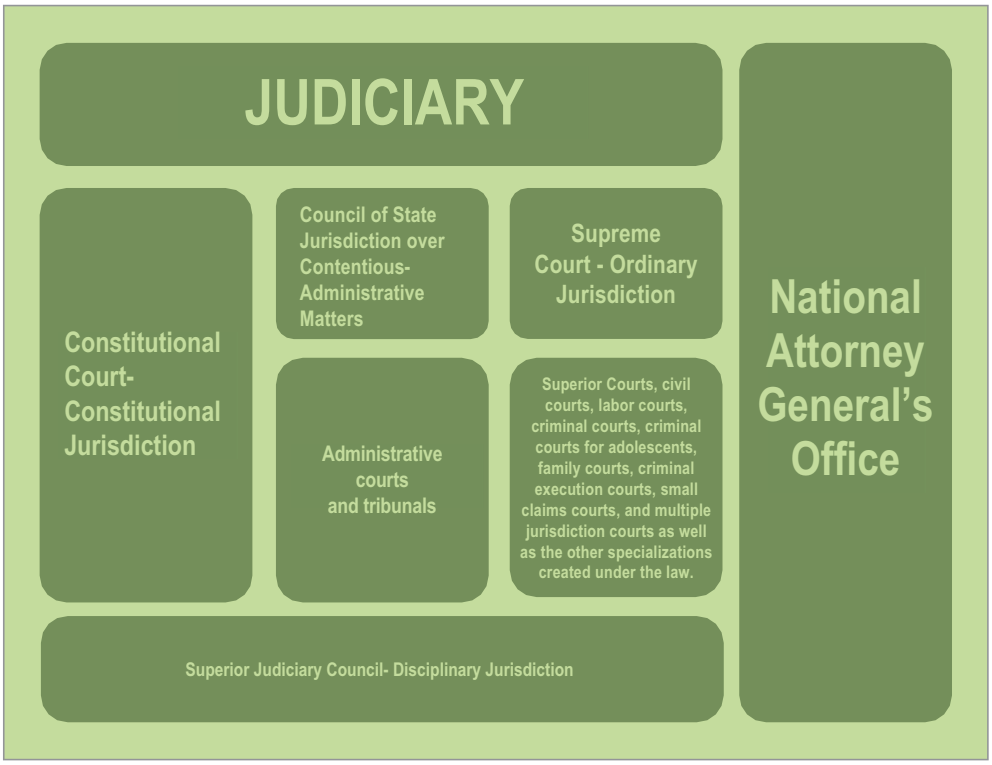
Source: Developed by the authors.

At the substantive level, regulations regarding family disputes can be found in: (i) the Civil Code. Titles 10 to 21 of Book 1 regulate aspects of relationships between parents and children; (ii) the Code on Childhood and Adolescence (Law No. 1098 of 2006). For civil matters, we must refer to

Titles 1 and 14 of Book 2 of the Civil Code ("On assets and their ownership, possession, use and enjoyment"), which address aspects related to the acquisition, transfer, and loss of rights recognized by the Colombian legal system such as the right to ownership, possession or use.

From an organizational perspective, Colombia's judiciary is set up as follows:

Figure 5
Organization of the judiciary



Source: Developed by the authors.

The judicial path is organized at the institutional level around the Formal Justice Directorate of the Ministry of Justice and Law, which works with the Directorate for the Development of Law and the Legal System and the Legal Directorate. They are divided into various working groups such as the entities focused on strengthening gender-based justice, the family law entities group, and the group responsible for the registration and monitoring of legal offices.

Judges' work is subject to Law No. 2094 of 2021. Article 1 of the law states that the National Judicial Discipline Commission and Sectional Judicial Discipline Commissions are responsible for exercising

disciplinary action against judicial officials and employees, including the National Attorney General and private entities that can be disciplined under this law and other officials who administer justice on a temporary or permanent basis [*"A la Comisión Nacional de Disciplina Judicial y a las Comisiones Seccionales de Disciplina Judicial les corresponde ejercer la acción disciplinaria contra los funcionarios y empleados judiciales, incluidos los de la Fiscalía General de la Nación, así como contra los particulares disciplinables conforme a esta ley y demás autoridades que administran justicia de manera temporal o permanente".*[16]] (Our translation.)

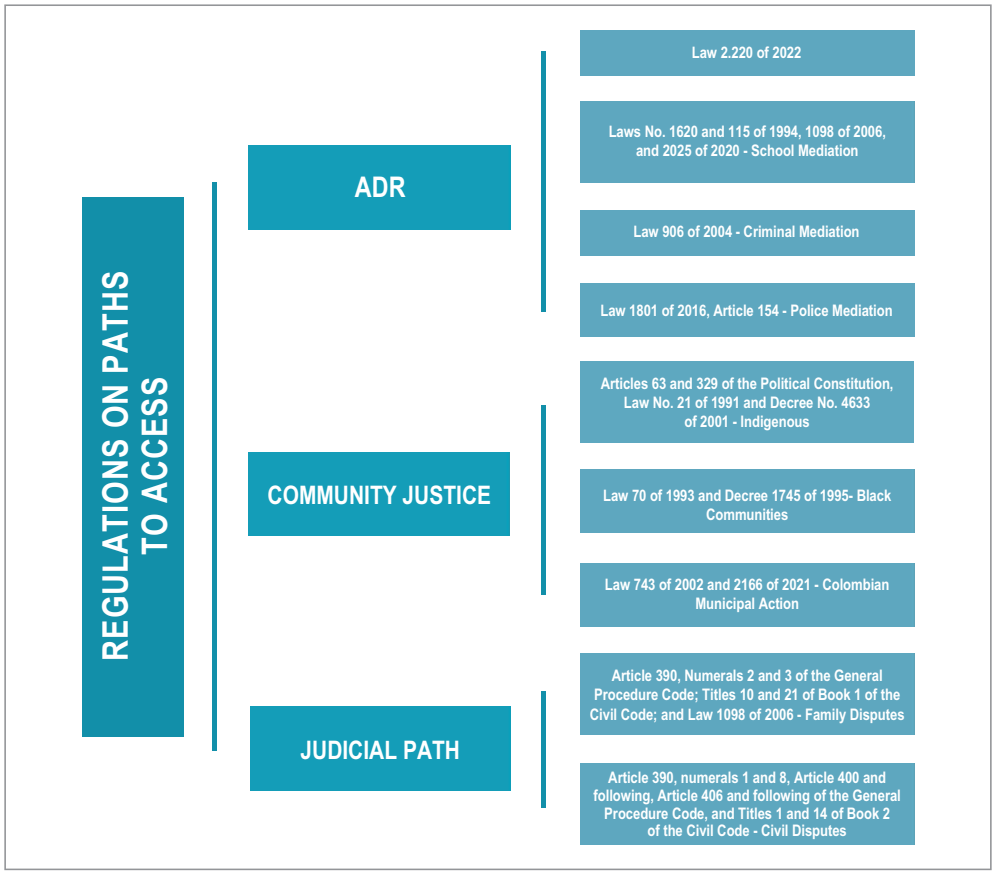
Colombia's judiciary is a fundamental part of the proper functioning of the country and the government. It is responsible for ensuring that citizens' rights are protected by applying the law when necessary and that they meet their obligations and, in general, that disputes are resolved in order to ensure peaceful coexistence.

In regard to the conditions under which magistrates work, it is worth mentioning that the judiciary can make decisions completely independently of other government departments (i.e. the executive and legislative branches). Similarly, each jurisdiction within the judiciary is autonomous.

Along those lines, Article 228 of the Political Constitution states that: Justice administration is part of governance. The judiciary's decisions are independent. Its actions will be public and permanent with the exceptions established under law, and substantive law will prevail over them. Procedural terms will be observed diligently, and non-compliance will be punished. The entity's operation will be deconcentrated and autonomous. [*"La Administración de Justicia es función pública. Sus decisiones son independientes. Las actuaciones serán públicas y permanentes con las excepciones que establezca la ley y en ellas prevalecerá el derecho sustancial. Los términos procesales se observarán con diligencia y su incumplimiento será sancionado. Su funcionamiento será desconcentrado y autónomo".*] (Our translation.)

16 ee Article 2 of Law No. 1952 of 2019.

Figure 4
Regulation of paths to access to justice



Source: Developed by the authors.

Before concluding this section, we are interested in revisiting two pieces of information from the study *Necesidades y Satisfacción con la Justicia en Colombia* (USAID, 2024) given that they are important for this research. The first is related to how people act when they have problems. Only 52% of people who have a dispute do something about it. The second is linked to sources of assistance or mechanisms used to address these disputes. They include direct agreement (43%), police intervention (15%), family member intervention (7%), help from an attorney (6%), local public official (5%), help from a neighbor (4%), help from a national public official (4%), judges (4%), intervention by a friend (3%), health professional (3%), family law office, police station and traffic authority (2%), and justice houses and community coexistence centers (2%) (USAID Colombia, 2024: 20).

5. WHAT TYPES OF DISPUTES DOES THIS STUDY COVER?

5.1. The patriarchy and poverty as the foundation of family disputes

Before presenting our findings, it is important to note that this study is limited to family disputes involving: (i) the setting of child support amounts for minor children, that is, the duty of the parents to recognize the cost of living of their children over time and cover that expense;[17] (ii) coordination of visitation;[18] and (iii) custody and personal care.[19]

17 Article 24 of Law No. 1098 of 2006 (the Code on Childhood and Adolescence) states that children and teens have the right to monetary support and other means to develop physically, psychologically, spiritually, culturally, and socially in accordance with the care-giver's financial capacity. Support is understood as everything required to sustain a person, including housing, clothing, medical care, recreation, education or instruction, and, in general, everything integral to the comprehensive development of children and teens. Support includes the obligation to cover the mother's expenses during pregnancy and labor. ["Los niños, las niñas y los adolescentes tienen derecho a los alimentos y demás medios para su desarrollo físico, psicológico, espiritual, moral, cultural y social, de acuerdo con la capacidad económica del alimentante. Se entiende por alimentos todo lo que es indispensable para el sustento, habitación, vestido, asistencia médica, recreación, educación o instrucción y, en general, todo lo que es necesario para el desarrollo integral de los niños, las niñas y los adolescentes. Los alimentos comprenden la obligación de proporcionar a la madre los gastos de embarazo y parto".] (Our translation.)

18 Article 256 of the Civil Code of Colombia states that the parent who loses custody will not be prohibited from visiting their children as frequently and freely as the judge deems appropriate.

Furthermore, based on the specificities of the case and in the best interests of the child or teen, the judge will order the regulation of visits for ascendants up to second degree of civil relation on the mother and father's sides when they do not have custody of the grandchildren if their children refuse to allow them to have a relationship with their children. ["Al padre o madre de cuyo cuidado personal se sacaren los hijos, no por eso se prohibirá visitarlos con la frecuencia y libertad que el juez juzgare convenientes. Así mismo, teniendo en cuenta las particularidades del caso en concreto y atendiendo al interés superior del niño, niña o adolescente, el juez ordenará la regulación de visitas respecto de los ascendientes en segundo grado de consanguinidad o segundo grado de parentesco civil por línea materna o paterna, cuando estos no tuvieren el cuidado personal de los nietos y nietas o en los eventos en que los progenitores nieguen o sustraigan a sus hijos de la relación con estos".] (Our translation.)

19 Article 23 of Law No. 1098 of 2006 (the Code on Childhood and Adolescence) states that children and teens have the right to have their parents assume direct and timely custody of them on a permanent basis for their comprehensive development. The obligation of personal care extends to those who live with the children or teens in family, social or institutional environments or their legal representatives. ["Los niños, las niñas y los adolescentes tienen derecho a que sus padres en forma permanente y solidaria asuman directa y oportunamente su custodia para su Desarrollo integral. La obligación de cuidado personal se extiende además a quienes convivan con ellos en los ámbitos familiar,socialo institucional,o a sus representantes legales".] (Our translation.)

The information gathered in Bogotá showed that cases involving child support and custody and personal care of children were filed with overwhelming frequency. Some less frequent types of cases observed in Bogotá are divorce-related disputes; requests to liquidate the spousal partnership or common law partnership; requests to set support arrangements for older adults; and common law unions among both same sex and different sex couples.

The authors also observed that a large number of cases involve intrafamily violence and abuse, and that the victim often wants to leave their abuser but cannot do so for economic reasons.[20] Many cases also involve power struggles between former spouses. In other words, the most important element for the parties is not the dispute itself but harming the other party and seeking revenge for non-legal matters that arose prior to the appearance of the dispute in question. Examples include infidelity, disagreements over finances, or household management issues. These situations lead to legal disputes which -in some cases- are not only handled through the judicial path, ADR or community justice, but also lead to a series of issues such as drug use, abandonment of the home, sleep issues, or mental health challenges.

In Florencia (Caquetá), high indicators of family violence were observed in all spectra or modalities. The authors found the rates of physical, economic, psychological, and emotional violence to be especially high. In general, these situations are addressed by family law offices and the Universidad de la Amazonía legal clinic. However, they are not aware of other institutions or paths that are available in the territory. These include the Florencia Chamber of Commerce's Conciliation Center.

At the level of community justice, intrafamily violence and/or gender-based violence between partners are addressed privately in the department of Caquetá. Community justice operators report that although the acts of violence are known in the neighborhood and to local residents, they are "private matters" in which no one wishes to intervene. In other words, there is a triad comprised of concealment, privacy, and non-intervention.

20 This situation was mentioned by numerous conciliation in law operators in and beyond the city of Bogotá.

In the city of Barranquilla (Atlántico), the authors observed that family disputes mainly arise as a result of two sets of situations. The first is related to economic deficits that impact the family context. The second is the person's ego and sense of self.

In other municipalities where information was gathered -especially in Bojayá (Chocó), Pereira (Risaralda), and Bucaramanga (Santander)-, the system users and stakeholders interviewed mentioned the presence of high rates of intrafamily violence, gender-based violence, and discrimination-based violence in the context of family relationships. Psychological and economic violence were particularly prevalent. These types of violence are (generally) perpetrated by men against women. There was also a high percentage of infidelity and problems deriving from it such as abandonment of the home and maintaining multiple households and families.

This makes it more difficult to provide access to justice services in all of the areas in which the research was conducted. If we focus on the judicial path, we see that dispute resolution is limited to filing the claim regarding child support and/or custody and personal care without this implying the parallel activation of various channels in order to address a multifaceted dispute.

If we focus on ADR and community justice, we will see that -at least on paper- the approach would lead to the loss of jurisdiction of the justice operator. This situation aggravates the issue in a large number of cases because victims of violence do not have the same means to access the judicial path (whether for economic, social, demographic or geographic reasons). This involves a specific scenario of ongoing violation of rights without the institutional structure providing viable options for services. However, this does not mean that said disputes are not resolved. They are done in a de facto manner through the services offered by ADR operators or community justice providers even when the regulations state that they do not have jurisdiction over such matters.

As we observed Bogotá, justice operators from the judicial path in Barranquilla and Florencia are of the opinion that to a great extent and with certain complainants, the family judicial process is used to exact revenge. Florencia (Caquetá) Family Court No. 1 judge Dr. María Elisa Benevides and Barranquilla (Atlántico) Peace Justice House conciliator in equity Ricardo Romo both focused on this.

Family disputes cannot be understood in isolation, particularly in a country like Colombia, where the family institution remains a space interwoven with deeply rooted social structures in the belief systems of the majority of the population. The Catholic religion, with its moral and behavior systems, has conditioned the construction of the concept of family and regulated its functionality as the fundamental nucleus of society. The mandates regarding behavior and types of interaction reflect Christian doctrine. These include the prevalence of a patriarchal culture that is expressed in both social relationships and in institutional or extra-official dispute resolution figures.

The belief system based on religion, the patriarchy, and male domination leads to gender-based and discrimination-based violence, intrafamily violence, and abandonment of responsibilities related to children, depersonalizing their involvement in the family institutional structure. This statement is based on a mere critical theoretical position and is not based on the data gathered. The immense majority of complaints and cases involving these disputes are filed by women against men, specifically in regard to child support, visitation, and custody of children and teens, among other.[21]

The questioning of the dominant gender system has generated tension in society. This is expressed in spaces such as family conflicts. The different ways of understanding what it means to be a man or woman in different parts of the culture include diametrically opposed approaches. This is exacerbated in the context of the family, giving rise to multiple forms of violence that disproportionately impact women and girls.

In this context, an interesting piece of information emerges: though they continue to be a minority, men are increasingly using the various paths to justice to seek custody of their children or to report violent behavior on the part of their partners.

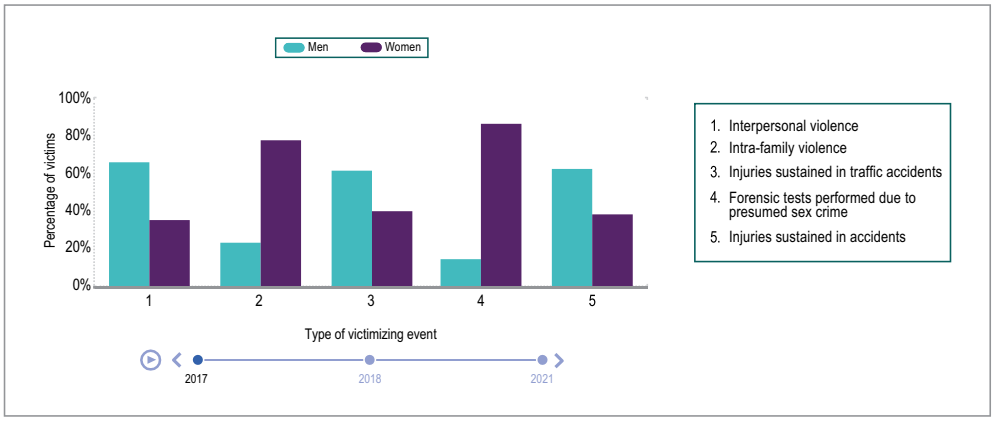
21 This situation was mentioned by many stakeholders of all paths to access to justice. However, it is notable that Dr. Luz Elena Conchilla -a social worker in Barranquilla Family Court No. 1 (Atlántico)- discussed the importance of communication in the approach to and resolution of family disputes, noting that its absence leads to the escalation of conflicts.

In addition, the increased visibility of same sex couples has posed an important challenge in a (traditional) society accustomed to a single way of understanding gender and sexuality. This impacts the exercise of their rights and the availability, use, and management of paths to access to justice that can be activated to protect them. These include civil unions declared through the judicial path or conciliation in law.[22]

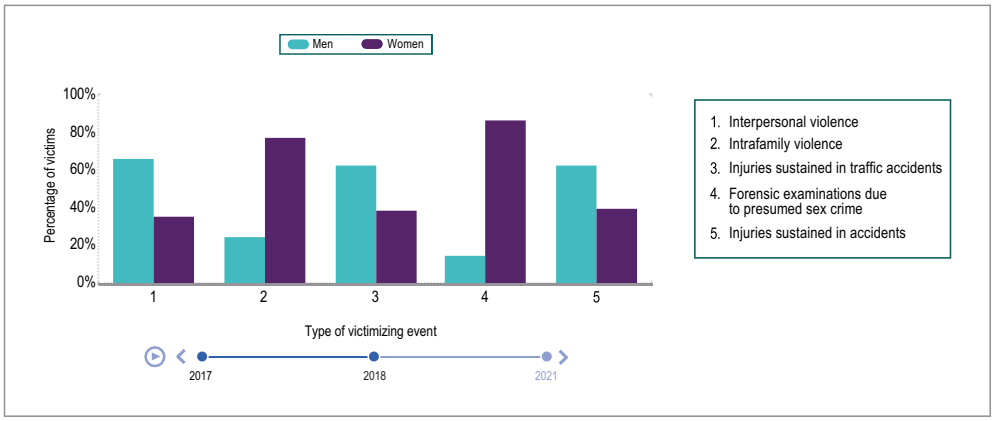
In relation to the phenomenon of gender-based violence and intrafamily violence, it is worth bringing some statistics from Colombia into the discussion.

Figure 7

Progression of percentages of non-fatal injuries by context and gender (2017-2021)

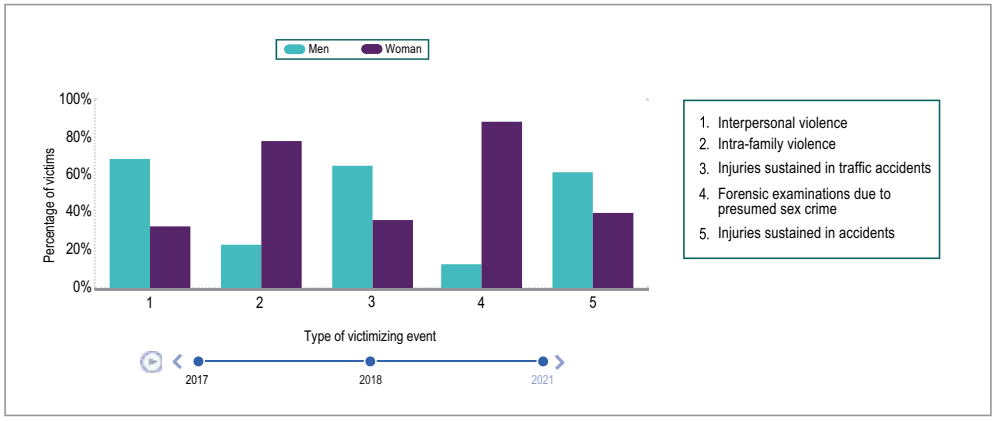


Source: Developed by the Colombian Women's Observatory (2022).



Source: Developed by the Colombian Women's Observatory (2022).

22 Conciliation in equity cannot be used to establish a civil union for heterosexual or same sex couples.

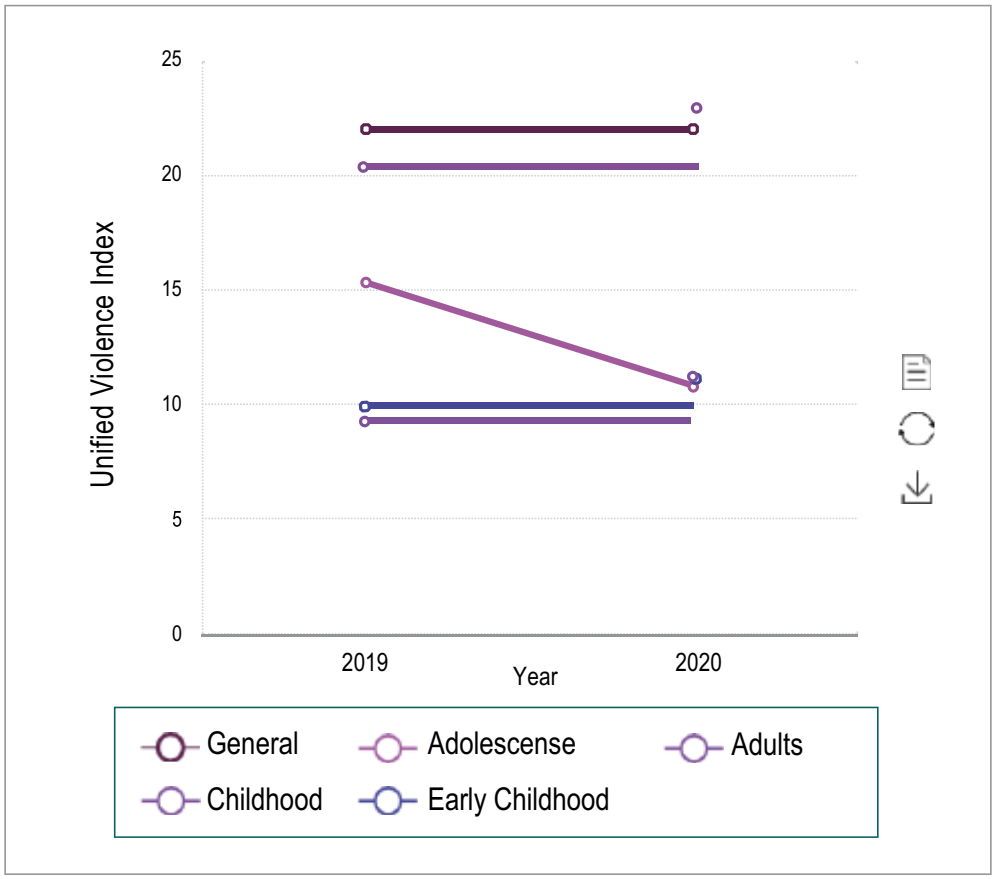


Source: Developed by the Colombian Women's Observatory (2022).

As the figures show, the trend in cases of non-fatal injuries remained unchanged in 2017, 2018 and 2021. Women reported being impacted by intrafamily violence more than men and are required to present forensic testing results in cases involving alleged sex crimes. Over the past few years, men have reported more cases of interpersonal violence, traffic-related injuries, and accidental injuries than women.

On the other hand, the Colombian Women's Observatory unified violence index shows the multidimensional nature of the violence that women suffer over the course of their lives. Between 2019 and 2021, the trend varied slightly, dropping from 21.94% to 21.81%. However, in the case of adults, there was growth (from 20.33% to 22.86%). The rate for early childhood rose from 9.85% to 11% and the rate for childhood increased from 9.22% to 11.11%. Only the rate for adolescents decreased (from 15.27% to 10.78%).

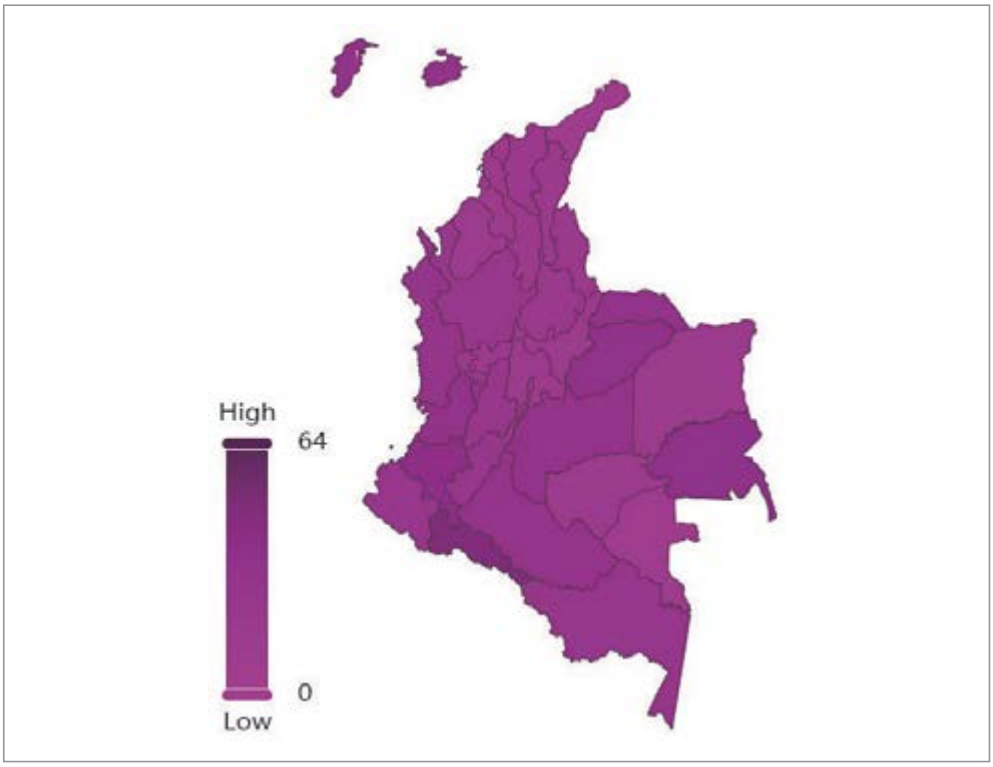
Figure 8
Unified Violence Index



Source: Developed by the Colombian Women's Observatory (2022).

The unified index of violence by department shows that Putumayo, Cauca, Guainía, Casanare, and Valle del Cauca have the highest rates in the country. The lowest were reported in Guaviare, Sucre, Córdoba, Vapués, and La Guajira. However, it is important to consider that underreporting persists.

Figure 9
Unified Violence Index - General by department (2020)



Source: Developed by the Colombian Women's Observatory (2022).

The data presented are reinforced by the information gathered in the context of the JSCA-IDRC Canada (2023) report "Vías de acceso a la administración de la justicia en asuntos civiles y de familia." The authors explain that households headed by women in Colombia are linked to higher levels of poverty and family conflict. Women, particularly female heads of household and caregivers, face unique challenges that directly impact their wellbeing and that of their dependents ["*están vinculados a mayores niveles de pobreza y conflictos familiares. Las mujeres, especialmente en roles de jefatura de hogar y cuidado, enfrentan desafíos únicos que impactan directamente en su bienestar y el de sus dependientes*"], which -as we mentioned- is exacerbated in family and housing disputes as issues that disproportionately impact women and their dependents (Our translation.)

Table 5
Unified Violence Index - General by department (2020)

Variable	Colombia
Urban poverty in women-led homes (2021)	37%
Rural poverty in women-led homes (2021)	49%
Deaths of women caused by a partner/ former partner (2021) per 100,000 women	0.5

Source: Developed by JSCA-IDRC Canada, 2023.

5.2. Housing as a cross-cutting problem: Informality, precarity, and co-existence

In this report, we address civil disputes linked to the right to housing and related issues from a legal and community perspective. Specifically, this section covers phenomena such as rental; property and borders; usufruct entitlements; easements; neighborhood coexistence; neighborhood relationships; the use and disposal of trash; pet-related issues; and water use. These conflicts are strongly impacted by the socio-historical processes that develop in the country. It is especially important to consider the history of social and armed conflict that has persisted for over six decades, leaving violence and inequality in its wake.

A very high rate of disputes related to rural and urban real estate rentals was observed in the information gathering process and, in general, in all of the priority municipalities. According to the interviews that the authors conducted, over 90% of conciliators linked to and operators of civil courts mentioned that the execution of, failure to comply with, and termination of housing rental contracts were common issues.

This is crucial for understanding the indivisibility and interdependence of human rights both in reality and at the legal level. This is the case because challenges related to accessing dignified housing in Colombia in any way (i.e. ownership or rental) are linked to and feed off of high rates of informal labor and unemployment. The person's situation and property (neighborhood- community) and the structural conditions that they face limit their opportunities to pursue other life projects or better levels of enjoyment than the legal system promised them in terms of rights.

This allows us to relativize what has been said about certain sectors with regard to access to housing as a strictly legal matter or one that is secondary to other phenomena such as family disputes. As one conciliator in law who works in Bogotá stated, housing issues are directly related to fundamental human rights and in no case should a rental contract be understood as an exclusively legal phenomenon.[23]

According to the interview participants, issues around housing emerge as a result of failure to pay rent and are also the result of a speculative real estate market that makes it difficult for the general population to buy their own home. This situation and the lacking structural conditions (i.e. zoning policies, limitations on land access, the mercantilization of rights, and the absence of soft credits) end up promoting and imposing renting as the only way to access housing, particularly in urban areas.

Renting tends to present various (cumulative) additional difficulties. First, the legal requirements are not always met. Second, it is developed in the context of inequitable or structurally unequal power relationships. The property rental process is exponentially more difficult for migrants, female heads of household, members of the LGBTQ+ community, and members of other vulnerable groups. Third, it does not guarantee the minimum standards outlined by officials interpreting the Inter-American and Universal Human Rights systems. Legal security in rental, availability of services, reasonable costs, accessibility, and habitability are frequent issues.

Along these same lines, conflicts arise regarding access to and use of land in rural areas of the country. There is acute inequality in the area of land ownership, as only 1% of Colombia's population owns 81% of the country's land (OXFAM, 2017).

This social inequality that is manifested in land use has led to expressions of everyday violence that were based on the practices deployed in the context of the armed conflict. This suggests that in the areas of the country most impacted by that violence -in their communities and neighborhoods-, less complex or everyday dispute resolution approaches can be handled violently without using any sort of mediation service.

23 Dr. Clemencia Muñoz, Legal Conciliator. Interviewed on September 26, 2023.

In the urban space, intolerance and the culture of violence cause conflicts that could be resolved through dialogue to escalate and become harder to manage. This is particularly true when the dispute involves a physical object or asset.

It is important to note that the differential approach allowed the authors to identify certain types of disputes or modes. These derive from discrimination against specific populations such as the LGBTQ+ community. It is frequent for individuals or groups to face multiple forms of exclusion when interacting with neighbors or landlords when they find out that they have a same sex partner or non-hegemonic gender identity.[24] There is an additional difficulty: disputes derived from discrimination based on a person's sexuality, nationality, ethnicity, race or gender tend to be rendered invisible.

The authors found that an overwhelming majority of conflicts in Bogotá are due to failure to comply with rental contract terms. This was accomplished through: (i) the judicial path in judicial proceedings meant to facilitate the restitution of the rented asset; and (ii) conciliation in law, in payment negotiations for rentals that have not been paid and/or termination of the rental contract with a commitment to turn over the property that is the object of the dispute.

Based on the information produced, other disputes related to the right to ownership that are addressed through the judicial path -though less regularly than rental cases- are acquisitive prescription, divisions, and easement recognition.

In the area of ADR and community justice, the most prevalent disputes are related to failure to comply with the terms of work contracts, provision of common areas by builders, and issues related to co-existence.

The city of Florencia (Caquetá) presents high levels of conflict over rural matters. This has not been mitigated by the presence of a municipal lead responsible for overseeing such issues. This is understandable if we

24 This situation was described by Dr. Astrid Acuña Chadid, an advisor with the Universidad del Norte de Barranquilla (Atlántico) Legal Clinic.

consider that a large part of the municipality is located in a rural area with a marked rural cultural tradition, which permeates geographically rural matters as well as relationships between the parties within the urban area.

In that context, the great majority of the disputes presented in the municipality in question involve fence movement and maintenance, easements, and rental contracts. These matters are traditionally handled at the ADR or community justice office because -as municipal civil court operators and staff from the Florencia circuit civil courts reported- most of the disputes that they hear are executive proceedings due to non-compliance with contractual obligations and/or disputes over medical accountability for cosmetic surgeries.[25]

In the city of Barranquilla (Atlántico), the main characteristic of the disputes under analysis is the lack of economic resources on the part of the public and a generalized perception that the other person is acting in bad faith and with the intention of causing harm.

In the framework proposed and based on the information produced, it seems that the dominant disputes in the area of housing involve construction, disposal of debris, unlicensed work, disputes over irregular possession rights, sale of ownership as possession or property, fights among intoxicated individuals, gossip in neighborhoods, the interruption of easements, interruption of water and electricity services, noise pollution, and improper waste disposal.

Finally, we note that both conciliation in law operators and litigators who handle family law report that civil disputes over housing are different from family conflicts in the sense that the former: (i) tend to include a clearer economic component; (ii) present less emotional content -though this is relative, hard to measure, and cannot be generalized, if we think about family evictions or analogous situations; and (iii) tend to be intervened in through conciliation, with a high number of agreements. This is due to the fact that participants tend to believe that objective negotiation criteria are being presented, which is not the case in family disputes.[26]

25 This situation mentioned was described by Doctors Carlos Alberto Ruiz Oviedo (Secretary of the 1st Civil Court of the Circuit) and Mariano Duque (Senior Officer of the 1st Civil Court of the Circuit) of Florencia (Caquetá).

26 According to Dr. Clara Stella Montañez Torres, a conciliator in law with the Bogotá Chamber of Commerce Conciliation Center.

6. PATHS OF ACCESS TO JUSTICE: WHAT, WHO, AND WHERE?

6.1. ADR methods

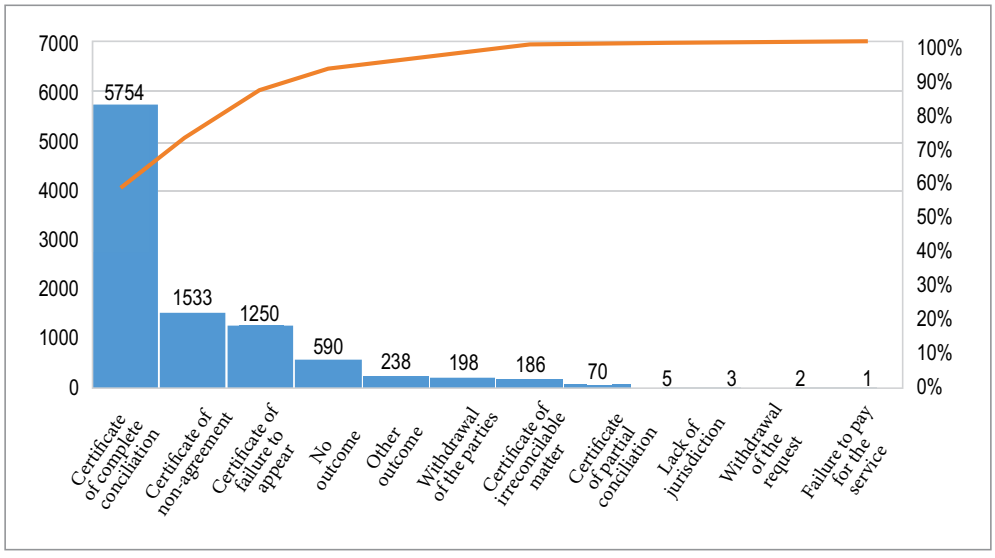
As noted, it was not easy to contact ADR users to obtain information for this study. In view of this, we used data from the Conciliation, Arbitration, and Amicable Resolution Information System (*Sistema de Información de la Conciliación, el Arbitraje y la Amigable Composición*, SICAAC).

6.1.1. Department of Atlántico

- ***Cases filed and types of results***

A total of 9,830 requests were received in the department of Atlántico in 2023. The results suggest that the great majority were conciliation agreements (58.5%), certificates of non-agreement (15.6%), and certificates of failure to appear (12.7%).

Figure 10
Cases filed and types of outcomes (2023)



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia -SICAAC).

Table 6
Cases filed and types of outcomes (2023)

Types of outcomes	Number of cases	%
Certificate of complete conciliation	5754	58.54%
Certificate of partial conciliation	70	0.71%
Certificate of irreconcilable matter	186	1.89%
Certificate of failure to appear	1250	12.72%
Certificate of non-agreement	1533	15.60%
Extra-judicial conciliation agreement	5	0.05%
Lack of jurisdiction	3	0.03%
Failure to pay for services	1	0.01%
Case dropped by the parties	198	2.01%
Withdrawal of the request	2	0.02%
Other	238	2.42%
No outcome	590	6.00%
Total	**9830**	

Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia -SICAAC).

As one can see, agreements represent more than half of the outcomes reached in the cases filed. A lower number of cases result in direct agreements among the parties (0.05%). It is encouraging that other outcomes present low incidence, including: (i) the absence of jurisdiction of the conciliators (0.03%); (ii) withdrawal of the conciliation hearing request (0.02%); and (iii) failure to pay for the requested service.

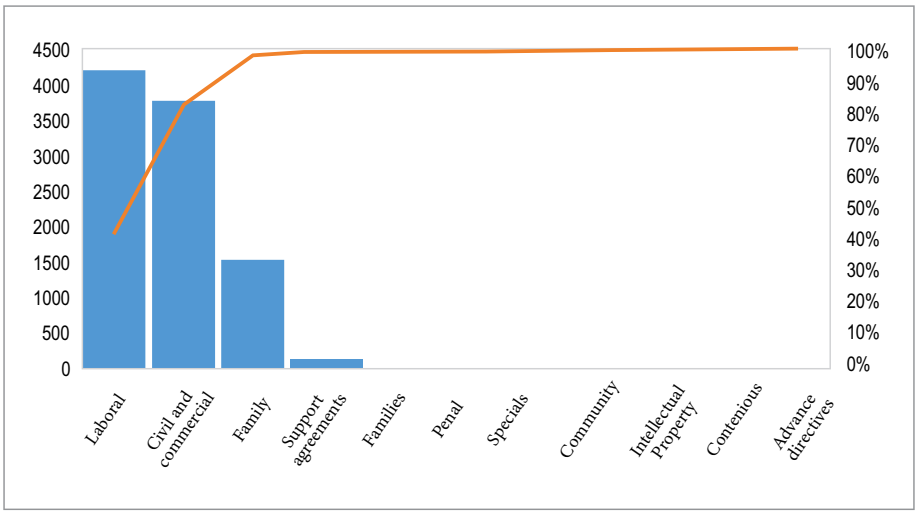
- ***Areas of conciliation***

Most conciliation cases in Atlántico filed in 2023 involved civil and commercial law (38.8%), family law (15.9%), and labor law (43.2%).

If we start from the premise that private conciliation centers cannot hear labor mediation cases because labor rights are not handled freely by the parties, the information presented is (at least) noteworthy: it is the most frequent area addressed (43.21%). The least common matters are community and intellectual property (0.04%), matters related to contentious-administrative law (0.03%), and advance directive requests (0.02%).[27]

27 Law No. 1996 of 2019 establishes the regime for the exercise of legal capacity of adults with disabilities. The law states that a person can determine the type of support they need to exercise their legal capacities during conciliation hearings.

Figure 11
Matters addressed using conciliation (2023)



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia -SICAAC).

Table 7
Matters addressed using conciliation (2023)

Areas of conciliation	Number of cases	%
Support agreements	171	1.75%
Civil and commercial	3795	38.79%
Community	4	0.04%
Contentious-administrative	3	0.03%
Advance directives	2	0.02%
Special	6	0.06%
Family	1555	15.89%
Relatives	8	0.08%
Labor	4228	43.21%
Criminal	8	0.08%
Intellectual property	4	0.04%
Total	9784	

Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia -SICAAC).

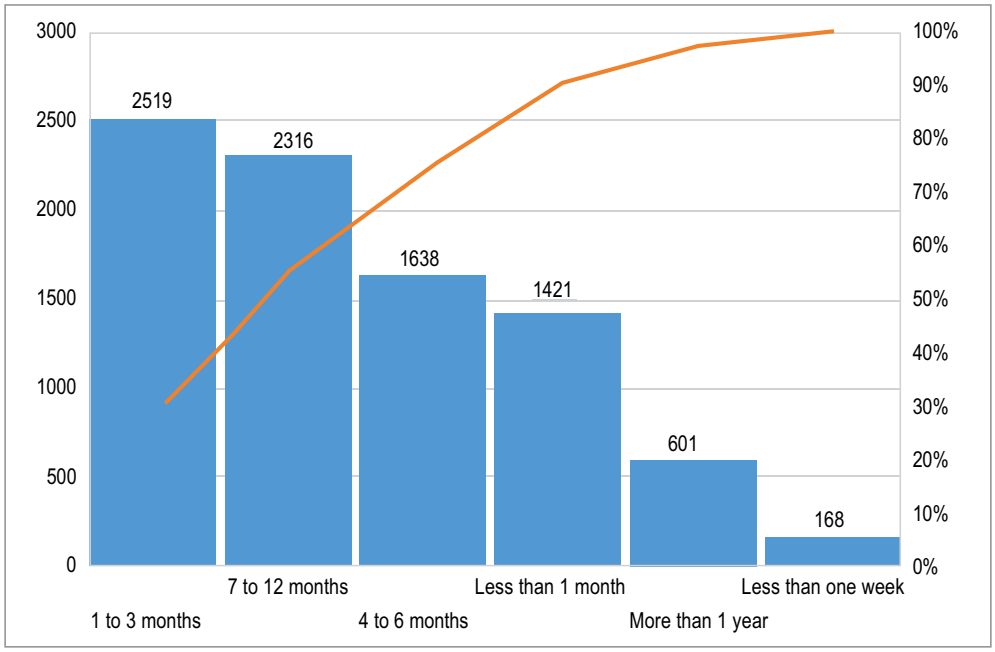
- ***Conciliation requests by topic***

Most conciliations involve contracts (26.9%).

Duration of conciliation proceedings

Most proceedings last one to three months (29%) followed by between seven and twelve months (26.7%).

Figure 12
Timeframe and number of cases (2023)



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia -SICAAC).

Table No. 8
Duration, quantity, and percentage (2023)

Duration of conciliation proceedings	Number of cases	%
Less than one week	168	1.94%
Less than one month	1421	16.40%
1 to 3 months	2519	29.08%
4 to 6 months	1638	18.91%
7 to 12 months	2316	26.73%
Over 1 year	601	6.94%
Total	**8663**	

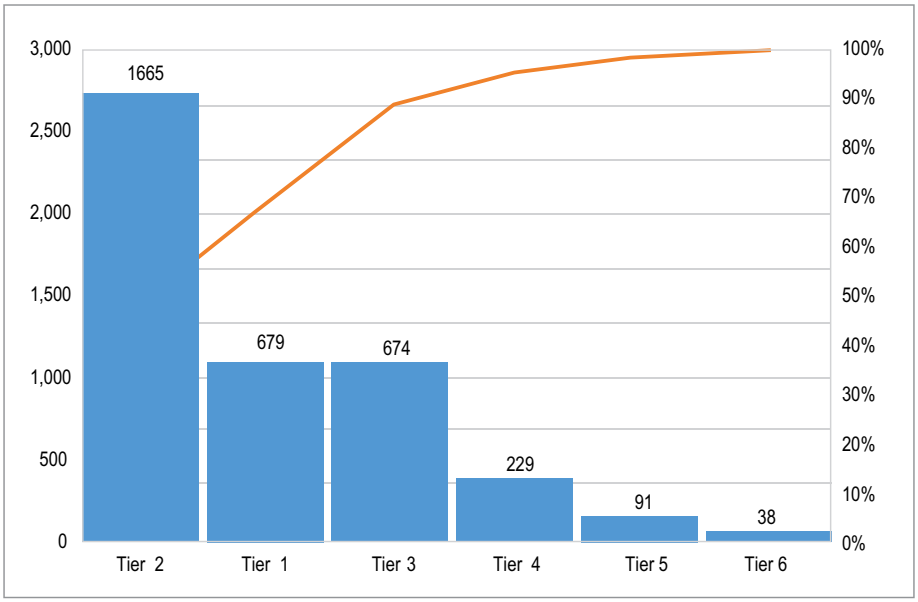
Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia -SICAAC).

According to current legal dispositions, the conciliation process should be completed no more than six months after the submission of the conciliation hearing request. The data produced suggest that this requirement is met in 33.67% of cases.

Requests by socio-economic tier[28]

The majority of the convening parties are from Tier 2 (49.3%) followed by Tiers 1 (20.11%) and 3 (19.96%).

Figure 13
Convening parties by socio-economic tier (2023



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia -SICAAC).

28 Law No. 142 of 1994 and its modifications implemented the socio-economic tier system in Colombia. According to the DANE, it classifies residential housing at the municipal level based on the Household Public Services Regime in Colombia. ["este es la clasificación de los inmuebles residenciales de un municipio, que se hace en atención al Régimen de los Servicios Públicos Domiciliarios en Colombia."] (Our translation.) Colombia's socio-economic tiers are: 1) Low low, 2) Low, 3) Medium low, 4) Medium, 5) Medium high and 6) High.

Figure 13
Convening parties by socio-economic tier (2023

Convening parties by tier	Number of cases	%
Tier 1	679	20.11%
Tier 2	1665	49.32%
Tier 3	674	19.96%
Tier 4	229	6.78%
Tier 5	91	2.70%
Tier 6	38	1.13%
Total	**3376**	

Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia -SICAAC).

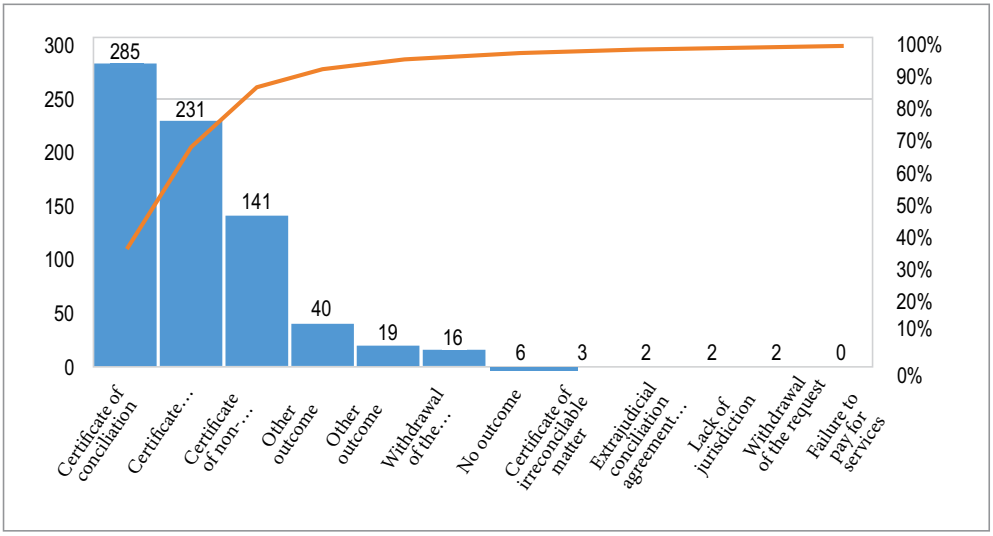
Considering that the most common socio-economic tier is #2 followed by #1 and #3, one can conclude that the target audience for conciliation in Atlántico is low-income individuals. This explains the high percentage of cases in which free channels are used, such as those made available to the public through justice houses by public servants.

6.1.2. Department of Caquetá

- ***Cases filed and types of outcomes***

A total of 747 requests were received in Caquetá in 2023. The majority ended with a conciliation certificate (38%), certificate of non-agreement (18.9%), and certificate of failure to appear (30.9%).

Figure 14
Cases filed and types of outcomes (2023)



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

Table 10
Cases filed and types of outcomes (2023)

Types of outcomes	Number of cases	%
Complete conciliation certificate	285	38.15%
Partial conciliation certificate	19	2.54%
Certificate of irreconcilable matter	3	0.40%
Certificate of failure to appear	231	30.92%
Certificate of non-agreement	141	18.88%
Extra-judicial conciliation agreement	2	0.27%
Lack of jurisdiction	2	0.27%
Failure to pay for services	0	0.00%
Withdrawal of the parties	16	2.14%
Withdrawal of the request	2	0.27%
Other	40	5.35%
No outcome	6	0.80%
Total	747	

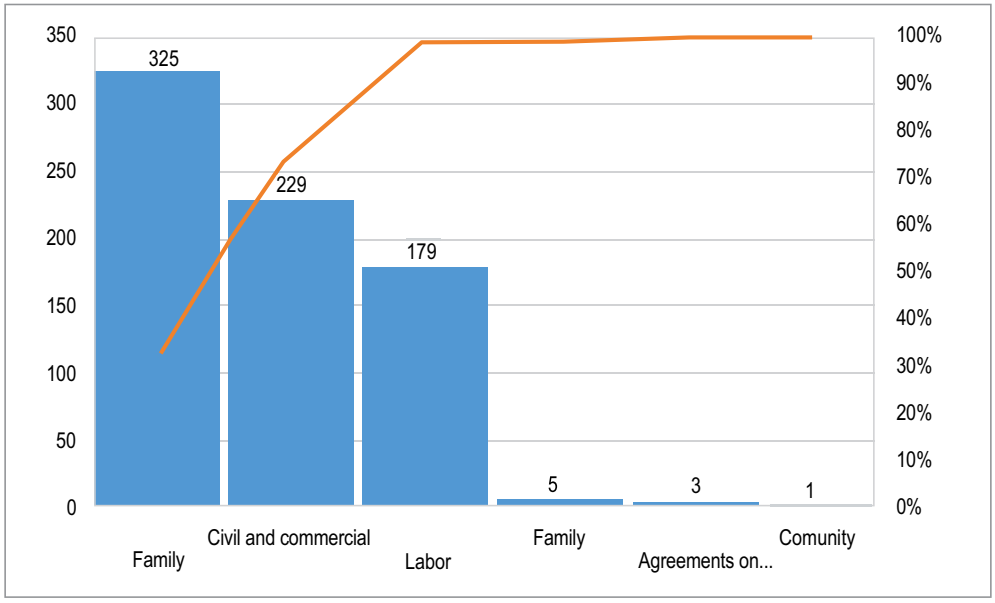
Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia -SICAAC).

For the Department of Caquetá, it was found that, as is the case in Atlántico, the most common outcome of conciliation hearings is the certificate of agreement. However, there is a 20-percentage point difference between the two: 38.15% (Caquetá) vs. 58.54% (Atlántico). The least common outcomes are the certificate of irreconcilable matter (0.4%) and direct agreements, lack of jurisdiction, and withdrawal of the request (each with 0.27%).

- ***Areas of conciliation***

Most conciliation cases in 2023 were civil and commercial (30.86%) and family (43.8%) matters.

Figure 15
Matters subject to conciliation (2023)



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia -SICAAC).

Table 11
Matters subject to conciliation (2023)

Areas of conciliation	Number of cases	%
Support agreements	3	0.40%
Civil and commercial	229	30.86%
Community	1	0.13%
Family	325	43.80%
Relatives	5	0.67%
Labor	179	24.12%
Total	**742**	

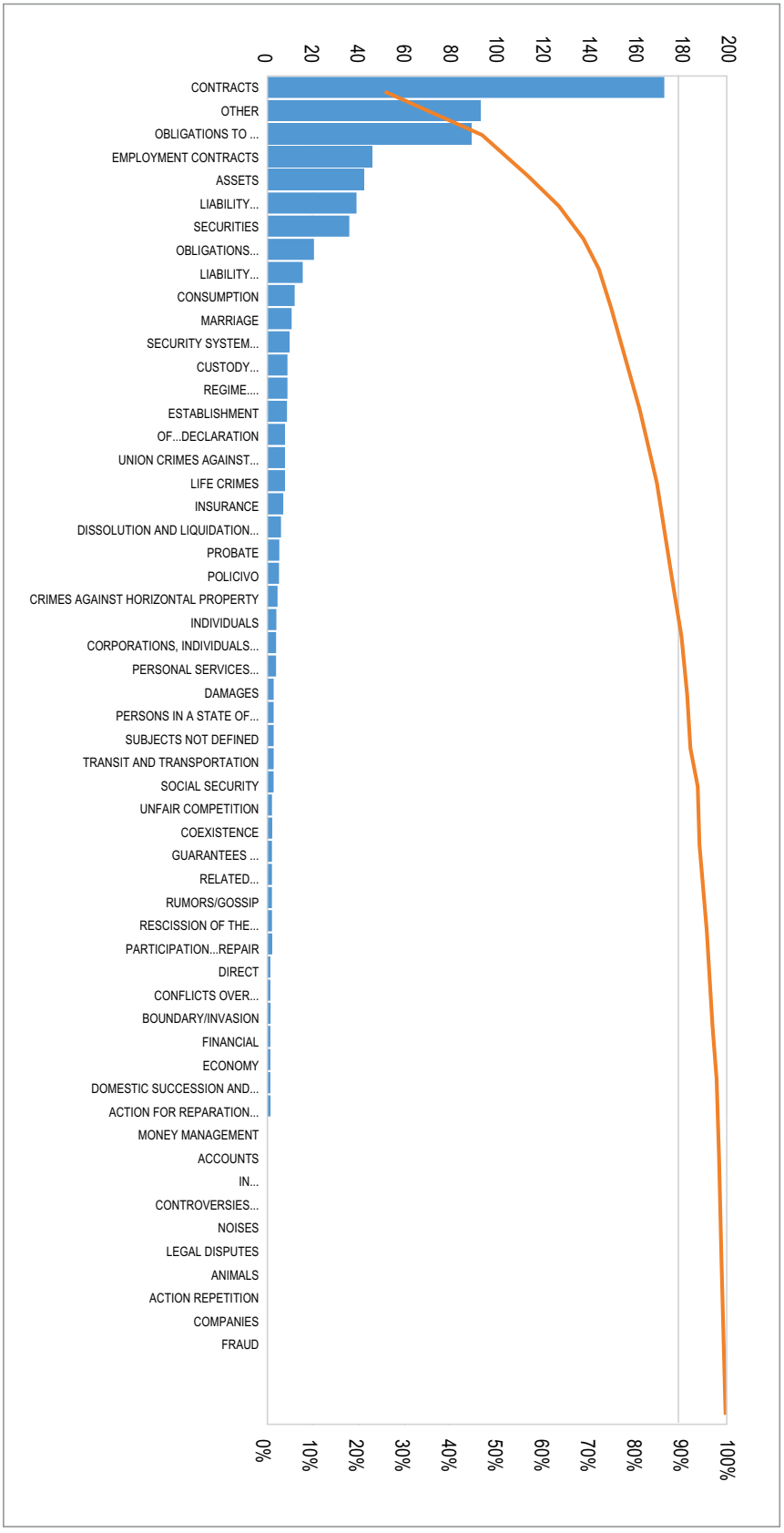
Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia -SICAAC).

The most common conciliation area is family law, where matters include setting child support, personal care, and custody of children (43.80%). They are followed by commercial and civil matters (30.86%).

- ***Conciliation requests by topic***

Most conciliations involve issues related to contracts (22.7%).

Figure 16
Conciliation requests (2023)

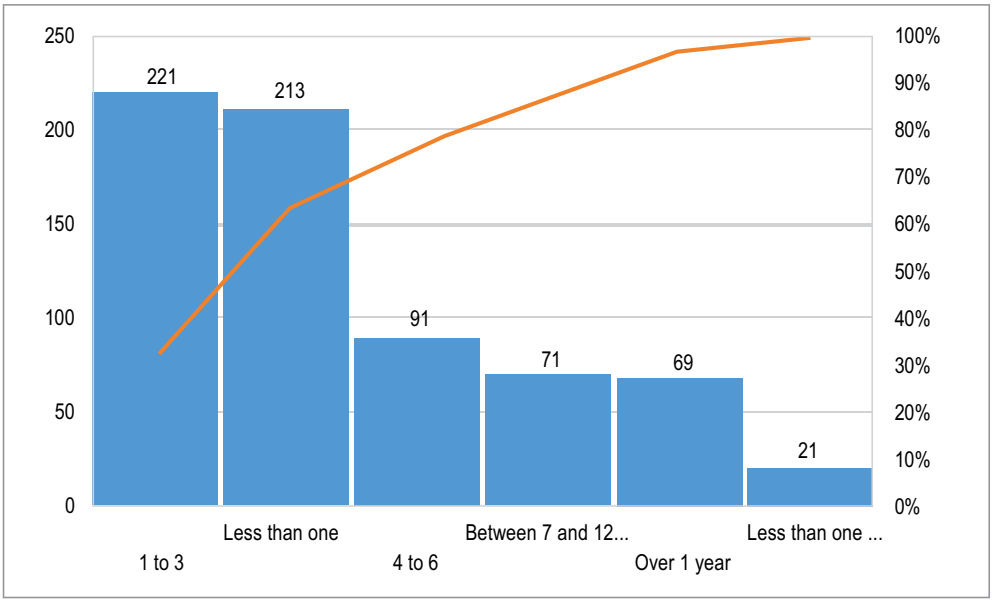


Source: Developed by the authors using official information.

- ***Duration of conciliation proceedings***

Most proceedings last between one and three months (32.22%), though a similar percentage of cases last less than one month (31.1%).

Figure 17
Conciliation requests (2023)



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

Figure 12
Conciliation requests (2023)

Duration of the conciliation proceedings	Number of cases	%
Less than 1 week	21	3.06%
Less than 1 month	213	31.05%
1 to 3 months	221	32.22%
4 to 6 months	91	13.27%
7 to 12 months	71	10.35%
Over 1 year	69	10,06%
Total	686	

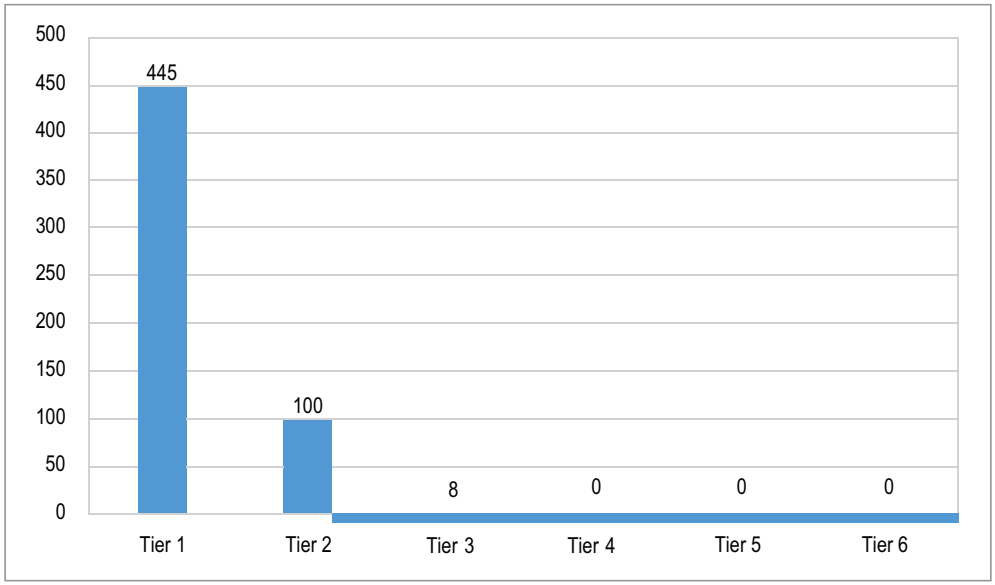
Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

In contrast to the Department of the Atlántico, the principle of celerity is used more and better in conciliation in Caquetá. In fact, 79.6% of cases are resolved in 6 months or less, and 66.33% are resolved in less than 3 months.

- ***Convening parties by socio-economic tier***

The majority of convening parties belong to tier 1 (80.47%) followed by tier 2 (18.08%). No convening parties from tiers 4, 5 or 6 were identified for 2023.

Figure 18
Convening parties by socio-economic tier (2023)



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

Table 13
Convening parties by socio-economic tier (2023)

Tier	Number of cases	%
Tier 1	445	80,47%
Tier 2	100	18,08%
Tier 3	8	1,45%
Tier 4	0	0,00%
Tier 5	0	0,00%
Tier 6	0	0,00%
Total	**553**	

Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia -SICAAC).

The data collected and analyzed in regard to the parties' socio-economic tier led us to conclude that the target audiences of conciliation services in Atlántico and Caquetá are similar. On the other hand, while the information obtained through the Conciliation, Arbitration, and Amicable Resolution Information System suggests that conciliation requests were not filed by individuals from tiers 4, 5 and 6, we did find out during the field trip that the Putumayo Chamber of Commerce Conciliation Center was operating. Given that its target audience is the municipality's business sector, there would seem to be a contradiction or inconsistency without a clear explanation.

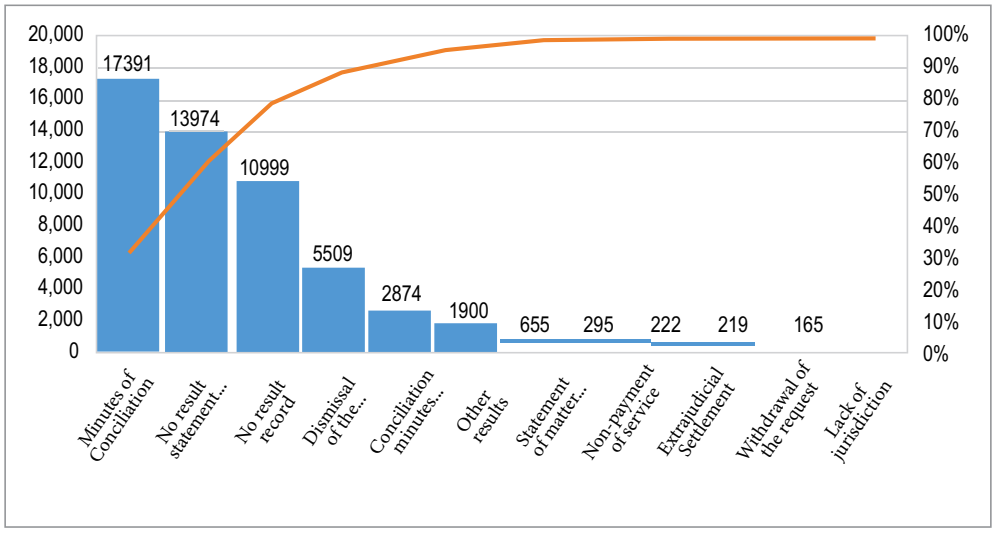
6.1.3. Bogotá D.C.

- ***Cases filed and types of outcomes***

A total of 54,279 requests were filed in Bogotá in 2023. Most ended with the issuing of a conciliation certificate (32%). However, certificates of non-agreement (25.7%) and certificates of failure to appear (20.3%) represented 46% of the total.

Figure 19

Cases filed and types of outcomes (2023)



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

Table No. 14

Cases filed and types of outcomes (2023)

Types of outcomes	Number of cases	%
Full conciliation certificate	17391	32.03%
Partial conciliation certificate	1900	3.50%
Certificate of irreconcilable matter	295	0.54%
Certificate of failure to appear	10999	20.26%
Certificate of non-agreement	13974	25.74%
Extra-judicial conciliation agreement	219	0.40%
Lack of jurisdiction	94	0.17%
Failure to pay for services	222	0.41%
Withdrawal of the parties	2874	5.29%
Withdrawal of the request	165	0.30%
Other outcomes	655	1.21%
No outcome	5509	10,.15%
Total	**54297**	

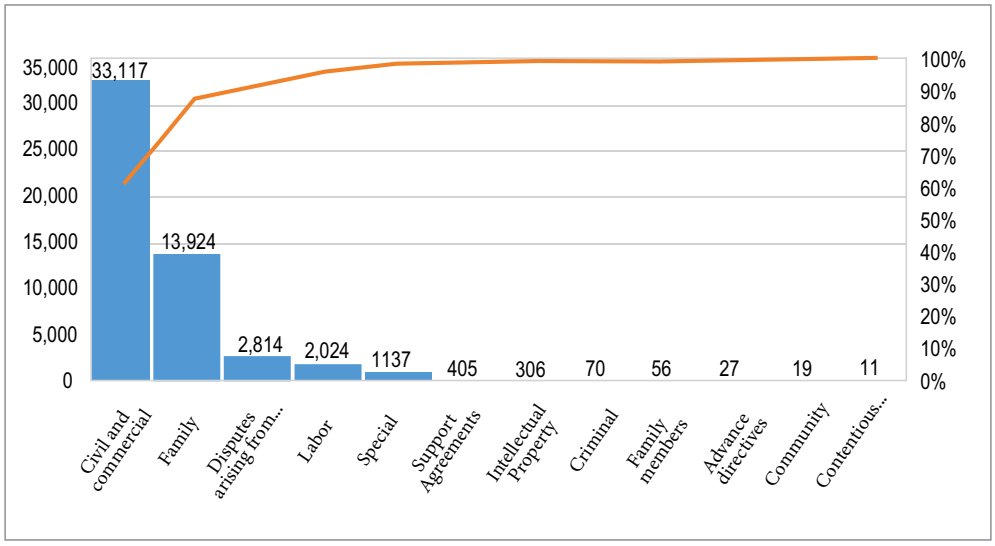
Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

The percentage of agreements reached in cases in which conciliation was requested is not only low in Bogotá (32.03%); it is lower than the percentages reported in Atlántico and Caquetá.[29] The less common outcomes continue to be direct agreements (0.4%), withdrawal of the request (0.3%), and lack of jurisdiction (0.17%).

- ***Areas of conciliation***

The majority of conciliation cases involved civil and commercial (61.4%) and family (25.8%) matters.

Figure 20:
Matters subject to conciliation (2023)



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia -SICAAC).

29 It is important to mention that even though the information presented covers all conciliation hearings in the city of Bogotá, the Bogotá Chamber of Commerce's Conciliation Center reports that close to 80% of hearing requests result in an agreement.

Table 15
Matters subject to conciliation (2023)

Areas of conciliation	Number of cases	%
Support agreements	405	0.75%
Civil and commercial	33117	61.43%
Community	19	0.04%
Disputes derived from the public health system	2814	5.22%
Contentious-administrative	11	0.02%
Advance directives	27	0.05%
Special	1137	2.11%
Family	13924	25.83%
Relatives	56	0.10%
Labor	2024	3.75%
Criminal	70	0.13%
Intellectual property	306	0.57%
Total	**53910**	

Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

The most prevalent conciliation areas in Bogotá in 2023 were civil and commercial matters (61.4%) followed by family issues (25.8%). The least common cases involved advance directives (0.05%), community matters (0.04%), and contentious-administrative matters (0.02%).[30]

- ***Conciliation requests by topic***

The majority of conciliation cases involved disputes over contracts (25.4%).

30 The low rates of contentious-administrative matters submitted for conciliation may be indicative of the failure of Colombia's current system and can be interpreted as a call to reformulate the same.

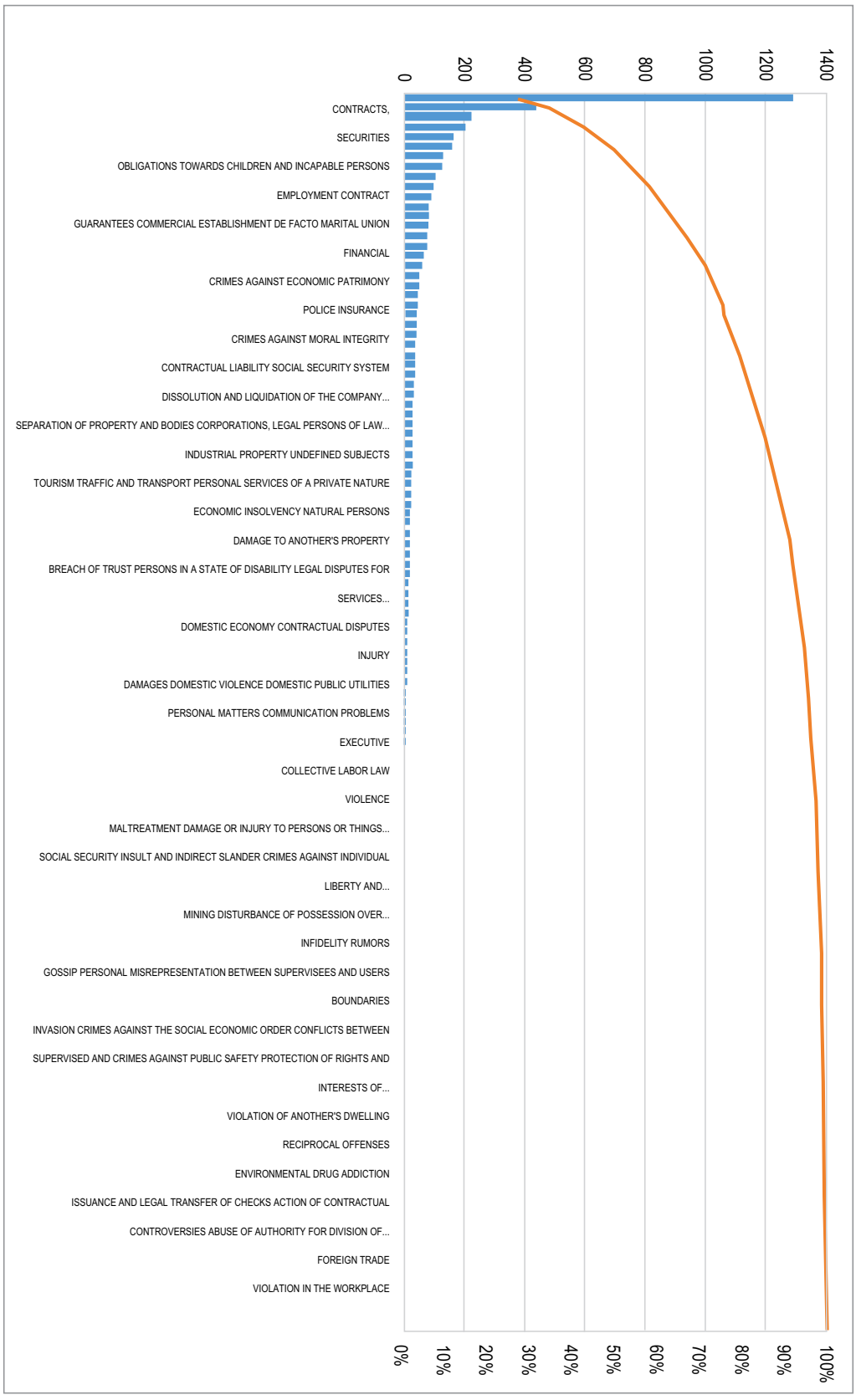


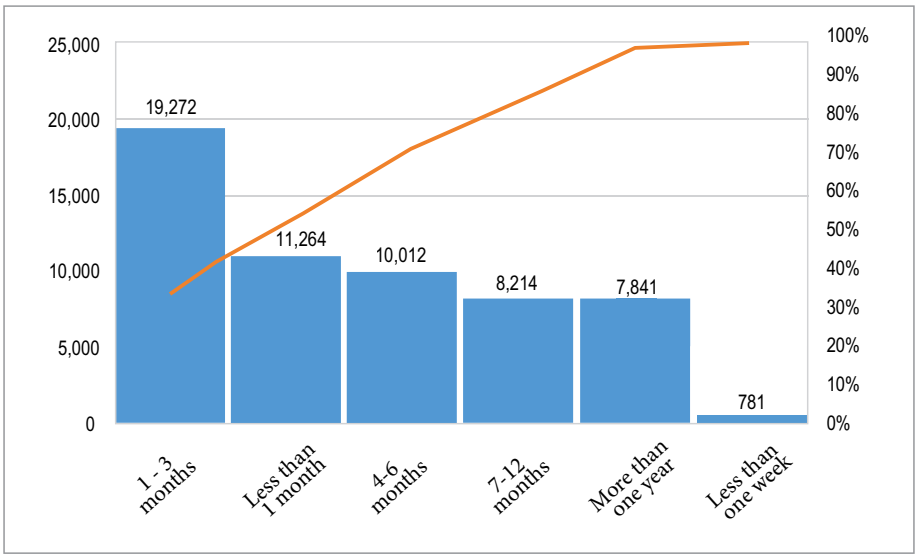
Figure 21
Conciliation requests (2023)

Source: Developed by the authors using official information.

- ***Duration of conciliation proceedings***

The majority of proceedings last between 1 and 3 months (33.58%), though a significant percentage lasts less than 1 month (19.6%).

Figure 22
Duration and number of cases (2023)



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

Table 16
Duration and number of cases (2023)

Duration of conciliation proceedings	Number of cases	%
Less than one week	781	1.36%
Less than one month	11264	19.63%
1 to 3 months	19272	33.58%
4 to 6 months	10012	17.45%
7 to 12 months	8214	14.31%
Over 1 year	7841	13.66%
Total	**57384**	

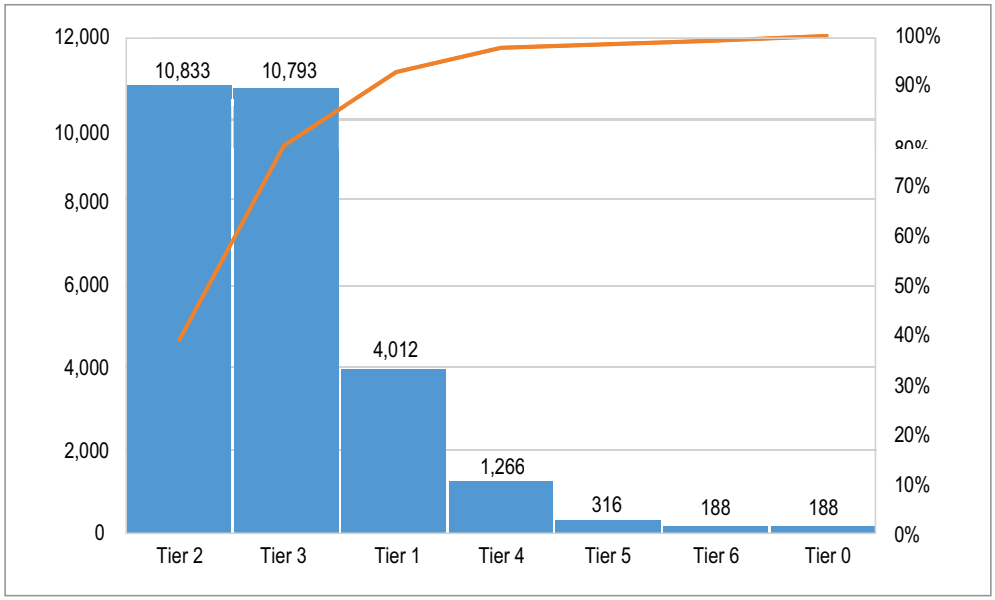
Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

As is the case in the department of Caquetá, in Bogotá most cases (54.57%) are resolved in under three (3) months following the submission of the conciliation hearing request. That percentage increases to 72.02% if we consider the legal limit of six months.

- ***Convening parties by socio-economic tier***

The great majority of the convening parties belong to medium-low tiers (78.37%). Tier 2 members filed 39.26% of cases and Tier 3 members filed 39.11%.

Figure No. 23
Convening parties by socio-economic tier (2023)



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

Table 17
Convening parties by socio-economic tier (2023)

Convening parties by tier	Number of cases	%
Tier 1	4012	14.54%
Tier 2	10833	39.26%
Tier 3	10793	39.11%
Tier 4	1266	4.59%
Tier 5	316	1.15%
Tier 6	188	0.68%
Tier 0	188	0.68%
Total	**27596**	

Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

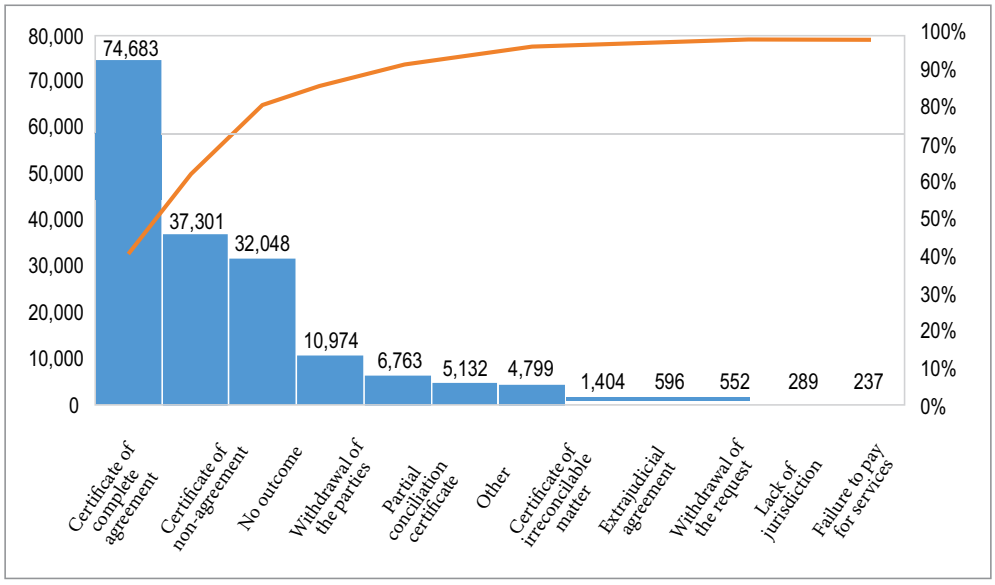
As is the case in the departments of Caquetá and Atlántico, the target audience for conciliation in Bogotá is members of the medium and low tiers. The socio-economic description of the people who want the service is related to the fact that the services are free and explains the extremely high number of conciliation hearing requests submitted, which must be channeled through justice houses and/or public officials with conciliation roles.

6.1.4. National perspective

- ***Cases filed and types of outcomes***

A total of 172,886 claims were filed nationally in 2023. Most of them ended in complete conciliations (42.7%), though the negative outcomes total was nearly as high (39.6%). This percentage can be broken down into certificates of non-agreement (21.3%) and failure to appear (18.3%).

Figure No. 24
Cases filed and types of outcomes (national) (2023)



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

Table 18
Cases filed and types of outcomes at the national level (2023)

Type of outcome	Number of cases	%
Complete conciliation certificate	74,683	42.7%
Partial conciliation certificate	5,132	2.9%
Certificate of irreconcilable matter	1,404	0.8%
Certificate of failure to appear	32,048	18.3%
Certificate of non-agreement	37,301	21.3%
Extrajudicial conciliation agreement	596	0.3%
Lack of jurisdiction	289	0.2%
Failure to pay for service	237	0.1%
Withdrawal of the parties	6,763	3.9%
Withdrawal of the request	552	0.3%
Other	4,799	2.7%
No outcome	10,974	6.3%
Total	**174,778**	

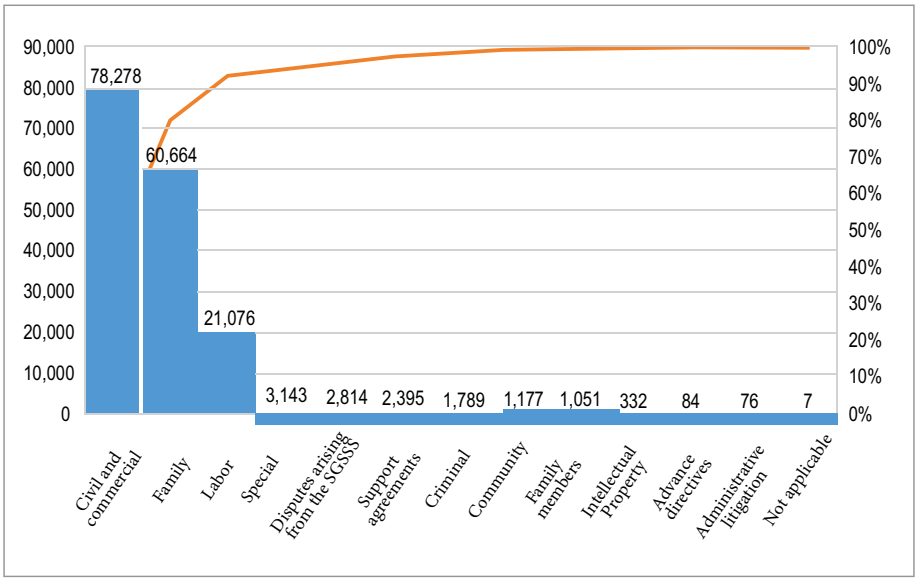
Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

It is clear that the most common outcome of a conciliation hearing is the conciliation agreement, whether complete (42.7%) or partial (2.9%). The latter percentage is higher than the figures for Bogotá D.C. and Caquetá, but lower than those of Atlántico. The least common outcomes were direct agreements and withdrawal of the request (0.3%), lack of jurisdiction (0.2%) and failure to pay for the requested conciliation service (0.1%).

- ***Areas of conciliation***

The majority of the conciliation cases were civil and commercial matters (45.3%), followed by family (35.1%) and labor (12.2%) matters.

Figure 25
Cases filed and types of outcomes at the national level (2023)



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

Table 19
Matters subject to conciliation at the national level (2023)

Areas of conciliation	Number of cases	%
Support agreements	2,395	1.4%
Civil and commercial	78,278	45.3%
Community	1,177	0.7%
Disputes derived from the public	2,814	1.6%
Contentious-administrative	76	0.0%
Advance directives	84	0.0%
Special	3,143	1.8%
Family	60,664	35.1%
Relatives	1,051	0.6%
Labor	21,076	12.2%
Not applicable	7	0.0%
Criminal	1,789	1.0%
Total	**172,886**	

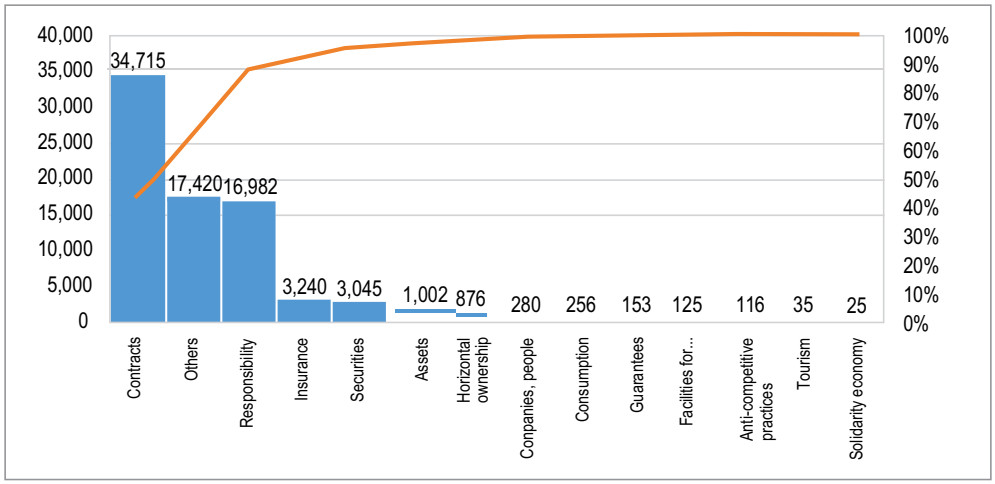
Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

The least common matters involve advance directives and contentious-administrative disputes, each of which represented less than 0% of the national total.

- ***Requests for topic-specific conciliation***

Most conciliation processes involved contracts (44.3%). This was followed by disputes categorized as "other" (22.3%) and those involving extracontractual liability (21.7%).

Figure 26
Conciliation requests at the national level (2023)



Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

Table 20
Conciliation requests at the national level (2023)

Areas of conciliation	Number of cases	%
Assets	1,002	1.3%
Anti-competitive behavior	116	0.1%
Consumer affairs	256	0.3%
Contracts	34,715	44.3%
Solidarity economy	25	0.0%
Business entity	125	0.2%
Guarantees	153	0.2%
Other	17,420	22.3%
Horizontal property	876	1.1%
Extracontractual liability	16,982	21.7%
Insurance	3,248	4.1%
Companies, legal entities	280	0.4%
Securities	3,045	3.9%
Tourism	35	0.0%
Total	78,278	

Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

- ***Outcome comparison table***

Table 21
Comparison of outcomes generated in the departments analyzed (2023)

	ATLÁNTICO	CAQUETÁ	BOGOTÁ D.C.	NATIONAL
Outcome	Agreement 58,54%	Agreement 34,15%	Agreement 32,03%	Agreement 42,7%
Area	Labor	Family	Civil and commercial	Civil and commercial
Topic	Contracts	Contracts	Contracts	Contracts
Socio-economic tier	2	1	2	Not applicable

Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

The table offering comparative information points to the following preliminary conclusions: (i) the most frequent outcome was signing agreements, though there was a substantial difference between private conciliation centers and hearings held in public contexts; (ii) the tool of conciliation was mainly used in areas linked to civil and commercial law, followed closely and with equally high percentages by family matters; and (iii) the most common issue mentioned when requesting conciliation hearings was the signing, execution, and termination of contracts, regardless of their nature.

6.1.5. Other key national data

- ***Conciliation areas by region***

Table 22
Matters subject to conciliation at the national level (2023)

REGION	SUPPORT AGREEMENTS	CIVIL AND COMM.	COMMUNITY	SOCIAL SECURITY SYSTEM	CONTENTIOUS-ADMIN.	ADVANCE DIRECTIVES	SPECIAL MATTERS	FAMILY	RELATIVES	LABOR	NOT APPLICABLE	CRIMINAL	INTELLECTUAL PROPERTY
CARIBE	2.7%	41.0%	2.7%	0.0%	0.7%	0.2%	2.8%	24.1%	1.4%	15.7%	0.0%	8.4%	0.3%
PACIFICA	2.7%	43.4%	4.8%	0.0%	2.5%	0.3%	1.9%	24.0%	3.0%	10.3%	0.0%	6.8%	0.2%
AMAZONIA	7.2%	34.1%	0.6%	0.0%	0.0%	0.0%	4.0%	24.4%	0.8%	28.4%	0.0%	0.3%	0.0%
ORINOQUIA	2.5%	46.2%	3.6%	0.0%	0.4%	0.0%	2.0%	35.8%	0.8%	4.0%	0.0%	4.8%	0.0%
ANDINA	2.9%	43.2%	5.2%	0.0%	0.3%	0.6%	3.7%	30.6%	2.5%	7.8%	0.0%	3.0%	0.2%
BOGOTÁ D.C.	1.3%	50.8%	2.6%	0.5%	2.0%	2.3%	4.8%	14.5%	2.0%	10.2%	0.3%	6.1%	2.6%
SAN ANDRÉS	11.1%	88.9%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Source: Developed by the authors using official information.

This table shows that, regardless of the region in which the conciliation proceedings are held, the most frequent topic addressed was civil and commercial disputes followed by family matters.

- ***Type of service by department***

The institutions that could provide conciliation services include municipalities, legal offices, financial system entities, notaries public, public agencies, prosecutor's offices, the Colombian Family Assets Institute (*Instituto Colombiano de Bienes Familiar,* ICBF), the municipal civil court, the Ministry of Social Protection or Ministry of Labor, non-profit entities, the civil or family judicial offices, the Superintendency of Notaries Public, and registries. The table below provides data disaggregated by department.

Table 23
Percentage of services by department (2023)

DEPARTMENT	ENTITIES
AMAZONIAN	Municipality -80% ICBF - 20%
ANTIOQUIA	Municipality -20.9% Legal offices -12.2% Non-profit organization - 23.9%
ARAUCA	Municipality - 28.6% Legal offices - 16.1% Non-profit organization - 39.3%
ATLÁNTICO	Legal offices - 26.4% Public entities - 23% Non-profit organization - 26.4%
BOGOTÁ D.C.	Legal offices - 23% Public entities - 29.3% Non-profit organization - 24.2%
BOLÍVAR	Municipality - 13.4% Legal offices - 29.1% Non-profit organization - 24.6%

DEPARTMENT	ENTITIES
BOYACÁ	Municipality - 27% Non-profit organization - 16% Legal representative - 23.7%
CALDAS	Municipality -26.9% Legal offices - 17.5% Superintendency of Notaries and Registry -17.5%
CAQUETÁ	Legal offices - 23.7% Public entities - 21.1% Non-profit organization - 23.7%
CASANARE	Municipality- 10.4% Legal offices - 10.4% Public entities - 31.2% Non-profit organization - 32.5%
CAUCA	Municipality - 15.2% Legal offices - 18.8% Public entities - 37.7%
CESAR	Legal offices - 30.4% Non-profit organization - 58.4%
CHOCÓ	Municipality - 9.5% Legal offices - 28.6% Public entities - 44.4%
CÓRDOBA	Legal offices - 32.2% Ministry of Labor - 16.7% Non-profit organization - 20%
CUNDINAMARCA	Municipality - 28.1% Public entities - 14.5% Non-profit organization - 28.6%
GUAINÍA	Ministry of Social Welfare - 16.7% Ministry of Labor - 83.3%
CUAVIARE	Municipality - 33.3% Superintendency of Notaries and Registry - 66.7%

DEPARTMENT	ENTITIES
HUILA	Municipality -30% Legal offices -19.3% Non-profit organization - 18.5%
LA GUAJIRA	Public entities -47.2% Labor Ministry -19.4% Non-profit organization -20.8%
MAGDALENA	Municipality - 17.1% Legal offices 23.8% Public entities -26.7% Non-profit organization -19%
META	Legal offices - 15.8% Public entities -22.8% Non-profit organization - 44.6%
NARIÑO	Municipality - 16.70% Public entities - 25.4% Non-profit organization - 24.2%
NTE DE SANTANDER	Legal office - 34.9% Public entities -19.1% Non-profit organization - 23.9%
PUTUMAYO	Municipality - 17.7% Non-profit organization - 22.6% Legal representative - 45.2%
QUINDÍO	Municipality - 33.3% Public entities - 18.4% Non-profit organization - 17.2%
RISARALDA	Public entities - 18.7% Non-profit organization - 23.6% Superintendency of Notaries and Registry - 17.6%
SAN ANDRÉS	Non-profit organization - 100%
SANTANDER	Legal office - 20.5% Non-profit organization - 18% Superintendency of Notaries and Registry - 17.9%

DEPARTMENT	ENTITIES
SUCRE	Legal office - 32.1% Non-profit organization - 42.9% Office of the Attorney General for Family
TOLMA	Municipality - 28.4% Legal offices - 23.2% Non-profit organization -21.6%
VALLE DEL CAUCA	Legal offices - 24.5% Public entities -12.6% Non-profit organization -38.4%

Source: Developed by the authors using official information.

The data presented show that: (i) a significant number of cases are concentrated in municipalities, legal offices, public entities, and non-profit entities; and (ii) entities like courts, attorney general's offices, and financial system entities are not attractive venues for conciliation.

6.2. Community justice

As we have noted throughout this publication, the information gathered shows that the paths to access to justice have been compromised by numerous factors. In the case of community justice, the violence present in the national territory has been particularly adverse, preventing and/or discouraging people with disputes from turning to available operators.

Even though community justice operates in certain scenarios and ways -using tools like community mediation and justice mechanisms unique to Colombia's multicultural communities-, tracking the socio-demographic characteristics of the users was not practical or feasible in the context of this project.

6.3. The judicial path

The process of information gathering on judicial system users posed serious difficulties due to: (i) strict policies for handling personal data in Colombia; (ii) the fear experienced by the individuals interviewed related to the new wave of violence in the country; and (ii) having eminently virtual spaces for holding judicial proceedings, which stands in the way of personal interaction in spaces such as municipal justice buildings.

As such, we do not present conclusive data regarding socio-demographic characteristics of judicial path users in Colombia. However, we present some relevant data on the operation of the judicial branch in Colombia below.

- ***Department of Atlántico***

In the Department of Atlántico, a total of 1,023,853 cases were filed between 2013 and 2022. The year with the highest number of cases filed was 2022, with 118,940. The number of cases closed during that same period was 863,253, and 2020 had the lowest number of cases closed (58,004) followed by 2016 (62,265). This comparison shows a filing rate that is higher than the closure rate (Superior Judiciary Council, 2023).

- ***Department of Caquetá***

In Caquetá, a total of 266,117 cases were filed between 2013 and 2022. The year with the highest number of cases filed was 2016 (40,450). A total of 231,864 cases were closed during that period. The year with the lowest number of cases closed was 2018 (15,417), followed by 2020 (19,698). The comparison shows a filing rate that exceeds the closure rate (Superior Judiciary Council, 2023).

- ***Bogotá D.C.***

A total of 338,006 actual filings was recorded in Bogotá between 2013 and 2022. The highest number of filings (707,632) was reported in 2015. The highest number of cases closed during that same period was 4,248,760. The years with the lowest number of cases closed were 2019 (with 232,569) and2020 (319,902 cases). As in the previous cases, the filing rate was higher than the closure rate (Superior Judiciary Council, 2023).

- ***National level***

A total of 24,947,305 cases were filed nationally between 2013 and 2022. The year with the highest number of cases filed was 2015 (3,152,339). Cases closed totaled 20,859,641 for the same period, and the year with the lowest number of cases closed was 2019 (1,149,659) followed by 2020 (1,521,088). The previous comparison shows a filing rate that is higher than the closure rate (Superior Judiciary Council, 2023).

Table 24
Conciliation requests (2023)

	ATLANTICO	CAQUETÁ	BOGOTÁ D.C.	NATIONAL LEVEL
CASED FILED	1.023.853	266.117	5.338.006	24.947.305
CASES	863.253	231.864	4.248.760	20.859.641
RATIO [31]	1.18 casos ingresados por cada salida	1.14 casos ingresados por cada salida	1.25 casos ingresados por cada salida	1.19 casos ingresados por cada salida

Source: Developed by the authors using data from the Conciliation, Arbitration, and Amicable Conciliation in Colombia Information System (*Sistema de Información de la conciliación, el arbitraje y la amigable conciliación de Colombia* -SICAAC).

31 The ratio was calculated by dividing the total number of cases filed by the number of cases closed, which implies that any result over 1 indicates the presence of judicial congestion.

7. BARRIERS IN PATHS OF ACCESS TO JUSTICE? DATA FOR UNDERSTANDING, INFORMATION FOR EXPLORING

Based on its socio-legal content, justice is more than just the satisfaction of legal interests. Rather, it is an ethical and moral principle that is handled by State institutions and the community, which exercise unique forms of justice within their spheres of influence.

This principle reflects the cultural systems of each society which -in the exercise of its (territorial and national) autonomy and through complex legal systems- questions them by trying to solve or respond to citizen demands "through justice." In this context, access to justice as a right and government obligation plays a fundamental role in the development of more egalitarian societies: without access, rights cannot be demanded or considered in the legal system.

Social justice and access to justice are relational concepts that comprise fundamental pillars for building just and equal societies. According to the report on access to justice written by Amadasi, E., & Salvia, A. (2019), impoverished and marginalized individuals have fewer opportunities to access justice due to a series of barriers such as a lack of economic resources and limited knowledge of and information about their rights or pathways to access. On the other hand, the authors state that limited access to justice services exacerbates social inequality. This is because: (i) people who cannot find a solution to issues that the justice system should resolve face negative economic consequences; and (ii) it stands in the way of or delays the opportunity to address and resolve structural social conflicts individually or collectively.

These structural problems in Colombian society are reflective of a complex system that has as its epicenter the country's social and armed conflict. The violence that characterizes that process despite ongoing efforts to promote peace and dialogue has shaped approaches to resolving common disputes. That situation (re)creates and exacerbates existing conditions of inequality (i.e. poverty or lack of opportunities to access land

and/or housing) and limits the development and power of government and community institutions to change them (i.e. lack of accountability, reports of corruption, and inefficiency in resolution methods).

According to the Secretariat of Transparency of the Presidency of the Republic of Colombia (2023), some 57,582 complaints were filed regarding harassment. Of these, 93.99% did not result in conviction, 89.7% have not resulted in arrest, and 77.15% are under investigation. The data gathered reveal several interesting elements: (i) the majority of the complaints that have not received a response or resulted in a conviction are filed in the poorest departments and those with active armed conflict[32]; and (ii) justice is applied effectively in just 6% of corruption cases.

In this context, strengthening paths to access to formal and community justice and giving them the same legal weight and importance in the eyes of State institutions seem like the best ways to begin to decrease the social inequality gaps manifested in the way that people can address and solve their disputes.

The sections that follow describe paths to access to justice as well as the main barriers to access or operativity perceived by justice system users and stakeholders. We define barriers to access as obstacles to accessing dispute resolution paths or paths to justice, while operativity obstacles are defined as impediments to the proper operation of the system. The analysis will not be merely descriptive. It also contains assessments and discussions based on the information gathering and validation processes conducted by the authors.

32 Vaupés, Guiviare, and Guainía, departments located in the Colombian Amazon region.

7.1. Gaps in ADR methods: Between what they are and what they could be

In all of the municipalities where information on ADR was gathered, the operators mentioned that they (generally) are perceived as an adequate tool for prompt administration of justice. However, for ADR operators, this is a relatively new path that the public should be made aware of so that people will ask to use it. This reveals the existence of lacks around the promotion of tools for accessing justice on the part of the Ministry of Justice and Law.[33]

In regard to the operativity of ADR methods, the authors highlight the following: (i) their speed and promptness; (ii) the opportunity to address disputes using a specialized approach (i.e. family precincts and police stations); and (iii) its importance as a complementary tool to the judicial path that has positive effects such as decongestion of judicial offices,[34] dejudicialization of disputes that arise in daily life,[35] and, in general, a decrease in conflicts.[36]

The interview respondents from Florencia (Caquetá) state that most disputes that come before the conciliation in law center are family disputes over child support, custody, and the personal care of minors.

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33 Although no official data on communication and educational actions developed by the Ministry of Justice and Law are available, the overall perception of ADR operators (and even judicial operators in regard to judicial conciliation) is that the public needs more information about the existence of ADR methods.

34 While relieving judicial office congestion is one outcome of the use of ADR methods, it cannot be interpreted as one of its goals. It would be erroneous and reductionist to propose that ADR methods only exist to avoid or alleviate judicial congestion when its advantages in terms of the construction of peace, repair of the social fabric, and restorative justice are undeniable.

35 Dejudicialization is a desirable phenomenon related to the use of ADR methods and their existence in justice ecosystems, referring to the possibility that certain cases -based on their nature, parties, dynamics, or unique circumstances- do not reach judicial offices or are resolved on a priority basis at other levels.

36 Decreasing the prevalence of social disputes through ADR methods tends to be one of the most critical aspects of their use. People generally believe that the level of conflict in a certain area will decrease through the use of dispute resolution methods. However, this is not (necessarily) true or linear because the ADR methods that they are seeking out involve the parties in conflict reaching an understanding and an agreement, which decreases violent manifestations of the dispute and not conflict as a complex social phenomenon that is inevitable in life in society.

Matters related to civil lawand coexistence are mainly addressed through the judicial path. Perception or observation mainly indicates that this preference and decision on the part of users would not be intentional or deliberate. Rather, it is due to a lack of knowledge of the wide range of possibilities that ADR methods offer for said matters.

In the municipality of Barranquilla (Atlántico), we determined that conflicts do not tend to be resolved through peaceful agreements. Conciliation, whether judicial or extra-judicial, does not tend to be used by the public. According to the information that we gathered from operators, it is a cultural issue.[37] The municipality itself observed that child support disputes tend to be resolved through conciliation at the judicial offices.

The authors also have identified a decrease in the number of requests for conciliation hearings in private centers, which is associated with the economic and political uncertainty that the country is facing. This was recognized by the stakeholders interviewed at the Universidad del Norte Legal Clinic's Conciliation Center.

Another interesting finding from various municipalities in regard to legal conciliation is that police agents have a higher rate of success when providing this service. This may be linked to the fact that the policy agency has the power to proceed with the corresponding disciplinary proceedings if the hearing fails (Article 206, Law No. 1801 of 2016). This gives the parties an incentive to reach an agreement and discourages the parties from engaging in obstructive behavior or acting in bad faith.

However, it is important to note that the person who presides over the conciliation hearing is also responsible for ruling on the applicable administrative sanctions. One could argue that this undermines the impartiality of the public official and creates a crisis for conciliation as a space for reaching agreements by introducing a problematic incentive for the exercise of free will, which is the foundation of ADR methods -i.e. reaching agreements out of fear of administrative sanctions.

37 37 The use of conciliation is even more limited in matters related to inheritances or to requests for full payment in cases involving breach of contract whether or not a complaint was filed prior to the conciliation meeting.

We have found that justice houses (casas de justicia) are used in the municipality of Barranquilla (Atlántico) for conciliation in equity. The approach is mainly used in family disputes related to child support; civil disputes related to non-payment of rent; neighborhood disputes such as gossip, improper use of water, and noise pollution; fights among intoxicated individuals; and infidelity.[38] We were unable to gather data regarding this tool in the city of Florence (Caquetá) because we could not establish contact with local operators. The same was true in Pereira (Risaralda) and Bojayá (Chocó). This does not mean that such services do not exist, but it does speak to the difficulties that everyday citizens have accessing this mechanism.[39]

The main barriers perceived with regard to access to ADR and the operativity of these tools are:

1) Low national coverage of private conciliation centers. Estimates suggest that these exist in a very low percentage of the national territory.[40] In this same sense, the provision of the service outside of populated areas, key municipalities, and departmental capitals presents a wide range of geographic barriers. Rural and intercultural contexts -like the Department of Casanare[41]- face additional difficulties:

38 With regard to the analysis of the operativity of conciliation in equity in the municipality of Barranquilla (Atlántico), the contribution of Conciliator in Equity Ricardo Romo, who has worked in the Barrio La Paz Justice House and has nearly 18 years of experience, was essential.

39 As we stated previously, one of the main issues with the operativity of ADR methods in Colombia is the lack of demand for them on the part of the general population. This is the result of a lack of familiarity with this approach and the absence of a communication plan that could truly reach members of the public in an effective and efficient manner, particularly in rural municipalities and areas.

40 SICAAC members observed that, as of the writing of this report, there are 494 conciliation centers operating normally in Colombia. Of these, 99 are located in Bogotá, 39 in Medellín (Antioquia), 35 in Cali (Valle del Cauca), 22 in Barranquilla (Atlántico), and 14 in Bucaramanga (Santander). In other words, 209 conciliation centers or 42.3% of the supply nationally are concentrated in five capital cities. On the other hand, there are no conciliation centers in municipalities with Development Programs with a Territorial Approach, such as Miranda (Cauca), Turbo (El Urabá Antioqueña) and Istminae (Chocó).

41 In regard to this issue, the Director of the Casanare Chamber of Commerce's Conciliation Center, Dr. Sonia Arenas, mentions the significant difficulties that arise in regard to communication. There is an erroneous perception that a single piece of communication can be shared on various communications channels and to many target audiences. In fact, promoting a service to a hydrocarbon sector company, financial entity or parents living in a rural area require different strategies. In addition, countries like Colombia also present multiple linguistic expressions.

the linguistic barriers and communication expressions to make the figure known to the entire population.

In remote areas located far from the provision of conciliation in law services, areas where formal justice is also not available, the vacuum is filled by community justice. In particular, the authors found that community mediation tends to be offered through conciliation and coexistence commissions that are part of Municipal Action Boards or peace judges.[42]

2) Following the passage of Law No. 220, conciliation in law and equity providers have found growing bureaucracy and increased regulation of the tool, at times through the legislative process. In addition, conciliators in law are not legally allowed to hear matters such as labor law, contentious-administrative law, or the lack of the requirement of processability in executive proceedings, key matters for the provision of this service in the country.

3) There is limited knowledge of ADR in general and conciliation in law or in equity in particular. People have practically no knowledge of mediation and its different manifestations. This makes it much more difficult to promote the use of these approaches.

4) Economic limitations of the parties to the dispute. There is a general perception that the provision of conciliation in law by private centers is very costly despite the fact that the rates are regulated.[43] This was confirmed by the leadership of those centers, who noted that it can be difficult to access the tool because of the fixed costs related to them and the income levels of potential users.

42 This is another clear example of the thin line that divides ADR methods from community justice. In many situations, community justice -as a concept- takes on the form of ADR for its materialization.

43 Decree No. 1069 of 2015 -Regulations for the Justice Sector and Law- modified by Decree No. 1885 of 2021.

Another economic barrier is the asymmetry to access to capital, which makes it difficult or impossible to reach equal agreements between the parties. For example, the tenant or female head of a household that is looking for a child support amount to be set may be compelled to accept an agreement that is disadvantageous simply because she is in an unequal power dynamic in the negotiations.

In this sense, the interview respondents mention that economic disparity influences the capacity to negotiate, strengthening existing power relations between the parties around the dependence of some members of family and society. This favors unfair or unequal agreements in which the more vulnerable party is forced to accept the demands of the more powerful person or entity, perpetuating structural factors of inequality. In this sense, ADR methods should consider the economic factor and power of the parties to the dispute in order to achieve horizontal interactions that favor agreements that are beneficial to all involved.

Patrimonial obstacles have also denaturalized the community work of public conciliation centers. The centers' social function was to ensure free access to justice for members of lower socio-economic tiers. However, in practice, many people who are not part of this target audience request free services, clogging the public system and impacting those who cannot pay the fees charged by private conciliation centers.

5) In the municipalities in which the data was gathered, estimated wait times for conciliation hearings in free public conciliation centers can be up to six (6) months and is never shorter than three (3) weeks. This constitutes a violation of the rights in dispute, particularly in matters involving issues such as setting child support of disputes over rental contracts where support is not paid or the rental agreement remains in place while the parties wait for the hearing to be held.

6) There are digital obstacles to ADR method access for Colombians, especially in the case of private conciliation centers, which digitized their processes during the COVID-19 pandemic. This digital-cultural gap is exponentially more serious given that some centers do not offer non-digital options for receiving cases.[44]

7) Conciliation in law operators report low investment in physical and functional infrastructure for the appropriate use of ADR methods in the public sector. This is particularly important to consider in the country's rural areas.[45]

8) There is a cultural barrier linked to the way that people think about and address disputes. The interview respondents insisted that "people like punishment,"[46] and everyone wants to litigate. This is exacerbated by the country's highly litigious culture, which focuses on technical legal knowledge. Judicial proceedings are seen as more beneficial to people's own professional and economic interests than the use of other mechanisms.[47]

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44 As Dr. Moisés Daniel Raad Char, the advisor for the family, civil, and commercial proceedings area at Universidad del Norte stated, digital proceedings that are not appropriate for all users and their forced implementation constitutes a barrier to access to justice administration for certain populations.

45 That situation was mentioned by various public servants with conciliatory roles, as well as judicial officials in the case of judicial conciliation in law. These include the clerk with the First Civil Municipal Court of Barranquilla, the clerk of the Seventh Civil Municipal Court of Barranquilla, the social worker with the Second Family Court of Barranquilla, and the leadership of the Universidad del Norte Conciliation and Arbitration Center (in Barranquilla) -who emphasized the difficulties people with reduced mobility or other limitations face in terms of access to justice, the coordinators of the Florencia Justice House, and conciliators in law from private centers in that city.

46 The great majority of ADR operators interviewed noted this cultural barrier, especially those who focus on family matters.

47 This cultural barrier was identified through the JSCA-IDRC Canada (2023) report "Vías de acceso a la administración de justicia en asuntos civiles y de familia." The authors stated that attorneys prefer judicial proceedings for economic reasons, which impacts the inclination towards conciliation. [***"los abogados prefieren procesos judiciales por razones económicas, afectando la inclinación hacia la conciliación."***] (Our translation.)

9) Cognitive limitations and biases. There is a lack of information on ADR in Conciliation in Law and in Equity certificate courses and university degree programs. Many

Interview respondents said that law students generally do not receive sufficient analytical or practical tools, which leads to improper legal advising for future users and, even, lacks in the drafting of conciliation agreements (JSCA-IDRC: 2023).

Along these same lines, ADR operators mentioned lacks in existing specializations. Specifically, they talked about aspects related to soft skills for conciliation and mediation, such as reading the context and identifying the real needs and interests of the parties to the dispute.

In closing, we believe it important to revisit the conclusions extracted through the information validation process.[48]

7.1.1. Regarding the democratization of access to justice

First, we must understand that -at the technical level- ADR methods are the governmental approach to democratizing access to justice. However, there are two key issues to address. The first is related to existing barriers. The promise of democratization cannot be delivered when multiple obstacles are posed by the main agent of public policy. The second is linked to the reason for being of ADR methods. Based on their nature and operation, the administration of these mechanisms goes beyond strictly legal issues. This led us to ask ourselves: How should these instruments be conceived of, articulated, and managed if they are to be truly democratic?

48 The process of validating the information gathered for ADR was conducted through: (i) in-depth interviews with Dr. Alejandra Tarazona Zambrano, an attorney specializing in ADR and public-private partnerships with the USAID Inclusive Justice Program. Dr. Tarazona has been a Constitutional Court official and the director of violence prevention in Bogotá; and (ii) a focus group that included various key stakeholders who are recognized in Colombia for their knowledge of ADR methods.

This question is particularly important in Colombia given that the practices reveal the existence of small power monopolies within the justice administration apparatus. These monopolies interpret legal regulations and public policy in a discretionary way and arbitrary, which stands in the way of processes required to democratize ADR methods. These include the diverse channels available or geographic expansion of the same.

Beyond theoretical or dogmatic discussions, the efficiency of ADR methods will depend on each conciliation or mediation operator, the dispute itself, and the context in which they operate. In other words, ADR methods are not efficient per se, but are conditioned by contextual, institutional, and human factors.[49]

Finally, in terms of democratization, it is important to consider the implementation of innovative national ADR strategies. One example of this is the ADR toolbox alluded to in this document. In addition, we should consider the possibility that ADR operators have the authority to make equal and balance the situation of the parties to the dispute when they perceive an asymmetry that could impact the agreement process.

7.1.2. R*egarding the approach to family disputes*

ADR methods are more beneficial processing tools than the judicial system in family disputes. This type of issue tends to be singularly painful for the parties to the dispute. Emotion plays a key role and the rights of the parties change more easily.[50]

49 That need to have a specialized profile to work in ADR methods was not only identified by Dr. Tarazona Zambrano. It was also mentioned in the JSCA-IDRC Canada report (2023). That document states that ADR operators must have a vocation and develop skills such as empathy and effective communication.

50 This premise expressed by both Dr. Tarazona Zambrano and many ADR operators had already been addressed in other studies. Scholars have found that ADR in Colombia have been shown to be highly effective in solving family disputes, particularly those focusing on child support and custody, with agreement rates of over 60% and 70%, respectively ["muestran una alta efectividad en resolver conflictos familiares, especialmente en materias de alimentos y custodia de menores, con tasas de acuerdo superiores al 60% y 70% respectivamente" (JSCA-IDRC Canada: 2023]. (Our translation.)

In that context, a rigid decision like that of a judge in a judicial office may: (i) be counterproductive to the strictly legal interests of the family as an existing and distinctive system; and (ii) create possible friction between the parties because of the winner/loser approach or a similar one in said contexts, which does not occur with ADR methods. In ADR, the decisions are made by the parties jointly and on the basis of the needs of those parties and any children or other members of the family system.

Focus group attendees noted the need to understand the various legal components at play in family disputes, such as antagonistic narrations that are offered, the emotional states of the parties or the uncertainty of the parties regarding the future. Those aspects may be remedied by ADR operators through the proper management of the conciliation hearing or mediation meeting.[51]

Along these lines, it is important to note that -due to a lack of training, lack of knowledge, or bad faith- operators may take on the role of judges, ignoring the scope, form, and material of ADR methods, denaturalizing the figure and creating harm to the parties to the dispute.

This is particularly true because family disputes disproportionately impact groups that have traditionally faced discrimination, such as women, members of LGBTQ+ communities, and children and teens. It makes it even more important to monitor and eliminate operational barriers posed by poor practices deployed by ADR operators.

Understanding the dispute implies the (institutional-personal) capacity to take in its complex historical materiality order to adequately manage the situation. In many cases, using justice measures in administrative judicial offices does not resolve the family dispute even though a right can "begrudgingly" be protected.

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51 During the focus group, Dr. Martha Eliana Martínez Espinosa (Conciliator in Law, Narrative Mediator, former Director of the Conciliation in Law Area and Projects Area of the Bogotá Chamber of Commerce Conciliation and Arbitration Center) mentioned the importance of the adequate use of tools to address certain types of disputes. For example, the tools and techniques used in narrative mediation can be applied to family disputes because the mediation approach allows for the understanding of the parties' stories and sees the agreement reached by the parties as an organic result borne of empathy and understanding. Furthermore, mediation is not limited to a simple transaction focused on needs and interests, as may occur in other models.

7.1.3. Regarding the approach to civil disputes

In general, the observations offered regarding the benefits of ADR in family disputes can be applied to housing disputes (i.e. flexibility, ability to manage the parties' emotions, the role of the ADR operator). However, this presents some distinctive notes that we believe important to highlight:

1) ADR methods allow meetings to be held in situ to understand and address housing or coexistence disputes, which are particularly important in rural areas where the parties discuss situations such as moving a fence, the need for an easement, or use of a space by third parties.

2) If an ADR operator fails to successfully intervene, dispute management can be offered through the citizen agency as a party to the case and extension of community justice. As such, the judicial path is not the only available option.

The focus group participants stated that they identified a substantial difference between family and civil disputes in terms of the approach to them using ADR. Both report high levels of emotion and impacts on the most significant interests of the person.

7.1.4. Considerations based on the gender and diversity approach

Gender roles impact women's ability to access justice in many different ways. The interviews conducted showed that many people continue to believe that women should (by nature) play the role of the caregiver and that men should be the providers. This directly impacts the low level of economic autonomy that women enjoy when presenting their interests in dialogue and negotiation spaces like conciliation and mediation.

Gender roles also create disputes within families when women decide -through their behavior- to question the mandates assigned to them. This can give way to disputes in which men believe that women

are not meeting the responsibilities related to their role within the family, ignoring the fact that this is a socially and culturally constructed expectation.

Another element identified in the interviews conducted with ADR stakeholders is the abandonment of older adults who have no pension or income of their own. In these contexts, older adults are immersed in a situation of economic dependence on their families or public institutions. This tends to generate intrafamily tensions and economic disputes that make it difficult to represent the interests of the person in alternative dispute resolution contexts. This may have emotional and psychological effects on the mental health of older adults due to social exclusion, the risk of being impoverished, exclusion, and abuse.

Individuals with disabilities may also require a wide range of measures to guarantee their social inclusion. These range from physical adaptations to the provision of communication and access to information mechanisms. Some conciliators lack the training and sensitivity necessary to adequately identify and address these needs. This may lead to the exclusion of individuals with disabilities from conciliation processes that have fundamental implications for them. This perpetuate inequities and stands in the way of dispute resolution. Although ADR methods can be transformative, truly incorporating a diversity approach in this area requires greater efforts.

Finally, limited access to technological devices, deficient Internet service, digital illiteracy, and a lack of trust in technology are obstacles that enhance the digital divide in rural areas and the exclusion of the communities who live in them. Lack of technology prevents the availability of information that is key to awareness of and the full exercise of their rights. This is especially important to consider with older adults and rural populations with limited access to digital media.

7.2. Community justice: Is it effective? Violence, centralism, and free labor

The first territorial approach to community justice in the context of the information gathering process took place in the municipality of Florencia (Caquetá). The authors interviewed members and leaders of the conciliation and coexistence commission of the Municipal Action Board in the El Mirador neighborhood. They told us that community justice -defined as actions that can be taken at the various levels of the municipal action movement in Colombia, and especially through the Municipal Action Boards that comprise their base and the Community Housing Boards- is very broad in its approach to and resolution of disputes.

However, its effectivity is limited in practice. The interview respondents stated that this is due to various factors, including:

(i) The lack of information of members of Municipal Action Boards and their Coexistence and Conciliation Commissions[52] in hearing and resolving community and coexistence-related disputes;

(ii) The fact that a high number of appointments within Municipal Action Boards are not related to factors based on the adequacy or genuine interest of the individuals appointed but favor political quotas. These include the Vice Presidents and members of Coexistence and Conciliation Commissions;

(iii) The lack of communication and awareness actions, which are required to raise awareness about the opportunity to address and resolve disputes through municipal movement entities; and

52 It is important to recall that Coexistence and Conciliation Commissions at various levels of the Colombian municipal movement are spaces for addressing internal disputes. Under Article 48 of Law 2166 of 2021, the Coexistence and Conciliation Commission is an entity responsible for ensuring that affiliates manage their differences with the help of a neutral third party called a conciliator. The commission may propose peaceful dispute resolution, healthy coexistence, strengthening and just order of the community that is part of the municipal action entity. ["la comisión de convivencia y conciliación constituye el órgano encargado de garantizar que los afiliados gestionen sus diferencias, con la ayuda de un tercero neutral denominado conciliador. La comisión propenderá a la resolución pacífica de conflictos, la sana convivencia, el fortalecimiento y el orden justo de la comunidad que hace parte del organismo de acción comunal".] (Our translation.) We should also mention that this commission should exist in all of the municipal action entities. It should include an uneven number of members (at least three) (Article 49, Law No. 2166 of 2021).

(iv) The resurgence of violence, which discourages the parties from engaging in peaceful dispute resolution due to the unlawful occupation of roadways and fear of being victimized.

In this section, it is important to mention the phenomenon that has developed in Colombia around what are called Municipal Movement Conciliation and Coexistence Commissions. These bodies are regulated by Law No. 2166 (Articles 48-59), which establishes that its members earn a conciliation degree and have the authority to hear disputes filed with the organization which involve the Municipal Movement at any level.

Law No. 2.220 of 2022 (Articles 84 and 85) complements the aforementioned system, making it possible for commission members to serve as conciliators in equity if they meet the associated legal requirements. This means that the commissions have no real impact on hearing and resolving community disputes.

Connected to this, and as stated in the law, it is noteworthy that commission conciliators are not necessarily trained in dispute resolution management by a public or private entity prior to or following their appointment. Furthermore, their work is limited to disputes internal to the Municipal Movement (i.e. organizational conflicts, challenge and disciplinary processes, or serving as conciliators in equity). This relativizes the effectivity of the social impact of the institution in terms of access to justice.

The members of the Florencia Municipal Movement (Caquetá) who were interviewed mentioned that people prefer for issues of coexistence to be solved by the National Police through police mediation because: (i) the Municipal Action Boards are not used as dispute resolution spaces; and (ii) community paths are mainly secondary. The respondents also mentioned the fear that Municipal Action Board member intervention could make enemies of their neighbors or that they would be targeted by armed groups due to the resurgence of para-state social violence.[53]

53 The presence of armed groups operating outside of the law and de facto justice administration by those same entities parallel to the law and the State were mentioned by community justice, judiciary, and ADR operators and members.

It is important to underscore this because one of the main benefits that tends to be touted in regard to community justice and ADR in markedly violent environments with the presence of armed groups that operate outside of the law is the possibility that their implementation will empower community members to solve their own disputes, thereby reducing the groups' influence.

In regard to police mediation, we interviewed the assistant director of police mediation at the Florencia Justice House (Caquetá). He mentioned that he is increasingly asked to be present for community dispute interventions. He stated that this is positive if one considers as variables the reduction of violent acts in society and lower caseloads for administrative justice. However, he said that it is negative in terms of its overall functionality: it must handle police mediation tasks in the municipality and other tasks within the organization without additional resources being provided for the service.

With regard to community justice, the interview participants from the city of Barranquilla (Atlántico)[54] stated that the main disputes that arise at the level of coexistence -which they have learned about through the neighborhoods' Municipal Action Boards- are family disputes that structurally involve intrafamily and gender-based violence; abandonment of the family home; gang activity; drug use; abandonment of older adults; and disorderly conduct. The respondents note that the latter includes pet waste removal; littering; use of public spaces for private parties; and prostitution.

They also note that the Colombian Municipal Movement could have a significant impact on the community and how its problems are solved. However, the tool is ineffective for multiple reasons. For example, -as was the case in Florencia- Conciliation and Coexistence Commission conciliators are perceived of as would-be justice operators who lack legal education and training.

54 These included Pablo Areta Manriques (community mediator and Conciliator in Rights); César Hernández Otero (member of the Los Laureles Municipal Action Board, the Southeast Barranquilla Municipal Association, and the Federation of Barranquilla; and conciliator on the Colombian National Municipal Movement Confederation's Conciliation and Coexistence Commission); and Patricia Peña Ruiz (President of the Departmental Federation of Municipal Action Boards of Barranquilla and public school teacher in the same city).

The Municipal Action Board member interviews conducted for other jurisdictions[55] suggest that the legal structure is lacking in terms of the creation and operation of conciliation and coexistence commissions. The options for addressing this issue include: (i) changing the rule so that conciliators from other commissions have the same roles as conciliators in law as public servants; or (ii) given that mediation is not regulated in Colombia, conciliators should be trained as community mediators in skills and specialized techniques for addressing municipal and neighborhood disputes.[56]

Respondents who commented on community justice in Pereira (Risaralda) observed that it does not operate in an optimal manner and that the public is not aware of available channels for access. They note that public officials are unfamiliar with the technique and material aspects of its operation. As such, residents prefer for the Municipal Action Board president or mayor to intervene in disputes. This underscores the lack of empowerment of community justice operators in the municipality.

For their part, Quintana Moreno and Bru García -who live in eminently rural municipalities- mentioned the difficulties that community justice operators face in their work as community leaders because of the constant intervention of armed groups. This is similar to the aforementioned situation of Florencia (Caquetá).

García also states that the roles of conciliators in equity and members of the municipal moment are completely divided. "You don't just wake up a member of the coexistence commission one day and conciliator in equity another." This statement reinforces the thesis presented above that community justice and ADR methods are separated by a very thin and, in some cases, non-existent line.

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55 They include María Isabel Gutiérrez -a member of the Barrio La Palmilla Municipal Action Board, President of the Pereira (Risalda) Municipal Action Board Association, and Executive Secretary of the Colombian Municipal Confederation-; Edwin Enrique Quintana Moreno, President of the El Diamante en Tierralta (Córdoba) Municipal Action Board; and Waldyr Bru García, President of the Tiempo en Montelíbano (Córdoba) Neighborhood Municipal Action Board, member of the Córdoba Departmental Federation Conciliation and Coexistence Commission, and Conciliator in Equity.

56 The experience of implementing the ADR Toolbox, which was handled by the Bogotá, Cali, and Medellín Chambers of Commerce Temporary Union and the USAID Inclusive Justice Program and executed between October and December 2023, was similar. One hundred members of the Colombian Municipal Movement were trained in the regions of Urabá Antioqueño, Montes de María, Córdoba, Chocó, Pacífico Nariñense, Putumayo, Cauca, and Valle del Cauca, among others.

One of the interview respondents[57] said that one of the most efficient ways to democratize access to justice in a country like Colombia is through community justice. They specifically referred to the Municipal Movement because it has been shown to have the capacity to: (i) reach areas that the State and its formal paths have not reached; and (ii) offer spaces for dialogue and the construction of social relationships aimed at achieving a lasting and stable peace.

The main barriers perceived with regard to community justice in terms of access and operativity are:

1) A lack of a sense of belonging of community members for the construction of justice and peace as an immaterial place of collective interest.

2) The resurgence of violence in the departments of Caquetá and Córdoba and other parts of the country. This intimidates community leaders who intervene in social matters due to the fear of reprisals perpetrated by armed groups acting outside of the law.

3) A lack of training in skills or techniques for addressing and resolving disputes for Municipal Movement members, especially municipal and departmental Conciliation and Coexistence Commission conciliators. This affects the quality of service.

   In macro terms, the lack of training also extends to the population in general. As the authors of the JSCA-IDRC Canada (2023) report wrote, "Rural and Afro-descendant women present low levels of education, with a high percentage of them completing only 0 to 5 years of schooling. This gap impacts their understanding of and access to ordinary justice, highlighting the importance of oral mediation and community justice.

57 Jaime Gutiérrez Ospina, Executive Director of the Colombian Municipal Movement Confederation, human rights defender, member of the National Council for Peace, and Peace Judge for the municipality of Dosquebradas (Risaralda).

[las mujeres rurales y afrodescendientes presentan bajos niveles de escolaridad, con un alto porcentaje alcanzando solo entre 0 a 5 años de educación. Esta brecha afecta su comprensión y acceso a la justicia ordinaria, resaltando la importancia de la mediación oral y la justicia comunitaria.)"] (Our translation) This negatively impacts access to justice via real and efficient channels as well as the implementation and connection between negotiation processes.

4) The absence of community justice approaches that allow certain populations to access justice.

5) Leaders who reach important positions within structures like the Colombian Municipal Movement and/or the Municipal Action Boards lack technical and specialized training in conflict management.

6) There is a lack of trust in community leaders, which is closely linked to the absence of communication initiatives to disseminate and raise awareness of the scope of their duties.

7) The existence of excessive institutional centralism in Colombia that limits the operativity of community justice. The popular movement is seen as a threat given that -according to the interview participants- it has nearly 17 million members nationwide.

8) Lack of recognition of and compensation for community justice operators by the Colombian government. The work that they do continues to be understood as community work that is essentially free. Many fail to recognize that they are doing work that the State should perform.

In conclusion, we believe that it is important to summarize the conclusions extracted from the information validation process.[58]

58 58 The information validation process for the community justice path included an in-depth interview conducted with Dr. Juan Diego Manrique Osuna, a practicing attorney specializing in land rights, dispute resolution consultant focusing on land ownership and use and dispute resolution methods, and human rights leader of the Tayrona people at the national level. We also conducted a focus group that featured the participation of several important stakeholders known in Colombia for their knowledge in the field of community justice.

7.2.1. Regarding the contribution of this approach in terms of access to justice

Community justice allows rural communities to manage their disputes autonomously, challenging the paradigm of State intervention and proposing a renewed approach to dispute resolution. This change in perspective not only redefines access to justice, but also strengthens the power of communities by changing the rules of justice management and administration and giving them more power over their own issues.

In that sense, Colombian community justice emerges as an alternative to the formal legal system, allowing communities to address their disputes without depending exclusively on government intervention. This community empowerment -particularly important in rural areas where the presence of the State may be limited- encourages self-determination and self-management, displacing the traditional model in which the parties to disputes were mere receptors of external decisions.

7.2.2. Regarding the levels of community justice

Community justice operates on various levels on a spectrum that includes the validation of ordinary justice and the adoption of measures that could go against the law. However, the distinction between community justice and official justice is not clear. This leads to questions regarding the legitimacy of the former and its position vis-a-vis the national legal system. This is particularly notable in legal systems that are recognized and operate parallel to the official legal system, as is the case of Indigenous advocacy autonomy and community councils developed by Afro-descendant populations, both of which have their own legal systems.

This wide range of levels illustrates the complexity inherent to community justice and how it can be located on a continuum between socially accepted practices and formal legal regulations. Community justice is based on principles rooted in local traditions and values that are not codified in formal laws. This is a fundamental distinction because it stands in contrast to ordinary justice, whose foundations and suppositions rest on established legal regulations.

The implementation and expansion of this intercultural approach to community justice, though enriching, pose significant challenges. This is particularly true in a country as diverse as Colombia, where: (i) dispossessed communities have multiple interpretations of and approaches to justice; and (ii) the adaptation of cultural values and local traditions becomes a complex and multifaceted process. These challenges require a careful and sensitive approach that ensures that community justice can be developed effectively and generate benefits for all of the parties involved.

7.2.3. Regarding participating community stakeholders

There are no homogeneous communities in Colombia. Each of them has a wide range of unique symbols, traditions, and ways of organizing. This shapes the pool of stakeholders who intervene in community processes.

Based on our experience training local justice operators, we have found that the most impactful and most visible stakeholders who use the collaborative dispute resolution approach are social leaders. These social leaderships are not limited to merely political expressions. Rather, their intervention is generated in response to cultural, historical, and situated dynamics.

For example, in the Indigenous communities of the Sierra Nevada de Santa Marta, spiritual leaders resolve most family or civil disputes in each settlement. This aspect of community justice is a viable option for communities who are unfamiliar with legal language. They also tend to rule out the possibility of engaging with the formal legal system because it is detached from their unique ethno-territorial identity.

7.2.4. Regarding the approach to family disputes

Community justice stands out because of its capacity to identify innovative solutions to family disputes, adapting to the specific needs of each community. This flexibility allows the parties involved to recover their autonomy and actively participate in the search for solutions, thus promoting healing and reconciliation processes.

However, it is important to recognize that there is a risk of some agreements being unjust or painful, which is relativized in terms of arguments based on the benefits reported. In this way, agreements may be socially accepted due to the significant advantages that they contribute at the community level even though the dispute might have been handled differently in official contexts. This applies to some gender-based violence cases.

This capacity of community justice to address family disputes in a sensitive and contextualized way underscores its importance in the promotion of social cohesion and the wellbeing of local communities. Furthermore, its focus on the active participation of the parties helps to build community bonds and promote a sense of shared responsibility in dispute resolution.

7.2.5. Regarding the approach to civil disputes

Community justice emerges as a key resource in housing and land ownership, especially in areas where the presence and efficacy of the State has been compromised (i.e. rural areas or marginalized communities). These conflicts may emerge for several reasons, such as disputes over land ownership, trespassing or issues related to housing. In this context, community justice offers a valuable alternative to address these disputes in a localized and contextualized way.

It is important to note that the application of community justice is not limited to local established populations. Rather, it also extends to housing disputes related to migrants. Due to their migration status and limited opportunities to address barriers to access to traditional legal systems, migrants can benefit significantly from community justice and its flexibility when it comes to addressing disputes. By offering a space in which the needs and concerns specific to migrants are recognized, community justice can play a crucial role in housing and land ownership dispute resolution. This is key in Colombia, where there has been a significant increase in migration in recent years. This situation is particularly acute in areas like Santander, the Colombian Caribbean, Urubá Antioqueño, and southern Colombia, and especially in the cities of Cali and Bogotá.

In this sense, community justice constitutes a path to addressing housing and land ownership disputes in areas in which the State does not work efficiently. It also serves as an inclusive and sensitive channel for solving disputes related to migrant coexistence, promoting equity and social justice in various community contexts.

There is no question that the exploration of community justice reveals a dynamic and adaptable system that plays a key role in dispute resolution in various social and geographic contexts. From family dispute management to the resolution of disputes related to land ownership and housing, community justice is a valuable option on its own and when the formal legal system may not be accessible or adequate. Its capacity to adapt to the specific needs of local communities and focus on active participation of the parties to a case are noteworthy aspects that show its importance in the search for equity and social justice.

However, this valuable contribution is not free of challenges. The lack of clarity in regard to community justice and the national legal system poses questions about the approach's legitimacy and capacity to guarantee adequate protection of individual rights. In that context, improved coordination between the two is presented as an urgent need to facilitate the equitable application of the law and rights in all contexts.

In short, community justice is a vital component of Colombia's legal and social context, offering a unique perspective that recognizes and values cultural diversity and local traditions. Its strength lies in its capacity to adapt to communities' changing challenges and needs, promoting social cohesion and contributing to the construction of a more just and equitable society. However, in order for this contribution to be complete, existing challenges must be addressed and efforts must be made to improve integration and coordination between community justice and the formal legal system.

7.2.6. Considerations based on gender and diversity approaches

From the community sector, it is necessary to mention that there is a cultural belief that gender-based violence is a private matter that should not be discussed publicly. This idea constitutes an obstacle to

adequately preventing and addressing the issue given that it produces a space that allows aggressors to continue to have an invisible hold on their victims, who remain silent and tolerate the abuse in order to avoid social stigma. Furthermore, when people think that such situations are private matters, it is hard to understand the phenomenon as a one that requires a structural and collective response that everyone can facilitate. In particular, community justice raises awareness about and breaks down gender stereotypes that reproduce violence and discrimination.

Similarly, the discrimination faced by LGBTQ+ individuals in their communities causes them to avoid participating in community justice out of fear of rejection. Some people lack trust in community institutions because those in leadership positions are sometimes unfamiliar with issues related to sexual and gender diversity. In fact, some forms of community justice may openly exclude LGBTQ+ individuals in that they are not recognized as such in hegemonic social and cultural frameworks.

Community justice addresses a wide variety of disputes. These include those involving people with disabilities, migrants, and/or rural youth. This allows us to observe what constitutes horizontal justice. However, a partial or complete lack of knowledge of differential approaches among members of certain communities means that their specific issues are not considered during the proceedings, limiting their access to justice and leaving aside key issues that may generate disputes. These include economic and social disparities.

In this sense, community justice can actively address these dimensions, proposing solutions that mitigate inequities, though the limited importance that gender and diversity approaches are given in certain communities can cause leaders to lack the preparation they need to recognize discrimination or effectively address the specific needs of historically marginalized groups.

One piece of information that cannot be overlooked is the political instability that exists in Colombia and the presence of armed groups operating outside of the law in several regions. This makes it difficult to use community justice measures and makes the implementation of differential actions even more challenging due to the lack of safety and

the fact that no guarantees can be made regarding recidivism. The limited presence of the State in remote areas has contributed to the perception of abandonment, as community members feel that they do not receive enough support in terms of public services, security, and access to justice.

7.3. Judicial legitimacy without credibility? Congestion, costs, and institutional deficits

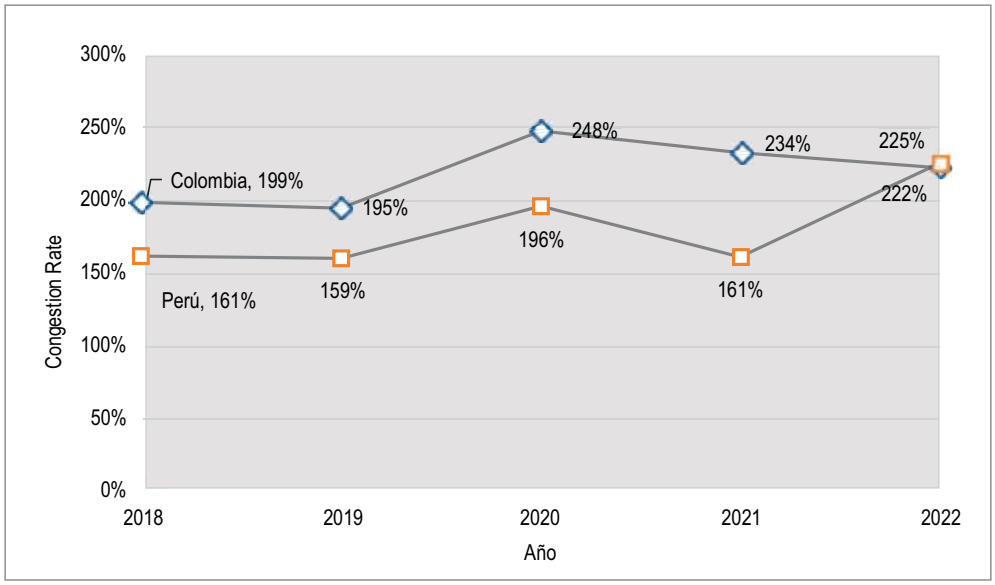
Colombia's judiciary is considered by many to be turbulent and difficult to navigate[59] in terms of access and operativity. There are several reasons for this, including -notably- high levels of judicial office congestion.[60] This saturation delays cases and constitutes a violation of the guarantee of reasonable time-frames. It takes time for proceedings to be assigned to specific offices. In addition, given the number of cases and processing issues that arise, wait times for decisions are considerable.

The information gathering process conducted in Bogotá included interviews with individuals who mentioned that it takes an average of seven (7) months to assign a case.

59 These terms were used by Dr. María Isabel Santos, a litigator and conciliator in law for family matters.

60 This was identified as the main barrier to access and operativity because it was mentioned by several interview participants and was featured in the information validation process.

Figure 27
Conciliation requests (2023)



Source: Developed by JSCA-IDRC Canada (2023).

The municipality of Florencia (Caquetá) respondents reported judicial office congestion and an economic issue: the high cost of accessing professional legal services from attorneys. This makes it difficult to secure representation and, in practice, to ensure that an essential requirement for access to justice is being met. As is the case elsewhere, professional counsel is required in the great majority of cases in Colombia's legal system.

For example, child support proceedings cost around 20% of the value of the support over the course of a year. An easement hearing can cost up to four minimum monthly salaries (plus 5% of the compensation).[61]

The existing barriers to the operation of judicial offices in Colombia is linked to the lack of adequate facilities for the provision of those services. The buildings are generally old and do not have the basic elements

61 It is important to note that Colombia has a legal custom of charging -at a minimum- the rates published annually by the Colombian National Bar Association (Colegio Nacional de Abogados de Colombia, CONALBOS). However, those rates are only made available to attorneys who pay to access the information. Furthermore, it is important to recognize that the rates are average recommendations. This means that large firms can charge more to provide their services. Given how large Colombia is and how many attorneys practice there, some professionals charge less than the aforementioned rates, but provide subpar services.

required to protect the privacy of system users and the operators' work. For example, in Florencia (Caquetá), where the median annual temperature is 30 degrees C and the average humidity is over 80%, there were no fans or air conditioning in the justice building. The same situation was observed in Barranquilla (Atlántico).

The obstacle identified is closely linked to the geographic distribution of judicial resources. As the JSCA-IDRC Canada 2023 report stated, there is a concentration of judicial resources in urban areas. In practice, this poses an additional hurdle for the rural population because they must spend entire days traveling to access specialized justice services.

Table 25

Number of specialized courts by department in Colombia (2023)

DEPARTMENT	FAMILY	CIVIL	TOTAL	POPULATION
Antioquia	16	135	625	6,848,360
Bogotá D.C.	14	190	623	7,907,281
Caquetá	4	6	15	425,053

Source: Developed by JSCA-IDRC Canada, 2023.

Another operational impediment identified is the lack of specialized judicial office staff, particularly in family law offices. These include psychologists or social workers who can take responsibility for or work on aspects or procedures such as judicial conciliation attempts or home visits for the parties to a dispute. The absence of such staff means that judicial office attorneys must not only handle all matters related to the proceedings -thus causing delays and a low institutional response capacity-, but that the approach is lower quality or less efficient because the individuals lack the interdisciplinary technical expertise to understand and propose appropriate solutions to the dispute.

Finally, during the information gathering process, we also observed a lack of networks and/or partnerships between entities in the justice ecosystem that would disseminate methods, rights, and available institutions. In Pereira (Risaralda), respondents mentioned that judicial officers face difficulties cross-referencing the information produced by entities outside of the courts such as the Colombian Family Assets Institute (*Instituto Colombiano de Bienes Familiar*, ICBF) or family law offices. The latter seem to let the public know that they can handle matters before the course, and that information is incorrect or imprecise.

Lay people are not the only ones who are unfamiliar with the rules. Experts face the same challenge due to the repeated and regular legislative changes introduced in Colombia. This makes it difficult for litigators and public officials to work in the justice sector.[62]62

However, it is important to reiterate that the judicial path enjoys a high level of legitimacy in Colombia. While residents are aware that it is slow, they continue to recognize it as a "fair" entity that issues legitimate and valid decisions.

Justice sector operators enjoy a positive reputation in regard to their work in the judiciary. Digital and physical work tools are available in municipalities like Medellín (Antioquia) and Pereira (Risaralda). This stands in contrast to the realities of eminently rural municipalities. For example, in Florencia (Caquetá), digital judicial service provision is compromised by deficient electricity services, which is also the case in many other Colombian towns.

62 This shows that the institutional challenges related to the judicial path initially identified in the JSCA-IDRC Canada report in 2023 were accurate. This is especially true for those related to high levels of judicial congestion, particularly in family matters; a lack of adequate training for judges who engage in judicial conciliation; and inadequate guidance provided to the parties by attorneys in terms of expectations and the functioning of the judicial process.

The main considerations identified in the judicial path information validation process[63] include:

7.3.1. Regarding the democratization of access to justice

Colombia has made significant progress with justice administration access mechanisms. This facilitates and democratizes the exercise of this fundamental right.

For example, the use of ICTs in the judicial service has made it possible to take legal action and has simplified the bureaucracy by eliminating steps or inefficient requirements such as having to physically go to the courts and wait for the officials to address the parties and their attorneys.

These same technologies and digitization processes have also improved transparency and accountability, contributing to the creation of practices that better align with democratic ideals. For example, procedures have been standardized and it has become easier to anticipate certain rules of conduct regarding the expected results. This decreased the incidence of objectionable forensic practices such as the right of the bar.

Administrative and geographic coverage challenges have been addressed by installing legal clinics, justice houses, and civic coexistence centers. In a certain sense, these measures mitigate the difficulties related to reaching remote regions such as rural areas, urban spaces, or traditionally marginalized populations (i.e. migrants, members of the LGBTQ+ community, and/or victims of gender-based or diversity-related violence).

7.3.2. Regarding the approach to family disputes

The unique social characteristics of family disputes go beyond the strictly legal. As a result, we must rethink the judicial instance and how it should be developed. Family disputes present a relational background that cannot be ignored, even in cases of child support and custody of

63 In an effort to validate the findings for the judicial path, we conducted an in-depth interview with Dr. Juliana María Giraldo Serna (attorney specializing in commercial law with a master's degree in sports law, arbitrator, arbitration court clerk, conciliator, former director of the Cali Chamber of Commerce Conciliation, Arbitration, and Amicable Resolution Center, and university lecturer in the field of probative law).

and care for children and teens. Only a comprehensive and responsible approach to the implications of breakdowns in family relationships can properly address and resolve a dispute, and this is not always something that occurs in the judicial sphere. This is due to the fact that the latter offer (i) strict impersonal approaches that reproduce the law and (ii) the dominant hierarchical system focused on winners and losers.

Starting from that premise, it is reasonable to state that the judicial path does not provide the best conditions or institutional capacities for addressing family disputes as a whole, as it lacks the appropriate system and its operators do not have the tools they need to truly meet the parties' needs. It would thus appear that ADR mechanisms and family justice are in a better position to offer comprehensive and efficient approaches.

7.3.3. Regarding the approach to civil disputes

While civil, housing, and neighborhood disputes are understood as conflicts of coexistence in social environments like neighborhoods, their sphere of (re)solution is the first thing that we should rethink. Those matters should not enter the judicial system. If they do, it is a clear example of a conflict being disproportionately escalated. Society should be able to resolve such disputes independently or, in the most extreme cases, through community justice or ADR methods.

7.3.4. Considerations based on gender and diversity approaches

One common thread of the family disputes reported by the interview respondents was the persistence of violence against women. These forms of violence -which include psychological, economic, physical, and/or institutional violence- do not discriminate on the basis of social class, context, or situation. They affect women from all walks of life: urban, rural, migrant, Indigenous, Afro-descendant, young, or older.

The interviews conducted with judicial sector stakeholders showed that a key aspect is that judicial operators still have gender biases. This is not only a violation of women's rights in and of itself, but also leads operators to indirectly ignore others. For example, the right not to be

revictimized is important to consider. One of the most significant gender-related barriers is lack of knowledge of and lack of empathy regarding the person when the dispute is filed in the judicial system.

Social inclusion of individuals with disabilities is recognized by the interview respondents as a key issue that requires the full attention of justice operators. However, the information gathered shows that there is a gap between the intention to include and the actual implementation of specific actions to achieve inclusion. In fact, although there are protocols for identifying and adequately addressing the specific needs of this population in some place, the low level of appropriation of guidelines by their staff makes it difficult to guarantee that their rights will be respected.

Publicly revealing the sexual orientation or gender identity of an LGBTQ+ person may cause family conflict due to cisheteronormative cultural patterns that persist in different parts of the country. This may cause rejection, violence, and even expulsion from the home, which in turn reproduces barriers of access to the judicial path, particularly for economic reasons.

As a result, LGBTQ+ people experience a great deal of fear of being exposed, which they equate to discrimination, stigmatization, and physical and/or emotional violence as a result of reporting discrimination or aggression. Furthermore, the interview respondents from the judicial sector state that public officials from judicial institutions continue to lack the tools necessary to adequately meet the unique needs of LGBTQ+ people. As a result, prejudices and subtle and hard to identify forms of exclusion are perpetuated.

On the other hand, the economic inequities in Colombia's various regions pose a significant challenge to access to justice. This is due to the fact that low economic resources can create significant obstacles when it comes time to complete processes, hire attorneys, and engage in legal proceedings. For many impoverished people, access to legal services can be excessively costly. This makes it more difficult for them to exercise their rights, particularly when they need specialized legal representation. In this sense, economic barriers increase inequality before the law and jeopardize the effectivity of the judicial system.

Finally, in some parts of the country, we noted that resources are limited when it comes to adequately implementing policies, programs, and projects related to access to justice. The limited economic, technological, and human resources of many regions stand as obstacles to the implementation of adequate actions for access to justice and limit the availability of legal counsel.

8. PROBLEMS WITH THE COORDINATION OF PATHS

If we analyze the favorable aspects, we see that coordination of the various paths has: (i) allowed for a deeper conversation about what the fundamental right of all people to access to justice in Colombia means; and (ii) generated important practical impacts such as reducing the use of de facto paths by the parties -as the public is aware of the methods available-, justice operator training in remote areas through public and/or private initiatives, and the creation of spaces for dialogue and collaboration that generate interesting synergies in the justice ecosystem.

All of this notwithstanding, and despite the efforts of national, departmental, and municipal institutions to improve coordination of the various paths, reality does not align with the desired scenario. Each of the paths presents deficiencies that must be addressed.

There are issues with communication and alignment between ADR institutions and stakeholders in Colombia, and among the operators that work in each space. This has a negative impact on the implementation of ADR methods.

According to the sources consulted, the Ministry of Justice and Law is the only stakeholder that implements promotional programs and public investment in the standardization of procedures and not specifically the promotion of ADR methods. This suggests that the participation of various institutional stakeholders is necessary for the proper operation of the system when it comes to promoting dispute resolution methods and, by extension, in community justice (National Planning Department: 2017).

In this sense, Law 2.220 created the National Conciliation System as a sectorial coordination entity. Article 133 states:

A national conciliation system is to be created that the Ministry of Justice and Law will use to implement conciliation public policy in order to coordinate actions and institutional efforts for the promotion, strengthening, and development of conciliation. [***"Créase el Sistema Nacional de Conciliación por medio del cual el Ministerio de Justicia y del Derecho implementa la política pública de conciliación, con el objetivo de coordinar las acciones y aunar esfuerzos interinstitucionales para la promoción, fortalecimiento y desarrollo de la conciliación".***] (Our translation.)

As one can see, the aforementioned system refers to the creation and implementation of conciliation public policy, leaving aside figures like mediation and the various other approaches described in this study. It also excludes expressions of community justice from this system, reducing the existence of conciliation to strictly legal or justice-related matters, understanding this as the satisfaction of legal interests.

Based on this, we recommend creating a national ADR system that would connect the national, departmental, and municipal systems, guaranteeing the participation of civil society organizations in order to delegate the promotion, implementation, and monitoring of ADR methods, as well as their structuring and operativity.

The institutions that should be part of that system based on the USAID Recommendations for Public Policy for the Application of ADR in Rural Areas include: the High Council for Peace, Labor Ministry, National Education Ministry, National Attorney General's Office, National Prosecutor's Office, Ombudsperson's Office, Superior Judiciary Council, Colombian Institute for Family Wellbeing, the Superintendency of Notaries and Registry, the Health and Social Protection Ministry, the Ministry of the Interior, Ministry of Agriculture and Social Development, National State Legal Defense Agency, National Protection Unit, peace judge representatives, municipal action boards, civil society organizations, and private sector stakeholders such as universities, research institutes... [*"la Alta Consejería para la Paz, el Ministerio del Trabajo, el Ministerio de Educación Nacional, la Procuraduría General de la Nación, Fiscalía General de la Nación, la Defensoría del Pueblo, el Consejo Superior de la Judicatura, el*

Instituto Colombiano de Bienestar Familiar, la Superintendencia de Notariado y Registro, el Ministerio de Salud y Protector Social, Ministerio del Interior, Ministerio de Agricultura y Desarrollo Social, la Agencia Nacional de Defensa Jurídica del Estado, la Unidad Nacional de Protección, los representantes de Jueces de Paz, las Juntas de Acción Comunal, Organizaciones de la Sociedad Civil, así como actores del sector privado, tales como universidades, institutos de investigación.] (Our translation.)

The National ADR system could be used to promote strategic alliances among various stakeholders in order to deploy dissemination (communication) and awareness (education) actions. Both are necessary to reduce the obstacles and gaps that exist in the area of access to justice through ADR methods. This is particularly important because part of the national system proposed are departmental and municipal territorial entities. Local knowledge of information dissemination would ensure that the public accepts the initiatives, contributing to the growth of supply of and demand for ADR services (including community justice).

With regard to community justice, it is important to highlight its capacity to implement specific mechanisms that prevent and resolve disputes related to family law and housing, offering solutions that reflect the diversity of rural and urban contexts present in Colombia. Beyond it or its effectivity, community justice faces significant challenges. These include issues coordinating with national laws and regulations that stand in the way of the integration of community justice processes and the formal legal system. That circumstance affects (directly or indirectly) the protection of individuals or collective rights and equity in the application of the law.

In order to overcome these challenges, it is crucial to design public policies that promote greater integration and coordination between community justice and the national legal system. This would involve creating legal frameworks and regulations that recognize and support community justice processes and the implementation of effective cooperation and communication mechanisms between the two entities.

In this sense, close integration between community justice and the national legal system not only guarantees adequate protection of the rights of the people involved in disputes, but also would promote more equitable application of the law in all contexts, thus strengthening the social status of justice and social cohesion in Colombia.

9. RECOMMENDATIONS FOR ACCESS TO JUSTICE

In this section, we offer recommendations for strengthening paths for access to justice and their operation. To that end, we assess the findings, best practices, and lessons learned during the information gathering, validation, and analysis processes developed in the municipalities explored.

9.1 Recommendations for ADR methods

The main recommendations related to ADR include:

1) Reporting to, raising awareness among, and educating the public on the existence of, reason for, and scope of ADR. To that end, it is important to engage in actions that disseminate, inform, and educate on their availability and use. This can be achieved through campaigns that publicize routes of access to ADR, locations where services are offered, who the operators are, and where to find them. Those campaigns should be simple communication initiatives that use simple and culturally appropriate language and can be replicated virtually in various municipalities and regions of the country.

   Those communication actions should have a territorial approach and raise awareness of ADR as well as daily matters or types of disputes that can be resolved using these methods, locations where services are provided, related costs, advantages, and, in general, how they work as negotiation sites or dispute resolution centers.

2) Creating strategic alliances among justice system stakeholders in order to promote ADR. For example, this may include building more flexible modes of interaction between courts and entities like justice houses, citizen coexistence centers, or legal clinics housed at universities to use conciliation in law and conciliation in equity to resolve disputes.

We also suggest that more students who participate in university legal clinics participate in the work of justice houses, citizen coexistence centers, and conciliation in equity service sites in order to hold conciliation in law hearings. This will strengthen the institutional supply and the skills and abilities of future professionals.

3) Incorporating ADR in early education plans used at schools, thus promoting the implementation of school mediation.

4) Allowing conciliation in law to be used for executive proceedings, which represent a significant percentage of judicial proceedings in Colombia.

5) Encouraging public officials responsible for conciliation to specialize in dispute management and resolution. The majority of those interviewed favor the idea of a training process for conciliators who currently work or will work in Colombia that focuses on or highlights soft skills in dispute resolution over technical skills or legal knowledge.

6) Strengthening institutional support for the Ministry of Justice and Law and municipal administration for the development of conciliation in equity by facilitating resources or institutional capacities like transportation, security, or office supplies.

Finally, it is important to consider the public policy recommendations for the sustainability of ADR in rural areas developed by the Bogotá, Cali, and Medellín Chambers of Commerce Temporary Union in the context of processes to implement the ADR Toolbox for the USAID program Justice for a Sustainable Peace (2021). These include:

(i) They will promote participatory dialogue on the various scopes of ADR methods so that they can be understood as tools that transform citizen peaceful dispute resolution culture, which contributes to improving relationships, creating trust, and promoting participatory democracy dialogue, and access

to justice in the territories, in short, as privileged tools for building peace. ["Promoverun diálogo participativo sobre los alcances diferenciales de los MASC para entenderlos como herramientas que transforman la cultura de los ciudadanos para la resolución pacífica de los conflictos, que contribuyen al mejoramiento de las relaciones de los ciudadanos, generan confianza y promueven la democracia participativa, el diálogo y apoyan el acceso a la justicia en los territorios, en resumen, como herramientas privilegiadas para la construcción de paz" (p. 16).] Our translation.)

(ii) Incorporate the peace and dispute resolution perspective as some of the guiding principles of ADR expressly recognized in regulatory instruments that state that mediation and conciliation offered in any modality are methods that contribute to building peace. ["Incorporar la perspectiva de paz y resolución de conflictos entre los principios orientadores de los MASC a través del reconocimiento expreso en los instrumentos normativos, de que la mediación y la conciliación, en cualquier modalidad, son métodos que contribuyen a la construcción de paz"(p.16)] (Our translation.)

(iii) Decentralize ADR methods through territorial empowerment from two dimensions based on the system established in the constitutional order: familiarizing national authorities with ADR and familiarizing municipal and departmental officials with ADR. ["Descentralizar los MASC a través del empoderamiento territorial, desde dos dimensiones de acuerdo con el esquema definido en el orden constitucional: el posicionamiento de los MASC entre las autoridades del orden nacional, así como el posicionamiento de los MASC en las autoridades territoriales del orden municipal y departamental" (p. 25).] (Our translation.)

(iv) Encourage third parties, local stakeholders, and regional organizations with a social vocation and community base to conduct ADR implementation and promotion processes using the methodology offered in the ADR Toolbox, as it responds to

the various needs of the country's territories, particularly in rural areas. ["Incentivar a terceros, actors locales y organizaciones regionals con vocación social y de base comunitaria para llevar a cabo procesos de implementación y promoción de los MASC bajo la metodología impartida por la Caja de Herramientas de MASC, pues ésta responde a las necesidades diferenciales de los territorios del país, especialmente en la ruralidad dispersa"(p.25).] (Our translation.)

(v) Encourage municipal administrations to implement conciliation in law parallel to other ADR methods based on the installed capacity of operators who can use this method. ["Motivar paraque las administraciones municipales implementen, de manera paralela a los demás MASC, la Conciliación en Derecho en virtud de la capacidad instalada de operadores de este método" (p. 25).] (Our translation.)

Finally, it is key to note that any recommendations regarding ADR methods must be accompanied by a deep understanding of these tools as vehicles of social dialogue, construction of peace, and restorative justice. These approaches take form through the interaction of the parties to change their positions and narratives between them and with the conflict. As such, these ADR cannot be irresponsibly reduced to tools for relieving congestion in judicial offices and for dejudicializing proceedings.

9.2 Recommendations for community justice

The main suggestions associated with community justice include:

1) Improving efforts to raise awareness of and disseminate community justice, its reason for being, goals, and channels. Specifically, information must be provided on access or protocols for activation for addressing and resolving disputes.

2) Promoting citizen communication and dialogue opportunities in community justice spaces such as Municipal Action Boards.

3) Encouraging recognition of multiculturality in the country's rural regions to strengthen the sense of belonging and uniqueness. This will allow individuals to address their unique nature in the process of addressing and resolving disputes for their proper application and replication.

4) Training community leaders on dispute resolution, community mediation, and/or intercultural mediation.

   Specifically, we propose improving training processes for municipal action board presidents, vice presidents, and conciliation and coexistence commission members. In an effort to ensure that those processes have practical impacts, we recommend expanding the functions of conciliators from municipal action board conciliation and coexistence commissions, board associations, departmental federations or special districts, and the national confederation.

5) Clarifying operating criteria for both ADR and community justice in order to rethink their scope and connections between them.

6) Making operators aware of the community path in cases involving gender and inequality to ensure that efforts to address them to not reproduce discrimination and allow the issues to be adequately addressed in a way that meets the needs of specific historically marginalized groups.

   The analysis of the information gathered and validated shows that community justice is still an abstract and complex phenomenon. As such, the recommendations provided are meant to leverage its flexibility and presence throughout the country to guarantee access to people-centered and more humane justice.

9.3 Recommendations for the judicial path

The proposal for proper access to and operativity of the judicial path include:

1) Considering the participation, support, and vision of the academy and civil society in future justice system reform projects and judicial reforms in particular.

2) Formulating rules for the operation of the judiciary, recognizing territorial realities and the functional needs of key operators and stakeholders.

3) Increasing support for judges from rural municipalities in Colombia in order to decrease congestion in judicial offices and improve institutional supply rates. Although a high number of the interview respondents offered this recommendation, no one said anything specific about how to achieve it. However, the information analysis and validation process allowed us to conclude that strengthening ADR methods and creating more courts nationwide would favor -in part and in a certain sense- judicial decongestion.

4) Analyzing organizational and methodological problems that limit the quality of jurisdictional responses. This would contribute to the administration of effective and efficient solutions and to the identification of the true causes of the problem (i.e. lack of staff, poor organization, or a lack of productivity due to a lack of accountability mechanisms).

   This reading suggests a need to assess the demand for certain operators related to the need for more and higher quality staff in the judiciary. Civil law only requires the participation of technical staff. By contrast, family law requires the support of other professionals such as psychologists or social workers. This is key to addressing the approach to issues that are currently handled by judges.

Furthermore, in the case of the family law specialty, we recommend that court operators receive more assistance from forensic divisions, particularly in view of the high rates of intrafamily, gender-based, and diversity-based violence present in family relationships. We also recommend making adjustments to physical spaces so that the people impacted by these issues can receive services. These entities should also offer training on technical and soft skills that are useful for addressing such matters from a perspective of action without harm and restoration of rights.

In the same sense, we suggest considering the possibility of having social workers conduct home visits in the context of judicial proceedings prior to the first hearing in order to streamline the decision-making process.

In regard to strengthening institutional capacities, we recommend training social workers and other professionals in the family courts to address and resolve disputes. This would allow them to contribute to the disputes that they handle in a different way and in a different place to mediation meetings between the parties, strengthening ADR, the judicial system, and the self-determination of the parties. At the same time, this would have a positive impact on efforts to clarify the disputed interests, terminate the case early or improve processing through the exploration of the conflict.

5) Court operators in various municipalities suggest that the Judiciary Service Centers be eliminated in order to physically and functionally reintegrate officials who must perform their operational work in the courts.

Those centers form part of the justice buildings that house some of the courts' administrative units.

We believe that that statement requires a more in-depth and serious analysis regarding the factors that explain the proper operation of centers and courts. This is particularly important

because any modern idea of judicial management involves the necessary professionalization of the work, the excision of administrative and jurisdictional functions, and the creation of specialized structures for that purpose.

6) Promoting the use of virtual spaces by the judiciary without ignoring obstacles to the exercise of the right to access to justice and the possibility of exacerbating inequalities based on the issue of the digital gap.

   Specifically, we support the creation of specialized areas within judiciary structures for handling practical matters related to virtual scheduling, which takes time and makes court operators' work more difficult. These include storing documents, digitization, and the organized communication of citations and notifications.

   This recommendation does not imply the comprehensive virtualization of the judicial service. This is not only due to what we have stated in regard to digital illiteracy or other barriers but is also a product of the fact that ICTs are means and not ends. Justice must be organized around people and their disputes. Starting from that premise and addressing the idea of foundational inequality, it is important to think through and provide all manner of measures (physical, digital, and of any other nature) that facilitate and improve efforts to address and solve disputes.

7) Rethinking judicial management in order to promote changes that improve the administration of the organization and its operation. Based on the above, it would be useful to clearly outline the jurisdictional responsibilities related to support and administrative duties so that each human resource can manage the tasks linked to their specialty. It would also be positive to optimize the methodologies managed in the judicial office, incorporating measurement, monitoring, and accountability measures.

8) Evaluating the implementation and/or reinforcement of psycho-social assistance for family court operators in order to protect their mental health. The matters that they handle tend to be sensitive and traumatizing.

9) Implementing a system for providing feedback on the judiciary's work and monitoring compliance with rulings in order to determine how much/how they are observed, the reasons for this, and the number of sentences executed.

10) Recognizing, regulating, and/or managing solutions for what is colloquially known as the right of the rail in courts and excessive ritualism manifest in judicial proceedings. This aspect has been highlighted by court operators and judicial system users.

11) Rethinking how relationships between procedural subjects and parties to the case are perceived and structured within the judicial path. Special attention should be paid to disputes related to non-mercantile, complex, and continuous rights. In that sense, written systems that are impersonal and hierarchical are problematic because they reproduce the law and practices (such as asymmetry between the judicial official and the rest of the subjects or the winner-loser paradigm, which dominates the judicial path and is of limited use in family relationships).

One aspect to be assessed when weighing the recommendations and implementing improvement processes is that -despite the high rates of delay presented- the justice system enjoys a great deal of legitimacy.

9.4. General recommendations

In this section, we will offer general recommendations for improving the operativity of paths to access to justice. These are:

1) Strengthen the operation and creation (where they don't currently exist) of local justice systems.[64] Multiple initiatives can

64 64 According to the Ministry of Justice and Law, local justice systems are a strategy that aligns and coordinates the collaborative work between the State and the community to guarantee effective responses to citizens' justice needs and to contribute the resolution of disputes locally and in rural areas in a comprehensive and relevant manner. ["los Sistemas Locales Justicia (SLJ) son una estrategia que armoniza y articula el trabajo colaborativo entre el Estado y la comunidad para asegurar respuestas efectivas a las necesidades de justicia de los ciudadanos, y contribuir a la resolución de conflictos en lo local y en lo rural, de manera integral y pertinente" (2024).] (Our translation). This makes it possible to create a space for interaction and dialogue among the various stakeholders in the local justice ecosystem, such as police inspectors, family law offices, notaries public, government offices that are part of municipal administrations, and/or conciliators in equity.

be launched in these systems, including training and education of ADR operators. They can also offer a permanent place for ADR and community justice operators to do their work.[65]

2) Create a National Dispute Resolution Methods System that covers the various ways that disputes are addressed and resolved using human rights, gender and diversity, and plural approaches.

3) Reinforce approaches like peace justice that combine both litigation- and non-litigation-based practices.

4) Concentrate legal, psychological, and financial advising services through existing State services. For example, justice houses allow the system to address strictly legal issues from a cross-cutting perspective. They also can address emotional, social or economic aspects that tend to be the root of the most common disputes.

5) Democratize and facilitate access to professional support in order to improve awareness of the paths that members of the public can use to address their disputes and exercise their right to mount a defense in an autonomous, responsible, and egalitarian manner.

6) Raise awareness and deepen the understanding of the general public and system operators of the meaning, scope, and specific application of the human rights and gender and diversity approaches.

65 n regard to this recommendation, the USAID Colombia report "Necesidades y Satisfacción con la Justicia en Colombia" states that Colombia has change makers who can offer justice on a territorial scale. For example, local justice systems have been promoted by the Colombian government since 2009. This governance mechanism helps coordinate justice stakeholders locally and has become an effective strategy for overcoming legal needs and building peace. ["Colombia cuenta con generadores de cambio que pueden impartir justicia a escala en los territorios. Por ejemplo, los Sistemas Locales de Justicia que han sido promovidos por el Estado colombiano desde 2009, son un mecanismo de gobernanza que permite articular a los actores de justicia a nivel local y que se ha convertido en una estrategia eficaz para la superación de las necesidades jurídicas y la construcción de paz" (2024:33).] (Our translation.)

in order to provide egalitarian solutions and obtain approaches focused on the individuals demanding justice.[66]

In this sense, it is beneficial to review the legal, organizational, and practical architecture in place based on the stronger commitments made by the State in the context of universal and regional human rights systems. Specifically, we believe it is important to consider: (i) the need to adopt new measures or courses of action; (ii) the need to monitor and oversee existing ones; and (iii) the need to build rational and responsible systems using adequate incentives.

7) Designing policies that reinforce the reason ADR mechanisms and community justice exist as autonomous dispute resolution mechanisms and not as substitutions for or services complementary to the judicial system. Their purpose is not to relieve congestion in judicial offices by dejudicializing certain disputes or creating a previous instance, but to provide options that have the same hierarchy, value, and importance for the adequate and plural management of the individual or collective disputes that people and society have.

With that goal in mind, it is fundamental that: (i) regulation, design, organization, and forms of coordination are structured on the basis of the disputes, rationally, and using a regime of adequate (dis) incentives; and (ii) the approaches are consistent in their conception and practices in order to provide adequate responses. For example, thinking through how information is key for the use of any ADR method.

66 In this same sense, USAID Colombia states that focusing on the results of individuals and those of not institutions allows interested parties to track and estimate the actual changes to people's lives due to the resolution of their legal issue. This offers justice providers a measurement of the quality of their services. Focusing on results can prove the effectivity of new or redesigned justice services, which may be connected to performance-based funding. ["en los resultados de las personas, no de las instituciones, permite a las partes interesadas rastrear y estimar los cambios verdaderos en las vidas de las personas debido a la resolución de su problema legal. Esto les ofrece a los proveedores de justicia una medición de la calidad de sus servicios. Enfocarse en los resultados puede probar la efectividad de servicios de justicia nuevos o rediseñados, lo que puede ligarse a una financiación basada en el desempeño".](2024: 32, our translation).

8) Emphasizing the need to promote critical and interdisciplinary positions around the right in order to have more and better tools for understanding the disputes and the management of solutions. This facilitates the use of the obligations that are part of rights-based and gender and diversity approaches. For example, by determining that the right to housing is comprised of a set of positive and negative obligations related to facilitating and guaranteeing access to land, a roof, or a place to live in an accessible and safe way, which is not limited to a matter of rentals. It covers sectorial regulations related to land, construction, bank loans, evictions, or the conditions and availability of public-private uses.

9) Developing mechanisms that work from and on the basis of the paths to access to justice, allowing us to gradually change discriminatory social connection structures, especially those related to patriarchal or conservative expressions.

   In that sense, the description of family disputes cannot be understood as separate from social phenomena, particularly in a country like Colombia, where the family institution remains a space woven together by deeply rooted belief systems.

10) Creating reasonable conditions for the exercise of rights such that the use of justice options is real and viable for vulnerable individuals. We note that only 52% of people who have a dispute do something about it, and they use the mechanisms analyzed in uneven and/or limited percentages.

In conclusion, it is necessary to reiterate that many of the recommendations presented refer to the need for coordination across the institutions that comprise Colombia's various territorial levels. The goal of such efforts is to promote development and ensure that access to justice is delivered so that the people can make informed decisions that meet their needs, reflect their realities, and align with their rights.

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11. ANNEX: METHODOLOGICAL GUIDELINES

The data collection, validation, and analysis process conducted by the Colombia team was performed as follows:

11.1. Data collection process

As section 3 of the report states, the data collection process took place between September 25, 2023 and January 12, 2024. During that period, we interviewed 146 people who belong to different areas of interest and municipalities throughout Colombia.

Table 28
Individuals interviewed by municipality (2024)

Project:	ALTERNATIVE PATHS TO FAMILY AND HOUSING DISPUTE RESOLUTION, JSCA-IDRC									
Local team:	COLOMBIA									
Report date:	Decemb									
City	Level	# of users interviewed	H	M	# of operators interviewed	H	M	# of stakeholders interviewed	H	M
BOGOTÁ D.C. September 25 - present	1	20	3	17	0	0	0	7	4	3
	2	0	0	0	21	3	18	4	1	3
	3	0	0	0	1	1	0	6	3	3
FLORENCIA, CAQUETÁ November 14 - 16	1	8	3	5	7	4	3	1	1	0
	2	0	0	0	9	1	8	4	2	2
	3	0	0	0	2	0	2	3	0	3
BARRANQUILLA, ATLÁNTICO December 4 - 8	1	3	2	1	7	2	5	3	1	2
	2	0	0	0	5	5	0	4	3	1
	3	0	0	0	3	2	1	6	3	3
OTHER September 25 - present	1	2	1	1	3	2	1	0	0	0
	2	0	0	0	2	2	0	4	0	4
	3	0	0	0	2	1	1	9	6	3
OTHER MUNICIPALTIES STUDIED Bucaramanga, Santander, Dosquebradas, Risaralda; Bojayá, Chocó; Cali, Valle del Cauca; Montelíbano, Córdoba; Tierralta, Córdoba; Medellín, Antioquía; Yopal, Casanare, Pereira, Risaralda.										
Percentage by gender: Men 56 / Woman 90										
Total profiles: 146										

Source: Developed by JSCA-IDRC Canada, 2023.

As the table shows, the main difficulty was related to contacting justice administration access path users. This was associated with:

i. Policies regarding disclosure of personal information by the operators who work in justice administration access paths because courts, conciliation centers, or litigators cannot legally provide information on system users and/or their clients.

ii. Fear of being interviewed and included in research projects that could generate visibility in highly violent areas of Colombia (i.e. rural areas where information was gathered, which could pose a risk to security).

The team was aware of these difficulties mentioned and formulated various strategies to strengthen the process. This allowed them to secure the results presented, regarding which it is necessary to provide the following clarification.

First, it is important to mention the different types of people interviewed and the pool of respondents. Using the information gathering methodological tools, we determined that a single person could have multiple roles. For example, conciliation in law operators are required to be attorneys, and in most cases, they engage in both ADR and litigation. Similarly, some law students are active in their universities' legal clinics and engage in conciliation in law work.

The fact that a single person can have many roles was not something that we had anticipated, and it allowed us to obtain comparative information that we did not expect to collect. For example, a conciliator in law who is a litigator can compare the operativity of ADR methods in judicial and extrajudicial contexts. Or the director of a conciliation center who is a conciliator in law can provide a complementary perspective based on the administrative apparatus that conciliation centers provide to operators and needs based on justice administration exercised by conciliators.

Second, it is important to note that some interview respondents have profiles that go beyond the territorial limit initially set for the focus municipalities, as some of them have responsibilities at the regional or national levels. Access to the same must be appreciated as an additional unanticipated outcome that allows for a macro and more complete and in-depth vision of the operativity of paths to access to justice administration in Colombia. The most important profiles in this sense are:

MARCELO ROJAS
Coordinator of the Legal Conciliation Area of the ADR Methods Directorate of the Ministry of Justice and Law.
GERMAN VALLEJO
Private consultant focusing on matters related to access to justice and ADR methods.
He is the former director of Access to Justice for the Ministry of Justice and Law.
ALEJANDRA TARAZONA ZAMBRANO
Attorney specializing in ADR methods and public-private partnerships from the USAID Inclusive Justice Program with a presence in the departments of Córdoba, Chocó, Antioquia, Cauca, Nariño, and Putumayo.
Former official of the Colombian Constitutional Court and
former director of Violence Prevention in Bogotá.
WILLIAM SAMACA QUIROGA
Community Justice Director for the Bogotá Chamber of Commerce.
JAIME GUTIERREZ OSPINA
Executive Director of the National Confederation of the Municipal Movement of Colombia,
member of the National Council for Peace,
human rights defender in Colombia, and
Peace Judge for the Municipality of Dosquebradas, Risaralda.
MARIA ISABEL GUTIERREZ
Member of the Barrio La Palmilla, Pereira Municipal Action Board.
President of ASOJUNTAS (Pereira, Risaralda) and
Executive Secretary of the Colombian Municipal Confederation.

Special attention should be paid to the interviews conducted with the conciliation center directors and coordinators who work in the Bogotá, Cali, Medellín, and Bucaramanga Chambers of Commerce, Dr. Mónica López Jaramillo, Ana Lucía Fernández de Soto, Diana Cecilia Domínguez, and Karol Viviana Pastrana, respectively. They are four of the five chamber of commerce conciliation center coordinators in Colombia.

11.2. Information validation process

The information validation process was conducted using two methodologies:

i. One focus group was held on February 1, 2024 from 2 to 4 p.m. It was attended by the following people:

ATTENDEE	ROLE
Mónica López Jaramillo	Director of the Conciliation in Law Area of the Bogotá Chamber of Commerce.
Edgar Augusto Ardila Amaya	Director of the Community Justice Academy at the Universidad Nacional de Colombia.
Nubia Garzón	Litigator and conciliator in law.
Juan Diego Manrique	Consultant focusing on land dispute resolution and human rights director for the Tayrona people at the national level.
Martha Eliana Martínez	Conciliator in law and narrative mediator.

ii. Three (3) in-depth interviews conducted. The respondents were:

INTERVIEW RESPONDENT	ROLE
Alejandra Tarazona Zambrano – Completed on January 24, 2024.	Attorney specializing in ADR and public-private partnerships. She works for the USAID Inclusive Justice Program. Tarazona is a former official in the Colombian Constitutional Court and former Director of Violence Prevention in Bogotá.
Juan Diego Manrique Osuna – Completed on February 7, 2024.	Practicing attorney, specialist in land rights, consultant specializing in dispute resolution for matters related to land use, tenancy, and ownership, and alternative dispute resolution methods. He is responsible for human rights for the Tayrona people at the national level.
Juliana María Giraldo Serna – Completed on February 9, 2024.	Attorney specializing in commercial law with a master's degree in sports law. She is an arbiter, arbitration court clerk, conciliator, and former Director of the Conciliation, Arbitration, and Amicable Resolution Center of the Cali Chamber of Commerce. She teachers probative law at the university level and her work focuses on the operation and performance of the Colombian

The information validation process completed allowed experts to learn about the different hypotheses presented and to complement their conceptual development in order to: (i) increase the depth of the technical and conceptual discussion of operational gaps and gaps in access to justice administration paths; and (ii) offer recommendations for improving them.

11.3. Information analysis process

Once the information validation process was complete, it was analyzed by the following team.

TEAM MEMBER	ROLE
Mateo Vásquez	Project Coordinator Mateo is an attorney who holds a master's degree in business administration. He is also a candidate for a master's degree in mediation and conflict management. He is a legal conciliator and mediator with over five years of experience and has handled over 500 cases. He also has over five years of experience with international
Andrés Pacheco Jaimes	Anthropologist with experience working with populations like the Roma community in Colombia and migrants as well as the formulation of ADR development strategies or members of those groups.
Leonardo García	Psychologist with significant experience in gathering and analyzing quantitative data or national and international projects.
Samed Vargas	Political scientist focusing on women's rights, the exercise of the same, gender-based violence, and routes to accessing services.
Ginna L. Ramos	Attorney and conciliator in law at the Popayán (Cauca) justice house. She is also a leader of the local Afro-descendant community.
L. Johanna Ñungo	Business administrator appointed to support the process by the Bogotá Chamber of Commerce.

Chapter 3

PATHS TO FAMILY AND HOUSING DISPUTE RESOLUTION IN PERU:

Effectivity of the Approaches and Responses

*This study was designed and led by the Justice Studies Center of the Americas (JSCA).

The research team in Peru included: Eduardo Vega and Federico Chunga (Lima), Cristell Casani (Arequipa), Liliana Fernández (Loreto), and Victoria Ormeño (Lima). This study also benefited from the contributions of Nataly Ponce, Lorena Espinoza, Matías Sucunza, and Javiera Domange.

1. EXECUTIVE SUMMARY

JSCA began its work on this report in June 2023. Its goals were: (i) to analyze barriers to access and operativity of three paths to addressing and resolving disputes in Peru, specifically the judicial path, alternative dispute resolution (ADR) methods, and community justice, with a focus on peace justice; and (ii) to formulate recommendations for strengthening and improving their performance for the State.

The research was conducted by a team based in Peru. Its work focused on priority cities.

The project has two main justifications: the prevalence of civil and family disputes and the limitations on access to justice demonstrated by the individuals involved, especially those in vulnerable circumstances. Special attention was paid to the services provided to women living in poverty or extreme poverty.

The research involved collecting, validating, and analyzing qualitative and quantitative data at the national level and in the cities of Lima, Callao, Arequipa, and Iquitos. It included 172 in-depth interviews, most of them with system users, though respondents also included judges, conciliators, experts, and other stakeholders.

All of the findings were widely distributed to and discussed with groups of experts, which facilitated the formulation of recommendations that include public policy proposals for improved access and operativity of the justice system in both types of disputes.

In general, the study identifies similarities in the findings from the priority cities. This means that the public policy should consider a territorial approach that addresses historic inequities between urban and rural areas, and between capital cities (Lima and Callao) and regions like Arequipa and Iquitos, especially in regard to poverty, efficiency, and the presence of the State. In our area of interest for this study, this inequality is much more evident in regard to peace justice, though it is not removed from the other dispute resolution paths.

The main findings include:

a) The State lacks updated and high quality information on ADR methods and their use and interaction in the judicial system. For example, the conciliation law has been in force for nearly 30 years, but there has not been a full evaluation of its impact, and no consistent public policy on improved dissemination, access, and quality of conciliation services nor the role of peace courts has been implemented.

b) Peru's litigious culture persists, which runs counter to the main goals of ADR methods -building peace through non-litigation-based mechanisms- and their mid- to long-term purposes, such as contributing to efforts to address the historic burden on traditional legal systems.

c) Extrajudicial conciliation public policy presents weaknesses linked to the absence of assessments of the progress made and adjustments needed. Over the past two decades, no rigorous monitoring has been conducted. The authors also identified specific related weaknesses. These include: (i) government supervision of private conciliation centers; and (ii) the process of training and accrediting conciliators is more focused on legal issues than soft skills that are fundamental to the type of disputes they handle and the role that they play.

   In this context, there is a strong perception that extrajudicial conciliation in civil cases has become just another task that is completed only because it is a requirement for accessing the judicial path. The opportunity to seek extrajudicial conciliation in these cases was found to be minimal, and it increases the cost of accessing justice. By contrast, given that it is voluntary, there is more demand for extrajudicial conciliation in family matters. This is due to the nature of the disputes handled -mainly child support- and the type of convening party involved -mainly low-income women who urgently need child support for their children.

This finding calls into question the discussion regarding the obligatory or binding nature of ADR methods and their relationship with the utility of the service that they provide. It also serves as evidence that conciliation can be an efficient and effective vehicle for solving disputes quickly and fairly when it is used correctly.

d) The type of service provided in the treatment of family cases was deficient in all of the different paths. The main issues are rooted in a failure to align the "means and form" to the nature and characteristics of the disputes, which require more human and less legal comprehensive management. For example, one weakness of the judicial path is that training focuses on legal aspects of issues but never social or psychological ones.

e) There is a marked lack of satisfaction among system users. There are multiple reasons for this, notably the delay in cases processing, which is attributed to the excessive procedural burden and persistent litigious culture, and the perception of discriminatory treatment reported by users, especially for economic or racial reasons.

This differs from users' opinions about extrajudicial and community conciliation. Factors that contribute positively to user perceptions include the provision of free services -in the case of government-run centers- and the provision of low-cost services -in private centers. Negative perceptions of these entities do exist. They are connected to (i) the time investment that the proceedings require; and (ii) unmet expectations about achieving an effective agreement, particularly for low-income women living on the outskirts of cities and in regions with high poverty rates.

The findings allow the authors to offer recommendations meant to strengthen dispute resolution public policy for civil and family law cases. They pay close attention to: (i) conciliation (judicial and extrajudicial) and peace justice; and (ii) the current effectivity of the fundamental right to access to justice for at-risk people.

2. OBJECTIVES

The purpose of the study is to analyze: (i) the dispute resolution paths available in Peru to guarantee access to justice in family and housing cases; and (ii) how effective they are at achieving the goals that were set when they were created.

The proposal is based on two main axes: the prevalence of these disputes and the incidence of obstacles to or limitations on access to justice for at-risk individuals.

According to the World Justice Project (2023), 44% of people in Peru report having a legal issue, but only 21% had the opportunity to receive assistance solving it. Of the latter group, just 47% managed to effectively resolve the issue.

This analysis is developed in a context of high levels of monetary poverty (18.9% pre-pandemic), with a marked difference between urban (12.4%) and rural (41.4%) areas. This socio-economic gap is aggravated if we look at extreme poverty: 5% of the country's population lives in extreme poverty, with 1.7% in urban areas and 16.6% in rural areas (JSCA-IDRC Canada, 2023: 10-1).

The fact that regular income is insufficient to meet basic needs is one of the main causes of poverty. It deprives individuals and families of access to fundamental rights such as food, healthcare, housing, education, and justice.

Although this is more prevalent in rural settings, it takes on more weight in justice proceedings in cities due to people's dependence on their monetary income. In the rural world, this dependence is muted by the coexistence of non-monetary forms of transactions and exchange.

The increase in the prevalence of family disputes and issues related to housing is closely connected to lack of income. This, in turn, is linked to several interconnected factors. Lack of sufficient income limits access to adequate and accessible housing, forcing families to live in precarious

conditions, with overcrowding, and without basic services like potable water, energy, and sanitation. These conditions may exacerbate family tensions, limiting peaceful coexistence.

The economic insecurity generated by the lack of funds that can be used to pay rent increases family members' stress and anxiety. Constant concern over economic survival and the inability to meet basic needs may cause or aggravate disputes and altercations within the home.

Lack of economic resources limits access to education and employment opportunities, perpetuating a cycle of poverty and conflictive restrictions on the exercise of personal autonomy and construction of family and community life projects.

In contexts marked by low incomes and structural inequalities, decisions about the use of limited resources can become a major source of disputes. For example the decision to prioritize food over rent can cause disagreements and tensions. Housing instability, including frequent evictions or inability to pay rent, can create an environment of uncertainty and fear, impacting families' emotional and psychological stability. This may increase or lead to disputes between family members and with landlords or neighbors.

Monetary poverty (and especially multidimensional poverty) can influence family disputes, especially those related to child support, visitation, and care. Children in single-family households, particularly households living in poverty, face a greater risk of enduring family disputes (McLanahan and Sandefur, 1994). These issues may be aggravated by the lack of economic resources or inability to resolve legal disputes in order to adequately provide for children and teens.

Female heads of single-parent households experience even more critical situations due to diverse factors that speak to gender inequality and its close link to poverty, such as salary gaps, discrimination in the labor market, and lack of access to affordable childcare.

In regard to housing-related issues, a study by Espinoza and Fort (2020) found that over the past two decades, Peruvian cities have expanded nearly 50%, and 92% of this growth is informal in nature. This

has led to a lack of access to basic services, jeopardizing residents' ability to enjoy their rights, such as health. The same study concluded that residents of such spaces will have to wait an average of 14 years to access such services. According to the authors, Peru has the second highest number of informal settlements in Latin America after Cuba.

This is exacerbated by a significant housing deficit, which has allowed for the growth of horizontal ownership and, with it, housing disputes that might be anticipated in a population that faces this phenomenon for the first time.

Informal settlements are fertile ground for the emergence of larger disputes, such as conflicts across groups over territorial control or among neighborhood organizations and the emergence of governance mechanisms parallel to those of the State that offer approaches to efficiently and transparently managing conflicts.

3. METHODOLOGY

The study used a mixed methodology, integrating both qualitative and quantitative methods of analysis. This combination allowed the authors to gather and analyze information from different perspectives and on different levels.

Given the nature of the report, priority was given to the qualitative dimension. The main goal was to learn about, understand, and interpret the perspectives of stakeholders, justice operators, and system users. Field work was conducted in Lima (pilot and information gathering), Arequipa, and Iquitos (information gathering).

The quantitative route was used as a complement to: (i) quantify and contextualize the context in which the family and housing disputes studied emerge; and (ii) describe the paths to solution through a statistical analysis at the national and regional levels.

3.1. Sources

Both primary and secondary sources were used in this study. The primary sources include semi-structured interviews, non-participant observation, discussions, and workshops with diverse audiences. The authors prioritized the following secondary sources: the use of public administrative databases and review of existing materials (i.e. documents and reports on the issues addressed, IDRC materials, and literature in general) and those produced specifically for this study (such as travel reports, documents from workshops, and communication products).

3.2. Data collection techniques and tools

Qualitative data was gathered through individual in-person and remote interviews[67]66 using specially designed tools such as interview guidelines and observation guides.

Primary information was collected through in situ field work, mainly with system users, extrajudicial conciliation and community justice operators, urban stakeholders, and judges.

Over the course of the analysis and evaluation, a participatory approach was used to provide feedback for the research, drawing on the perspectives, contributions, and recommendations of local research groups, the IDRC, and other strategic allies.

Finally, on May 28, 2024, JSCA held a meeting with experts in Lima to discuss a preliminary version of this report. Their contributions enriched the study and allowed the authors to adjust the conclusions and improve their recommendations.

67 Prior to its implementation, coordination work was conducted with the Ministry of Justice and Human Rights, the judiciary, and private conciliation centers. Every person interviewed signed an informed consent form authorizing us to use the information provided.

3.3. Sample

Given the eminently qualitative nature of the study, an intentioned sampling method was used to select the cities where the field work and semi-structured interviews would be conducted. The authors initially chose three cities: Lima (including Callao), Arequipa, and Iquitos. We added a fourth city, Piura, to round out the study.

The selection criteria are detailed below:

a) **Regional diversity:** Representation of the main natural regions (i.e. coast, mountains, and jungle).

b) **Supply of justice paths:** Availability and variety of justice mechanisms in each city.

c) **Urban complexity:** Capital cities, medium cities, and small cities were included based on their population volume.

d) **Demographic specificities and intersectionality:** Examples include rates of live births to women under 15; and

e) **Multidimensional poverty:** Poverty levels that impact the population of each city.

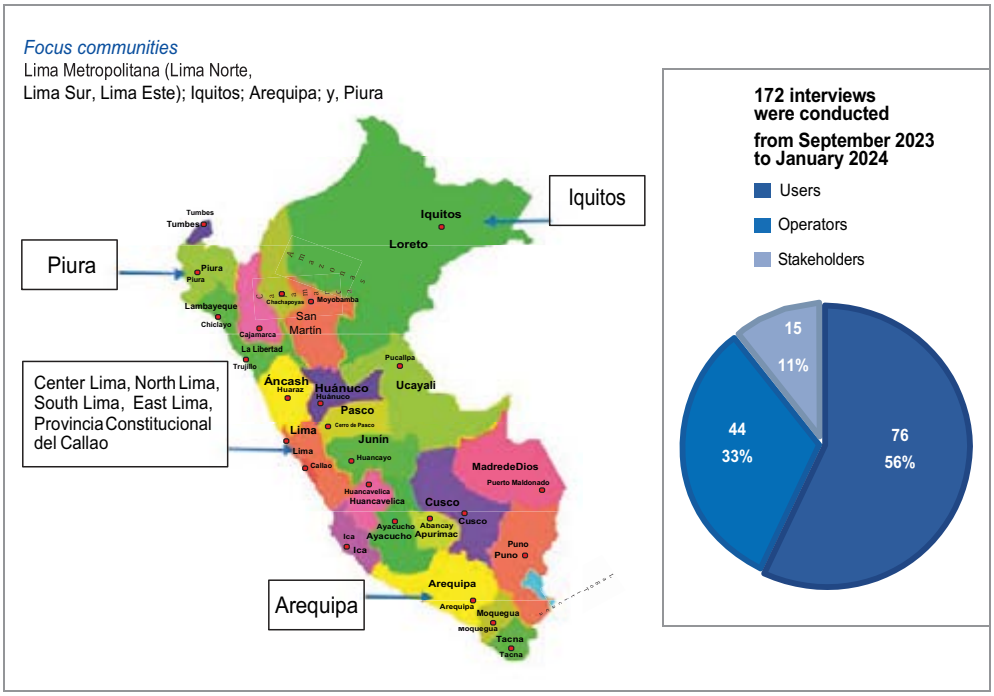
The following variables were considered to determine the sample of people interviewed:

a) **Justice operators:** Members of justice provision institutions in the paths studied.

b) **Stakeholders:** People who are influential in building the national agenda on paths to justice, including representatives of multilateral agencies, policymakers, academics, and representatives of organized civil society; and

c) **System users:** People who use the different paths to justice and have experienced family and housing disputes. Special attention was paid to women due to their increased vulnerability in the disputes addressed. We also included individuals who had recently been involved judicial proceedings, especially proceedings that had ended in the past four months, in order to generate a comprehensive assessment of their experience in the justice system.

Figure 1
Components of the sample



Source: Developed by JSCA-IDRC Canada (2023).

3.4. Data processing

The qualitative data were processed using a content analysis on the Atlas.ti platform. The questions, criteria, and variables guiding the study were considered, and matrices were used to organize, cross-reference, and validate the data.[68]

68 The confidentiality of the individuals interviewed was maintained throughout the qualitative data analysis process in order to prevent them from being identified based on their statements or arguments, except in special interest cases in which: (I) the benefits outweigh the risks of said exposure; and (ii) the informed consent of the person involved had been obtained.

4. PERU IN CONTEXT

4.1. Key country information

Peru is a democratic, social, independent, and sovereign republic (Article 43, Political Constitution). It is located on the west coast of South America and has a population of 33.7 million (National Institute of Statistics and Data, 2023: 9).

Over the past century, Peru has transitioned from predominantly rural (64.6% according to the 1940 census) to mainly urban (82.6%) and coastal (INEI, 2023:23). As of the 1961 census, 52.3% of the population was concentrated in the mountains, and 39% lived on the coast. However, in the 2017 census, it was determined that 58% of residents lived on the coast, 28.1% in the mountains, and 13.9% in the jungle (INEI, 2023: 18).

Peru is a pluricultural country where 47 languages are spoken. It is home to 55 Indigenous communities.[69] According to the 2017 census, nearly 4.3 million Peruvians reported speaking an Indigenous language as their first language (including Quechua, Aymara, or an Amazonian language). In addition, 6 million people (approximately 18% of the population) self-identified as Quechua, Aymara, or a member of an Amazonian Indigenous group.

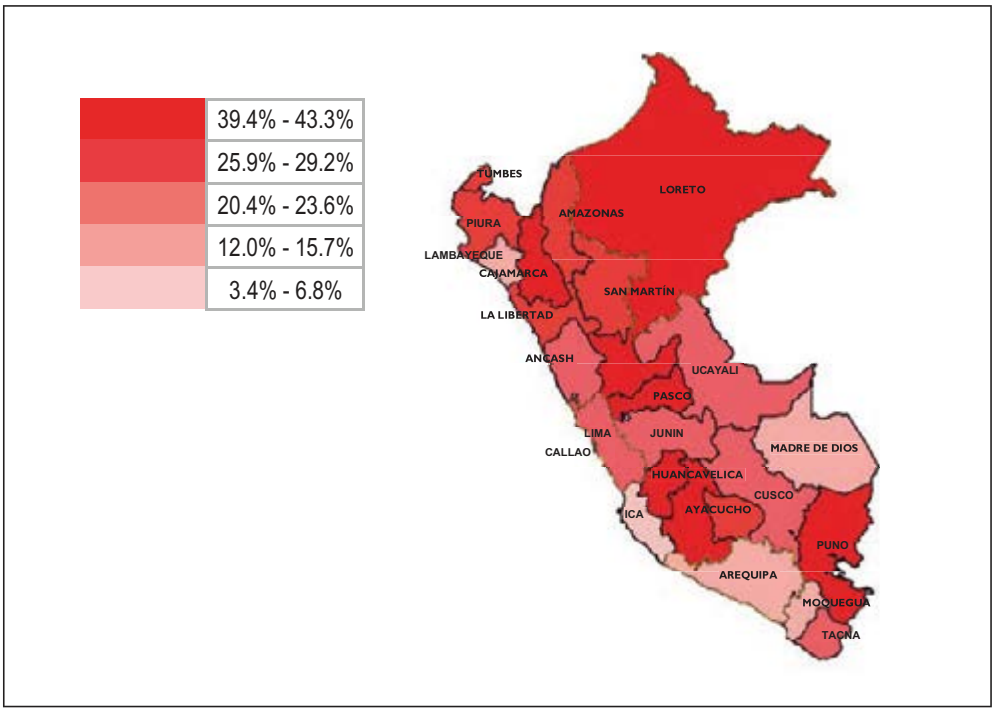
It is also a strongly centralized country. The capital, Lima, is home to 33% of the population, and over 82% of people live in urban areas. The most important and highly populated regional capitals are: La Libertad, Piura, Arequipa, Cajamarca, and Cusco. It is worth noting that the population of each of these cities is significantly smaller than that of Lima.

69 Indigenous Peoples Database, Ministry of Culture of Peru. See https://bdpi.cultura.gob.pe/pueblos-indigenas/. It is important to mention that this is referential. The number of Indigenous peoples may increase when others register.

These characteristics reflect the deep regional disparities in the distribution of poverty. As the map below (JSCA-IDRC Canada, 2023:11) shows, extreme poverty is concentrated in certain regions. There, two out of every five people face serious privation. By contrast, the lighter areas present significantly lower percentages (from 3.4% to 23.6%), which suggests a less severe but equally concerning situation.

As the figure shows, Loreto, which is located in Amazonía, presents a high level of extreme poverty. This is related to the vastness of its territory, difficulty accessing the most remote towns,[70] and especially the ability to reach Indigenous communities.[71]

Figure 2
Poverty levels



Source: Developed by JSCA-IDRC Canada (2023).

70 Iquitos is the only city in Peru that cannot be accessed by land from other regions. One must travel by air or river to reach it.

71 In some areas -like Lot 8- oil activity has polluted the water and soil and has caused several species to disappear. This has been reported by the Achuar, Kichwa, Kukama, and Urarina communities (UNDP, 2022).

Infrastructure, natural and economic resources, and investment in basic services. Each of these aspects plays a critical role in the prevalence of extreme poverty. Regions with higher rates like Loreto face additional challenges, such as lower access to markets, limited education, and insufficient healthcare services (JSCA-IDRC Canada, 2023: 10-11).

Another important element is the analysis of poverty and its impact using a gender-based approach (JSCA-IDRC Canada, 2023: 19). In the urban context, female heads of household and their families systematically face higher poverty rates than households led by men. In 2017, the urban poverty of these households was 43% compared to 33% for households led by men. While this gap decreases slightly every year, it does not change this difference, revealing the structural inequalities that women face in access to resources, essential services, and opportunities.

On the other hand, extreme urban poverty shows a different pattern. In 2020, a dramatic increase occurred: these rates doubled for both male and female heads of household to 26%. This may be related to the global health crisis and its economic impacts, acutely impacting the most vulnerable sectors of society.

Rural areas present a different situation. Although poverty rates are generally lower than in the urban sphere, gender differences are accentuated in the context of extreme poverty. The extreme poverty rate for households headed by women in 2020 was 8% compared to 7% for households headed by men. This increase may be linked to structural and cultural factors that perpetuate inequality.

The persistence of these inequalities has direct implications for the use of paths to justice in Peru. Women, who face the highest levels of poverty and vulnerability, are most likely to be involved in disputes and need justice services. However, their ability to access these services is limited by their economic situation and the geographic area where they live.

It is important to note that these situations perpetuate themselves despite the progress that the country has made in the areas of economic growth and poverty reduction during the two decades leading up to the

COVID-19 pandemic. Macroeconomic stability, commercial opening, and a favorable international environment allowed it to become a medium-high income economy. Per capita income has increased from US$2,040 in 2002 to US$7,126 in 2022 (OECD, 2023).

However, various international agencies have warned that the country continues to face significant threats to its ability to achieve greater development and prosperity including the impact of climate change, inequalities, and their primary economic structure (i.e. natural resource-dependent structure). Furthermore, unaddressed basic issues limit the creation of formal jobs, economic diversification, and the rate of reduction of poverty and inequality (OECD, 2023).

In this context, the OECD has stated that better quality public services, more solid governance, a fertile business environment, and political stability will be fundamental to more and more inclusive growth that promotes poverty and inequality reduction (OECD, 2023). [*"una mejor calidad de los servicios públicos, una gobernanza más sólida, un entorno empresarial propicio y estabilidad política serán fundamentales para un crecimiento mayor e inclusive que promueva la reducción de la pobreza y la desigualdad"*.] (Our translation.)

In this sense, one negative factor is the ongoing political crisis that the country is facing, which became more pronounced in 2016. Over the past seven years, Peru has had seven presidents. This crisis was exacerbated in late 2021 and early 2022 with a high level of social conflict that led to the deaths of at least 60 people, especially in Peru's southern mountain areas (mainly Puno and Ayacucho) and in Lima (IACRH, 2023).[72]

4.2. Access to justice? Status, problems, and reforms

The dispute resolution paths covered in this study face significant challenges in terms of accessibility, efficiency, and equity, especially for

72 It is important to note that different human rights prosecutor's offices are investigating the cases. They hypothesize that excessive force was used and that alleged extrajudicial executions were perpetrated. In its report, the IACHR recommends investigating these alleged human rights violations more quickly, ensuring that there is no impunity with regard to said crimes, and providing adequate reparations to victims.

vulnerable populations. While the ordinary justice system presents issues with reliability, accessibility, and procedural delays, ADR methods and community justice offer valuable alternatives, though they are not free from limitations and areas that require improvement.

The evolution of these systems and their capacity to adapt in order to respond to the needs of the most vulnerable populations is crucial to guaranteeing more inclusive and effective justice. For example, although we have no data on the availability of community justice, it plays a key role in access to justice in societies in which formal systems are less accessible. This form of justice, which is rooted in local practices and traditions, can offer more affordable and relevant solutions to family and housing disputes, especially in rural and Indigenous areas.

Agencies like the OECD also have focused on the Peruvian justice system, recognizing that its adequate operation is key to the country's sustainable development. This is because, among other reasons, the protection of property rights, adequate application of regulations, and compliance with private contracts requires an effective judicial system and these institutions are vital to protecting investors' yield, reducing transaction costs and discouraging opportunistic behavior, thus incentivizing savings, investment, and complex economic exchanges that serve as the foundation of trade and specialization. Slow-moving courts have been shown to significantly reduce economic growth, particularly in sectors in which contractual relations with suppliers are crucial. [*"la protección de los derechos de propiedad, la adecuada aplicación de las normativas y el cumplimiento de los contratos privados requieren un sistema judicial eficaz"* y estas instituciones son vitales para proteger *"los rendimientos de los inversores, [reducir] los costos de transacción y [disuadir] comportamientos oportunistas, incentivando así el ahorro, la inversión y los complejos intercambios económicos que son la base del comercio y la especialización. Está demostrado que la lentitud de los tribunales reduce significativamente el crecimiento económico, especialmente en sectores donde las relaciones contractuales con los proveedores son cruciales"]* (OCDE, 2023:86, our translation).

However, the performance of the Peruvian judicial system is lower than those of OECD nations and peers in the region, and it has been verified that both companies and individuals believe that the system lacks transparency and accessibility and is ineffective and inefficient when it comes to resolving cases. [*"el desempeño del sistema judicial peruano está por debajo de los países de la OCDE y también de otros pares de la región, y ha verificado que tanto las empresas como los ciudadanos consideran que el sistema carece de transparencia y accesibilidad y es ineficaz e ineficiente a la hora de resolver litigios"*] (OECD, 2023, our translation).

The perception of a lack of impartiality is one of the factors highlighted in the negative perception of justice. Over 80% of Peruvians feel that it does not provide services equally (Latinobarómetro, 2021). The same was reported in regard to corruption. The judiciary has been listed as one of the country's "most corrupt" institutions since national surveys on perceptions of corruption have been conducted in that country.

Over the course of Peru's history, various formal justice system reforms have been attempted. During this century, one of the key milestones was the creation of the Special Commission for the Comprehensive Reform of Justice Administration (*Comisión Especial para la Reforma Integral de la Administración de la Justicia*, CERIAJUS, 2003), as part of the political pact titled the "Agreement for Justice" (*Acuerdo por la Justicia)*. The purpose of the commission was to rebuild the justice system, which had been seriously impacted by widespread corruption during the 1990s.

The CERIAJUS report was technical in nature and enjoyed broad legitimacy because it was developed in collaboration with justice system agencies and through citizen consultations. However, it had a meager impact.

In recent years, the Wagner Commission report is worthy of note. The entity was created in 2019 after a scandal involving trafficking in influence and corruption among the judiciary leadership known as the "White Collars Case." The report's recommendations were incorporated into the Justice System Reform Public Policy (2021-25). However, the policy's

implementation has been halted to date because of the political volatility and instability in the Ministry of Justice and Human Rights [*"se ha visto frenada hasta ahora por volatilidad política e inestabilidad en el Ministerio de Justicia y Derechos Humanos"*] (OECD, 2023: 88, our translation) due to the aforementioned political and institutional crisis.

The Council for Justice System Reform, which is comprised of the main leaders and operators of key government institutions, is currently operational.[73] The entity was created to promote reform, monitor its implementation, and coordinate the execution of the policy by the entities that are part of the justice ecosystem.

The main issues identified with regard to the judicial path are: (i) the existence of a significant proportion of judges hired using short-term modes (61%)[74] who can easily be removed from their positions due to that condition; and (ii) the mechanism used to appoint temporary judges, which does not use merit-based selection processes. One of these mechanisms involves hiring temporary lead judges to fill roles at a level higher than the one they were initially appointed to (provisional judges). The other consists of appointing supernumerary judges and temporary prosecutors from a list of candidates who did not pass the selection process, also with a temporary hire. Similar systems are used for prosecutors; and (iii) the overload of cases (OECD, 2023: 88).

By contrast, ADR methods like conciliation are more flexible and accessible paths to dispute resolution. These methods focus on dialogue and mutually beneficial agreements, which can be especially valuable in communities where there is distrust of the formal judicial system or where cultural norms favor non-litigation-based, dialogue-based, or collaborative modes. ADR methods can be faster and less expensive than traditional judicial proceedings, which makes them especially attractive to at-risk populations.

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73 Created through Law No. 30942, the Council is comprised of the Presidents of the Republic, Congress, the judiciary, the Constitutional Court, and the National Board of Justice, as well as the National Prosecutor, Comptroller General, and Ombudsperson.

74 During the COVID-19 pandemic, this percentage increased 5%.

However, there are substantial differences between the conciliation processes studied. According to current regulations, family conciliation is optional or voluntary, but it is a mandatory requirement for filing a complaint in court in civil cases. As we will show, this has a considerable impact on the use and efficacy of the tool.

There are 84 public and free conciliation centers in Peru. This represents a rate of 0.25 centers per 100,000 inhabitants. The lack of accessible conciliation centers means that a large part of the population faces significant obstacles to accessing dispute resolution services. This may lead to the perpetuation of cycles of violence and marginalization of the most vulnerable members of society (SISCONCI, 2024).

Indigenous and rural populations and women and children are particularly impacted by this limited access because they frequently lack the economic resources and information required to become familiar with, access, understand, and successfully move through the formal judicial system. The lack of free conciliation centers perpetuates existing inequalities and contributes to these groups' vulnerability.

As such, improving the availability of public ADR services is a key strategy for democratizing access to justice and giving less favored communities effective dispute resolution tools. Providing these services free of charge ensures that economic capacity is not an impediment, contributing to mitigating an historic barrier that has marginalized many vulnerable people.

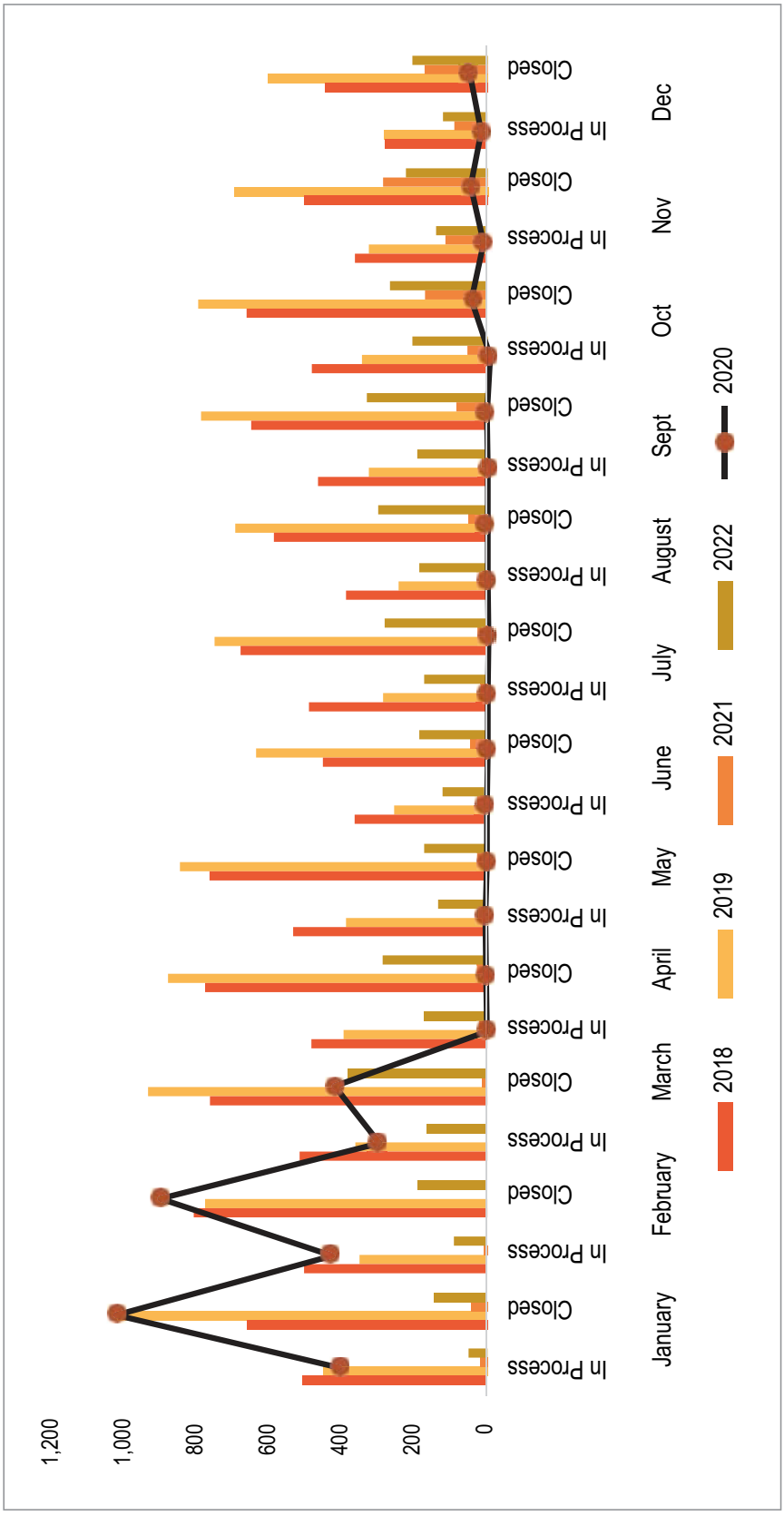
The implementation of free ADR methods also contributes to: (i) the efficiency of the justice system as a whole, alleviating caseloads and allowing disputes to be resolved in a more agile way; (ii) the promotion of approaches that are more participatory and human, which has a positive impact on case management, efforts to identify solutions, and compliance with them; and (iii) improved dispute prevention and the promotion of a culture of peace.

By facilitating access to dispute resolution mechanisms, communities promote peaceful management of differences and contribute to the creation of more stable and harmonious environments, especially in communities impacted by violence.

In the case of private conciliation centers, the use of more agile proceedings due to their limited structure favors celerity. The only requirement is the agreement of both parties and the conciliator.

By contrast, public conciliation centers face serious congestion issues and have been impacted by externalities that have shaped their operation. As the figure below shows, child support cases were not heard between April and November 2020 due to the COVID-19 pandemic. Since then, there have been no clear signs of recovery. In late 2022, the rate of cases filed was 2.78 times lower than the rate for 2018.

Figure 3
Child support cases in process and closed in public conciliation centers in Peru (2018-2022)



Source: Developed by JSCA based on data from the Extrajudicial Conciliation and Alternative Dispute Resolution Directorate of the Ministry of Justice and Human Rights

Researchers also have observed slight seasonality in the demand for child support, which was noted towards the first quarter of 2022. Demand for such services significantly decreases during June and August and then rises again and declines during November and December.

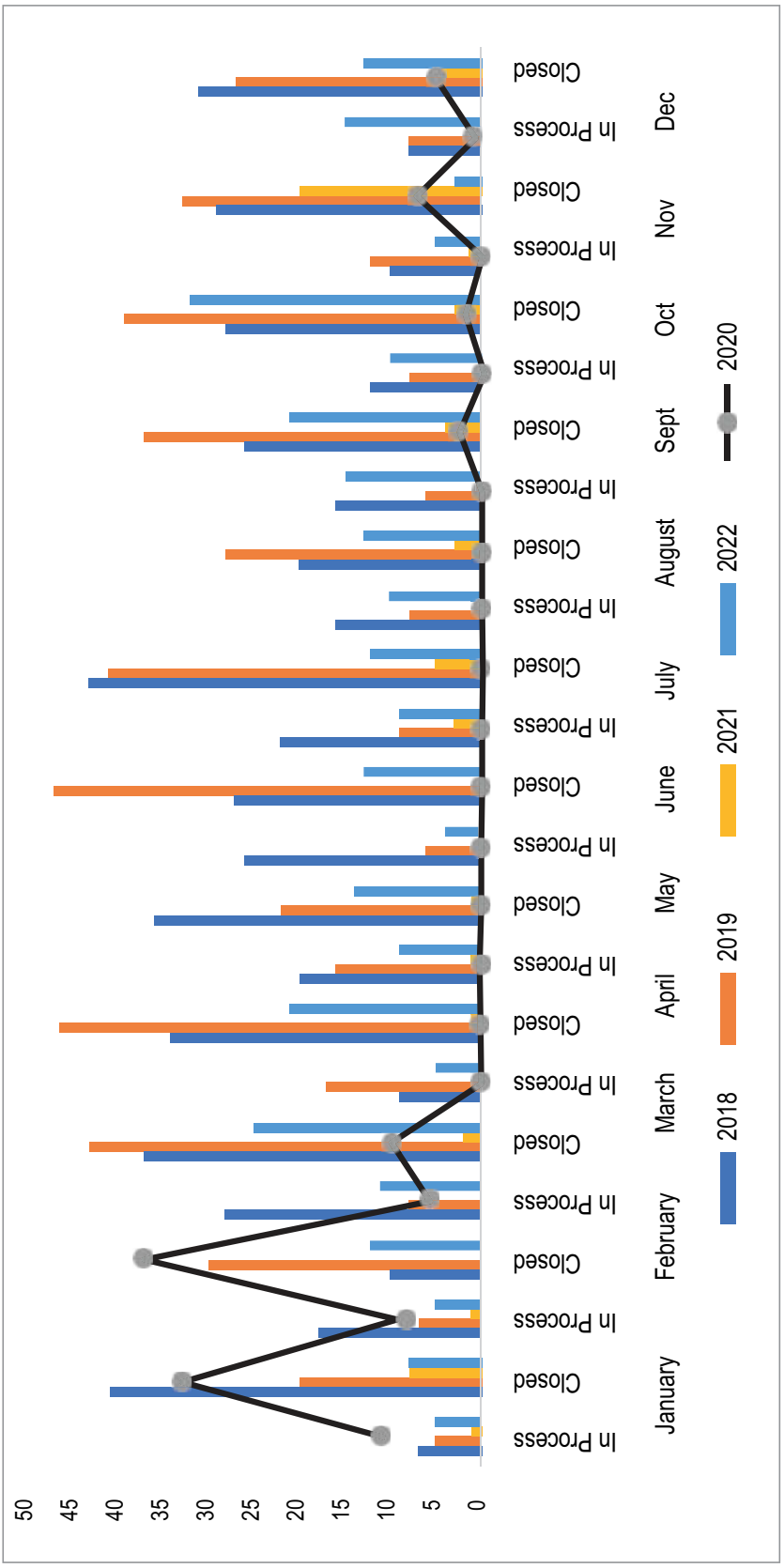
Congestion involving this type of disputes during the period analyzed shows significant variations: 239% in 2018, 185% in 2019, 194% in 2020, 170% in 2021, and 218% in 2022. Although there was a downward trend in 2022, the level continues to be close to the overall average for the judicial path in Peru (225%).

As we mentioned earlier, although the numbers are relatively similar, they cannot be compared directly in terms of judicial system speed. As such, these data are offered only for reference to evaluate the work of the conciliator.

The figure below shows that a similar pattern existed with eviction cases during the pandemic. While the volume of demand is lower than child support cases, there was a significant drop in these cases in 2020. This decrease in demand allowed cases that were closed in practice but that could not be heard due to the high workload that year to be terminated.

Figure 4

Eviction cases in process and closed in public conciliation centers in Peru (2018-2022)



Source: Developed by JSCA based on data from the Extrajudicial Conciliation and Alternative Dispute Resolution Directorate of the Ministry of Justice and Human Rights

In regard to the community path, Peruvian communities have a tradition based on local principles and practices, especially in rural areas and among Indigenous populations and campesinos . Its effectivity is based on its cultural relevance and accessibility to communities that may feel far removed from the formal justice system.

This mechanism allows them to solve disputes in a manner that aligns with local traditions and values, promoting more sustainable and socially legitimate solutions. However, the effectivity of this path may be impacted by the following factors: (i) the lack of knowledge of or integration with formal justice systems; and (ii) concerns regarding equity and consistency in the application of justice.

One key piece of information is that 49% of people who use the community justice system in the Peruvian Andes are women, and most of their claims are related to criminal disputes and violence against women. This underscores the importance of these mechanisms for providing services for those seeking assistance with highly sensitive social and personal matters. However, the low percentage of family disputes handled using community justice suggests possible underuse of these mechanisms for certain topics or a preference for using other means to resolve the disputes.

Community justice also plays a key role in handling severe cases of violence against women and children. The fact that 57.9% of such matters treated are serious reflects the utility of this mechanism in terms of offering culturally adequate and sensitive spaces and solutions. Fines, reparations, and municipal intervention are common solutions to disputes, which reflects the community focus in dispute resolution.

The paths available to Peruvians also include peace justice. Under Law No. 29.824, this is an entity that forms part of the judiciary (but not the judicial career) whose operators resolve disputes and controversies, mainly using conciliation and also through judicial decisions in accordance with the justice criteria of the specific community and in the context of the Peruvian Political Constitution (Article 1). ["órgano integrante del Poder Judicial [sin pertenecer a la Carrera Judicial], cuyos operadores

solucionan conflictos y controversias preferentemente mediante la conciliación, y también a través de decisiones de carácter jurisdiccional, conforme a los criterios propios de justicia de la comunidad y en el marco de la Constitución Política del Perú"] (Our translation.) In other words, its decisions are made to the best of their knowledge and understanding and need not include legal grounds. ["de acuerdo a su leal saber y entender, no siendo obligatorio motivarlas jurídicamente" (art. IV)] (Our translation.) These services are offered free of charge and should receive the support of the public prosecutor's office, the national police, armed forces, Ministry of the Interior, regional governments, local governments, campesino communities, Native communities, and 'peasant patrols' for the proper performance of their duties. ["deben recibir el apoyo del Ministerio Público, la Policía Nacional del Perú, las Fuerzas Armadas, el Ministerio del Interior, los gobiernos regionales, los gobier-nos locales, las comunidades campesinas, las comunidades nativas y las rondas campesinas" (arts. VI and VII] (Our translation.)

The Effectivity of the Approaches and responses depends on the forms, rules, and practices that define each path as well as its capacity or incapacity to adapt to the characteristics, needs, and circumstances of the general population and vulnerable groups in particular. While ordinary justice offers a formal legal framework, ADR methods and community justice offer more flexible and culturally sensitive approaches.

The challenge consists of ensuring that these systems work properly, using deferential approaches that are sensitive to the unique aspects of the disputes filed. They also should provide a full range of options for dispute resolution that are accessible, effective, and fair for everyone, especially individuals who have some sort of vulnerability.

4.3. Quality of the interventions: What information? The case of child support

The findings presented in this report reflect on the various ways in which the Peruvian population resolves its disputes through the judicial path, ADR methods, and community justice in family and civil matters. We have focused on the operation, operativity, best practices, and opportunities for improvement in each of these paths.

Throughout the phases of the study -information gathering, validation, processing, and analysis-, we have considered the unique aspects of family cases (child support, visitation, and custody) and civil cases (property and neighborhood coexistence) selected for this study. However, few prior studies evaluate the quality of the service of the justice system in relation to such cases. The only proceedings that have been analyzed in an organized and methodical manner involve child support.

In 2018, the Ombudsperson's Office published a report based on a representative sample of approximately 3,000 files nationally that were linked to the economic and social characteristics of the litigants. The main findings, which complement those identified in this report, were the following:

a) 90.2% of the complaints filed by women involved child support for children and teens.

b) Women represent 95.3% of the universe of system users in child support proceedings.

c) For most complainants, child support is the only income that they have to cover their children's basic needs, as 50.6% are homemakers, 16.8% are unemployed, and only 16.3% engage in paid labor.

d) In 95.3% of cases, the respondents are men, and most of them engage in paid labor in the service (39.4%) and transportation (13.2%) sectors. Only 0.6% of respondents are full-time homemakers.

e) Over half of respondents maintain a connection to the complainants (51.1%) and slightly over ten percent are married (13.5%).

f) In 53.1% of cases, the respondent did not participate in the proceedings. This has a direct impact on subsequent non-compliance with the sentence.

G) The advanced allocation of support was only requested in 18.7% of cases despite the urgency of being able to meet the nutritional needs of children and adolescents. Furthermore, when that benefit was granted, it did not exceed 500 soles (US$151 at the time) in 70.5% of cases.

h) A high percentage of judges (81.2%) granted support that did not exceed 500 soles. The amount required to cover the nutritional needs of a child or adolescent in 2016 -the average monthly price of the INEI Basic Family Basket- was 328 soles.

As such, such an award is absolutely insufficient to meet other key needs for their development, such as healthcare, education, clothing, and/or recreation.

The study authors report that they noticed significant differences in the decisions of male and female judges with regard to the claims filed by men or women. Male judges awarded support 48.2% of the time in response to claims filed by women. Female judges did so 47% of the time. Male judges awarded support for claims filed by men 33% of the time. Female judges did so 32.9% of the time.

i) The legal limit of 5 business days was met in 37.1% of the cases assessed. We must add to this the elements that we have already mentioned: advance allocation of support is awarded in less than 19% of cases. This leaves the very parties who turned to the proceedings to meet their needs exposed and particularly vulnerable.

j) Less than 3% of support claims were resolved in the first instance within the legal limit of 30 business days. Unfortunately, nearly half of the proceedings studied (47.5%) lasted more than six months.

k) Only 4.7% of support proceedings were resolved through judicial conciliation, and those cases took an average of 229

days to resolve (7.5 months). In other words, the judicial mechanism of conciliation does not help reduce the caseload pending in professional peace courts. This raises questions about how case management is handled (i.e., production of evidence that facilitates settlement, techniques for improving the understanding and communication of interests, or the administration of legal incentives to discourage malicious or imprudent attitudes) in order to achieve that institutional goal.

l) Nearly one fifth of support proceedings are declared legally abandoned (14,4%), which is problematic for various reasons, including the following: (i) A high number of women do not proceed with cases, and most of those cases involve arguments in favor of support being awarded for their children; and (ii) legal entities are encouraged to declare legal abandonment in order to clear cases, refraining from exercising their investigative authority to handle this type of cases. Both suppositions involve a worsening of conditions for demanding respect for rights.

m) Of the first instance sentences issued, 89.6% are upheld, which means that the ruling is executed immediately in favor of the complainant. Only 10.4% of those sentences were appealed.

n) Compliance was reported in 38.9% of sentences that awarded child support. However, support was actually provided 5 months later in 27.3% of cases, while compliance took over 15 months in 23.5% of cases. Those circumstances create uncertainty regarding the efficacy of legal and judicial tools available through judicial executions in general and support executions in particular.

o) The standard form for filing support claims is used frequently by members of the public because the process does not require an attorney's signature. In spite of this, it has been found to contain: (i) important omissions, such as the fact that it is not possible to file for increased support once such support has been awarded, request advance payment of support, or

request other protective measures; and (ii) inconsistencies that may confuse the person who wishes to file a claim for support.

p) Over three quarters of parties interviewed (77.4%) contact the court about the status of their claim even though there is a virtual Judicial File Consultation service.

The evidence gathered for this study aligns with the results of the Ombudsperson's Office research. These include the fact that women in poverty comprise the majority of convening parties and are seeking support in order to meet the basic needs of their children. In many cases, this support is their only form of income.

In addition, the authors observed the limited impact of judicial conciliation on mid- to long-term dispute resolution, as well as the serious problems that the complainants face when it comes to making sure that the sentence is executed in their favor. In many cases, that is the factor that resolves the dispute. The recognition of a right is sterile if it is not fulfilled.

4.4. How are paths to dispute resolution regulated?

4.4.1. Specialized justice: Necessary- but sufficient?

In Peru, the majority of civil proceedings are regulated by the Civil Procedure Code, which has been in place since 1993 and has undergone numerous changes. This code establishes processing mechanisms and deadlines for contentious and non-contentious cases. These are categorized into three main types: judicial proceedings (the longest kind with the greatest probative and appellate responsibilities), abbreviated proceedings (medium length), and summary proceedings (the fastest and most limited type).

However, civil proceedings that involve minors, such as those related to child support, custody, and visitation, are governed by a specific procedure code: the Code on Childhood and Adolescence (Law No. 27337). This law states that child support, visitation, and custody

cases must only be processed using summary proceedings. The Civil Procedure Code and other substantive or procedural regulations apply only in a supplementary manner, and customary law applies as long as it does not violate the interests of public order.[75]

In regard to the support proceedings themselves, the recent change to Article 170-A of the Code on Childhood and Adolescence (Law No. 31.464) has prioritized the principles of oral proceedings, concentration, celerity, and procedural economy. This forces the judge to deliver the ruling orally during the hearing and to submit a written report within five days.

Hierarchically, jurisdiction is distributed as follows in these cases: professional peace courts, specialized courts, superior courts, and supreme courts. Child support proceedings are initially handled in professional peace courts and then in specialized courts in second instance. For their part, custody and visitation matters are managed by the specialized courts and reviewed in the second instance by the specialized chambers.

In civil proceedings, jurisdiction is based on both the type of matter and the amount of money involved. Cases involving smaller amounts begin in the professional peace courts, while those involving more money are processed in specialized courts and review in the second instance is conducted by the immediately superior instance.

Based on the logic of specialization, there are family courts throughout the country. Most are located in regional capitals and some highly populated provinces (Articles 11 and following, Regulations for the Organization and Functions of the Judiciary). However, only the Lima Superior Court has specialized family chambers. Civil superior courts hear family matters in the rest of the country.

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75 According to Article VII of the Preliminary Title of the Code of Childhood and Adolescence, Civil Code, Criminal Code, Civil Procedure Code, and Criminal Procedure Code rules will apply to this Code in a supplementary manner. In matters involving children or adolescents who belongs to ethnic groups or Indigenous or Native communities, the customs of said entities will be observed in addition to this Code and current legislation as long as they do not go against the rules of public order. ["las normas del Código Civil, Código Penal, Código Procesal Civil y Código Procesal Penal se aplicarán cuando corresponda en forma supletoria al presente Código. Cuando se trate de niños o adolescentes pertenecientes a grupos étnicos o comunidades nativas o indígenas, se observará, además de este Código y la legislación vigente, sus costumbres, siempre y cuando no sean contrarias a las normas de orden público".] (Our translation.)

Family

Current regulations on family judicial proceedings are mainly comprised of the following bodies of regulations:

(i) Civil Code (1984),[76] as substantive law.

(ii) Civil Procedure Code (1993)[77] as procedural law, which establishes the rules for processing matters.

(iii) The Code on Childhood and Adolescence (2000)[78], which establishes a single process for handling support, visitation, and custody matters.

Jurisdiction for said processes is determined as follows:

(i) Child support proceedings come under the jurisdiction of the professional peace courts. Their decisions can be reviewed by specialized family courts in the second instance.

(Ii) Visitation and custody proceedings come under the jurisdiction of the family courts and may be reviewed by the civil or family courts depending on the area. The Supreme Court reviews cassation claims.

Housing

The main bodies of rules related to judicial proceedings involving housing are:

(i) The Civil code, as substantive law.

(ii) The Civil Procedure Code, which establishes an extremely summary process for rental cases and a process for hearing cases involving a claim of ownership.

76 Approved by Legislative Decree No. 295 in November 1984.

77 Its Ordered Single Text was approved by Ministerial Resolution No. 010-93-JUS in January 1993.

78 78 Approved via Law No. 27337 in August 2000.

(iii) The Municipalities Law, which regulates the roles of municipalities, including their power to police compliance with obligations in the area of neighborhood coexistence and to issue fines if there is a dispute.

(iv) Law No. 31.313 on sustainable urban development promotes access to housing and state policies to ensure access to dignified housing for low-income individuals.

(v) Legislative Decree 1668 on rules of coexistence with respect to horizontal ownership, establishing the rights and obligations of owners and the opportunity to judicialize disputes.

In regard to jurisdiction over said proceedings:

(i) Rental proceedings are handled by first instance civil courts with the opportunity to submit the decision for review by the civil chamber and a cassation request before the Supreme Court. [79]79 In the case of failure to pay or expiry of an agreement, when the amount involved is over 50 procedural reference units,[80] if the case goes before a professional court. The civil courts have the power to review said rulings. It is important to note that, according to the Fourth National Civil Jurisdictional Plenary (2017) and other jurisdictional spaces, precarious rental cases (when the lessor does not have the title or their title has expired) are handled by the civil courts.

(ii) Cases involving ownership claims are heard by the civil courts in the first instance. The civil chambers are responsible for reviewing such rulings and the Supreme Court hears the cases at the cassation level.

79 Unless there is dual jurisdiction (first and second instance), in which case the Supreme Court may not rule in the matter.

80 This amount is the basis for the payment of fees, tariffs, and fines in trials and proceedings within the judiciary. The Procedural Reference Unit (Unidad de Referencia Procesal, URP) is set based on the Tax Unit (Unidad Impositiva Tributaria, UIT), which is adjusted annually. An URP is 10% of an UIT in Peru. In 2023, an URP was worth S/495 soles (US$130.20).

(iii) Neighborhood disputes are processed as contentious-administrative proceedings before the municipalities,[81] which oversee them and determine which parties are responsible. If fines are issued, the professional peace courts are responsible for ensuring that they are paid.

Table 1
Types of proceedings related to housing

Proceedings	First instance jurisdiction	Second instance review jurisdiction	Cassation
Rental	Civil courts (with the exception of eviction due to non-payment)	Civil Chamber	Supreme Court
Eviction due to non-payment or expiry of contract, <50 procedural reference units	Professional Peace Court	Civil counts	
Claim of ownership	Civil counts	Civil chambers	Supreme Court
Neighborhood dispute	Contentious-administrative proceeding (Municipalities)		
Fines	Professional Peace		

Source: Developed by JSCA using official information.

81 The municipality may conduct visits, issues certificates, and eventually issue fines in the context of the administrative proceedings in a municipal office.

4.4.2. ADR methods: Conciliation as (exclusive) matrix

Judicial ADR methods

In Peru, the Civil Procedure Code established judicial conciliation, giving the parties the opportunity to resolve their conflict of interest at any stage of the process as long as a second instance sentence has not been issued (Article 323) ["las partes [la posibilidad de]conciliar su conflicto de intereses en cualquier estado del proceso, siempre que no se haya expedido sentencia en segunda instancia"] (Our translation.)

Although the data collected for this study cannot be generalized, the interviews show that approximately 60% of family cases are subjected to judicial conciliation, and agreements are reached in 30% of them. Judicial conciliation is much less common in housing cases. It is utilized in less than 5% of such matters.[82]

Extrajudicial ADR methods

Extrajudicial ADR methods are governed by Law No. 26872 on conciliation and by Legislative Decree No. 1071 on arbitration.[83] Although bills have been proposed to promote other alternative methods like mediation, Peruvian legal culture has focused on conciliation, the most frequently used mechanism identified in this study.[84]

The institutional structure of extrajudicial conciliation

Law No. 26.872 establishes conciliation as an alternative dispute resolution method that does not constitute a legal act (Articles 4 and 5) in which the parties seek out a consensual solution and use the services of an extrajudicial conciliation center. This procedure can be conducted in person, through electronic platforms, or using similar methods.

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82 Interviews with three civil judges and one professional peace judge.

83 Arbitration has constitutional rank. In this regard, Article 139 of the Political Constitution of Peru stipulates that there is no independent jurisdiction aside from military and arbitration, nor can there be one.... ["(…) no existe ni puede establecerse jurisdicción alguna independiente, con excepción de la militar y la arbitral".] (Our translation.)

84 Interview with family court judges Edwin Berjar and María Elisa Zapata.

System operators include extrajudicial conciliators, trainers, extrajudicial conciliation centers, and conciliator training and education centers (Article 19-A).

Conciliator training and education is handled by authorized centers, which may include universities, governments, and professional associations. The MINJUSDH's National Extrajudicial Conciliation School also plays a key role in training these operators. Training and education centers must meet certain requirements to register with the MINJUSDH National Single Registry of Training and Education Centers, which supervises and monitors courses and issues fines to entities that do not comply with the respective rules.

On the other hand, the law stipulates that extrajudicial conciliation centers may be public or private non-profit legal entities as long as they include conciliation as one of their objectives. However, they must secure the authorization of MINJUSDH in order to operate through the Extrajudicial Conciliation and Alternative Dispute Resolution Methods Directorate (Articles 19 and 24).

According to this mandate, the MINJUSDH is responsible for supervising, registering, renewing, authorizing, and penalizing these centers (Article 26).

According to Law No. 26.872, anyone who earns an accreditation may serve as a conciliator, and the role is not only open to attorneys. However, the law requires each conciliation center to have at least one attorney responsible for supervising the legality of conciliation agreements (Article 29). Furthermore, conciliation centers established by universities, professional associations, and regional or local governments must prioritize services for low-income individuals (Article 25).

In the context of the defense of rights, the Municipal Child and Adolescent Defense Offices (Defensorías Municipales de Niños, Niñas y Adolescentes, DEMUNAS) are also authorized to provide family conciliation as long as they do so to defend or protect the rights of children and teens.

In regard to the termination of the proceedings, conciliation can lead to several different outcomes: complete or partial agreement, no agreement, or failure to appear on the part of one or both parties. Law No. 26.872 clarifies that conciliation is a consensual institution in which the agreements reached obey the will of the parties exclusively (Articles 15 and 3). It is also important to note that the conciliation certificate has the status of executive title. As such, if one party fails to comply with the agreement, the other may attempt to enforce it through the single execution process (Articles 18, 19 and conclusions).

In regard to family law, Law No. 26.872 establishes that the following may be subject to conciliation: (i) requests for child support and the terms of visitation and custody; and (ii) any other dispute deriving from a familial relationship as long as the parties are not subject to restrictions. In these cases, extrajudicial conciliation is not a procedural requirement, which means that the parties are not required to use this path prior to filing a claim (Articles 7 and 9, paragraph i).

In issues related to housing, conciliation can be used for determined or determinable ends that involve available rights of the parties. As such, rental and ownership proceedings must be submitted to an extrajudicial conciliation entity prior to going to the civil justice system. However, cases involving eviction provided for in Legislative Decree on the Housing Rental Promotion Regime and in the law that regulates Real Estate Capitalization Contracting (Article 7-A, paragraph i, Law No. 26872) are exempt.

Finally, when the law stipulates it, cases are not admissible until they have moved through a conciliation stage. If this requirement is not met, the judge must declare the claim inadmissible (Article 6).

4.4.3 Justice and community: Conditions for peace (justice)

In regard to community justice, the main available mechanisms are: (i) peace justice and (ii) 'peasant patrols.' We will focus on the former. We will refer only to the concept of rondas campesinas given that it has not been covered by the authors.

The figure of the peace judge dates back to the inception of the Republic. The role was officially introduced by the Political Constitution of 1823 as the only person who can serve as a judge without being a legal professional. In fact, peace judges were elected by popular vote at various times in history (Escobedo, 2016).

Today, their duties are regulated by the Organic Judiciary Law (Article 183) and the Peace Justice Law (No. 29.824) in order to facilitate access to justice in areas of where ordinary justice has not managed to establish itself.

Professional peace judges are elected by popular vote. They are understood as respectable figures who are invested in the jurisdiction and enjoy powers that are mainly limited to conciliation. Under the law, anyone may be a peace judge. It is not necessary to hold a law degree to serve in that capacity.

This figure is part of the judiciary but does not have the right to pursue a judicial career or receive compensation. In these spaces, where everyone knows each other and there is strong social pressure, conciliation attempts are expected to be more successful.

The courts can hear certain cases, including child support and conciliation request cases. In the case of the latter, the interested party may go to any peace court to pursue their claim. However, in disputes related to issues of property, the jurisdiction criterion changes. Such cases may only be filed before a peace judge who has jurisdiction over the place where the asset or domicile of one of the parties is located.

The conciliation certificates issued by peace courts are executed before them. According to our interviews with peace judges, the most common conciliation cases that they handle involve child support, with fewer related to property ownership because the parties to those cases prefer to go through ordinary justice.

One of the peace judges from Arequipa stated in his interview that when the parties go to his office to resolve disputes without being clear on the facts in dispute, he proposes that they request clarification of the facts in order to determine whether the matter can be reconciled. The judge meets with the parties and explains the paths that they can use to resolve their dispute. They are even given the directory of free legal

clinics and public defense and access to justice centers run by MINJUSDH in the city. If the parties wish to engage in conciliation, they are asked for the respective documents and the conciliation hearing date is set.

The authors have found that the judiciary does not provide spaces for peace courts to operate. In most cases, they operate out of judges' homes. In other cases, especially in rural areas, they are based in locations owned by neighborhood boards or the municipality. Most of the physical spaces provided for their operation are owned by the community itself and donated or loaned out for that purpose.[85] In Lima and Callao, judges reported that their superior court provided the space.

Support staffing is subject to the same rules as peace justice: employees receive no pay, and they tend to be local residents or law students (Article 49, paragraph 1 of the regulations of Law No. 29842).

The sentences issued by peace court judges may be challenged before a higher instance. In most cases, this is the professional peace court in their jurisdiction (Article 31 of the regulations of Law No. 29824). While there is no single official list of peace courts operating in Peru, nearly 6,000 were reported to be distributed across all of its regions in 2019. The majority of them are located in peripheral urban spaces (Alverde, 2019).

The rondas campesinas[86] recognized in the Political Constitution of Peru as a form of community justice[87] have an internal dispute resolution

85 Interview with peace judges in Arequipa.

86 Organizational format in which certain citizens intervene in order to resolve their disputes using their own regulations.

87 Article 149 of the Political Constitution states that officials of rural and native communities may serve in judicial roles within their territory with the support of the rondas campesinas as long as they do not violate the fundamental rights of the person. The law establishes the ways of coordinating said special jurisdiction with the peace courts and other judiciary agencies [las autoridades de las Comunidades Campesinas y Nativas, con el apoyo de las Rondas Campesinas, pueden ejercer las funciones jurisdiccionales dentro de su ámbito territorial de conformidad con el derecho consuetudinario, siempre que no violen los derechos fundamentals de la persona. La ley establece las formas de coordinación de dicha jurisdicción especial con los Juzgados de Paz y con las demás instancias del Poder Judicial] (Our translation.) Similarly, Article 60 of Law No. 29.824 stipulates that in populated areas where peace courts coexist with municipal organizations like rondas campesinas, comunidades campesinas, or comunidades nativas, they should work together on justice administration in keeptin with Article 140 of the Political Constitution of Peru. ["en los centros poblados donde coexistan juzgados de paz con organizaciones comunales como las rondas campesinas, comunidades campesinas o comunidades nativas, deben trabajar coordinadamente para una adecuada administración de justicia de conformidad con el artículo140 de la Constitución Política del Perú".] (Our translation.)

system. As the Ombudsperson's Office states, they are organizations that represent and structure municipal life by providing security, justice, and representation before the State, ensuring municipal peace and promoting rural development. They are active in areas characterized by the absence or weakness of the State vis-a-vis guaranteeing order and respect for fundamental human rights (2006: 7). This is a widely accepted mechanism in the territories where it is used.

5. DESCRIPTION OF THE FAMILY AND CIVIL DISPUTES COVERED IN THIS STUDY

5.1. A family of mothers: Patriarchal (ir)responsibility and labor informality

5.1.1. Child support

Child support disputes are generally characterized by:

i. Being the most common cases in the three dispute resolution paths: specialized justice, conciliation centers, and peace justice.

ii. Being initiated by low-income women who file their claims to meet the urgent survival needs of their children in the great majority of cases.

This report found that the majority of the interview respondents in Lima, Arequipa, and Iquitos took this urgency as a determining factor when issuing a ruling on which agency to use to resolve the dispute. Extrajudicial conciliation is seen as the fastest and least expensive option. Furthermore, the authors found that system users were not familiar with the paths to access to justice and that, following consultations and visits to institutions and conversations with people around them, they chose to use conciliation in order to avoid the judicial path. Many were concerned that there would be limited opportunities to do so. Finally, the fact that the services were offered free of charge was an additional incentive for choosing this path.

iii. Ongoing failure to pay monthly child support (mainly) on the part of the father is linked to two factors. The first is related to evasion of responsibility and being resistant to taking responsibility, disagreements over custody, and conflicts over visitation. The second involves the economic (in)capacity of the party to cover the amounts owed. Some family court judges report that high levels of labor informality -nearly 80% nationwide- made it difficult to establish child support based on the respondent's income and to force them to comply. The process would be easier if their income were duly reported.

In response to this situation, some judges report setting the child support amount based on their knowledge of the local reality. They based their calculations on the approximate income that the respondent's informal job would apply based on whether they are a motorcycle taxi driver, longshoreman, or work various types of jobs. The judge also considers the basic needs of the minor involved that must be met. For example, one family judge in Iquitos said that she considered the high cost of living in that city in order to award child support that would ensure that children could survive.

iv. The prejudice and discrimination that characterizes patriarchal culture[88] in the context of litigation practices and in contexts of vulnerability allows one to understand the number of cases and the difficulties associated with reaching and executing agreements. The same is true of sentences.

Several judges stated that machismo is reflected in some fathers' refusal to pay support out of fear that the resources might benefit the mother's new partner, whether or not that person actually exists. In some cases, the litigant has stated that the support should be conditional on reconciliation.

In regard to the country's litigious culture, there is a perception that this is much more pronounced in the constitutional province of Callao than in the other regions considered in this study. One family court judge reported in her interview that she has worked in various courts but recognizes that her current jurisdiction is much more litigious, which is related to the specific cultural patterns expressed in that area.

88 While progress has been made on the deconstruction of this approach in the past few years -particularly among the youngest members of society-, surveys continue to reflect concerning levels of machismo, which is expressed in various forms of violence. See the surveys conducted by the Peruvian Research Institute for its special report on International Day for the Elimination of Violence against Women (November 25, 2023) and the IPSOS-Support on Attitudes towards Women in Peru (March 2022).

5.1.2. Visitation

The second most common dispute in all three instances involves visitation. The judges interviewed stated that there is a trend among the parties to reach an agreement regarding the visitation schedule. In most cases, they do not have the opportunity to discharge the cases or to impose supervision by the mother or another relative, especially when the parent in question has a new partner. The decision is generally reached by the parties.

5.1.3. Custody of children and teens

It has been determined that child and teen custody is generally addressed using the judicial path. Custody tends to be assigned solely to the custodial mother due to (i) the minor's greater dependence on her; and (ii) greater willingness on the part of women to focus on care work due to the cultural context.

Law No. 31.590 was designed to modify this situation. It introduced the concept of shared custody into the Code on Childhood and Adolescence so that the child would bond with both parents. The legislation also recognized that both parents are responsible for domestic chores and care work. However, this study has determined that custody of minors continues to be granted exclusively to the mother.

This study also has shown that some of these proceedings regarding child custody are undertaken by the father for utilitarian reasons. For example, they may want to decrease the child support amount -i.e. the father stops paying support when the child is in his care- or to exercise some sort of psychological pressure over the mother.

Each of the circumstances described shows how deeply rooted patriarchal practices are and the need for comprehensive work to be done to progressively eradicate it in terms of training, legal codes, organizations, and operations.

5.2. Centrality of rent: Between informality and partial solutions

5.2.1. Rent

In the civil sphere, rent-related disputes are one of the most frequently addressed types of issues in the judiciary, though they do not outnumber disputes regarding child support.

For context, the 2017 Census identified 1,256,000 private rented housing units (INEI, 2017: 66). Lima had the largest number of rented housing units (399,251), followed by Arequipa (52,653) and Loreto (11,361). However, the reports submitted by private institutions suggest that the real number is over 4.5 million rented housing units. In other words, there is a 70% informality rate in the provision of these services.[89]

Based on these numbers, Law No. 30.933 was issued in 2019. It regulates summary eviction with notary intervention and judicial execution in the case of rental contracts subject to certain formalities. However, to date there are no official reports on the impact of this law on the formalization of property rentals, one of the main purposes of its passage.

Following its entry into force, no research has been conducted on how this level of informality limits the rate at which property owners or renters have disputes and whether they use formal extrajudicial or judicial resolution methods. It seems reasonable to hypothesize that the impact is significant. For example, in Iquitos, one judge stated that in addition to informality, people tend to sign simple contracts that fail to include the clauses necessary to request rapid and effective eviction in case of non-compliance on the part of the renter.

Most stakeholders and judges interviewed in the regions covered by the study stated that (nearly) all of the people who use extrajudicial conciliation do so without serious or genuine intentions to resolve the dispute. They are looking to obtain the certificate that allows them to file the eviction claim using judicial channels. As we have noted, conciliation is viewed as a task to be completed that is thought to be ineffective rather than an opportunity to resolve the dispute without litigation.

89 For example, see a 2015 report from Fondo Mi Vivienda.

Once the judicial path is open to the parties, justice operators report that delays are related to scheduling the hearing, which generally gets pushed back due to the high volume of cases. Once the hearing date is set, the sentence is issued within two to five days and may even be announced during the hearing.

5.2.2. Property and property lines

The information gathered shows a limited presence of this type of dispute.

5.2.3. Neighborhood coexistence

Problems related to obligations among neighbors do arise and are generally addressed through legal paths or ADR methods. One example of this type of dispute is controversies over use of common areas.

While these do not tend to be addressed using the remedies analyzed here, when it does happen, they tend to be resolved through agreements. The authors also observed issues linked to interruption of possession (and thus promotion of third-party intervention) even if the amount -according to the judges interviewed- is insignificant.

6. WHO USES THE PATHS TO RESOLUTION?

Users share a set of characteristics that force public policies to incorporate a differential approach so that they can meet the needs of the public and ensure that individuals have the right to effective access to dispute resolution mechanisms.

The differential approach is a progressive development of the principle of equality and non-discrimination that emphasizes the fact that although all people are formally equal under the law, everyone is impacted differently based on their class, gender, ethnicity or age and the context in which they live or work. As such, government actions must address those differences, adopting measures that allow them to resolve their negative impact on and for the full exercise of rights under conditions of true equality (National Human Rights Plan of Peru, 2018-2021, 2018: 22).

This perspective is complemented by the intersectional approach. This tool makes visible the simultaneous presence of two or more of those characteristics and how this increases inequality in access to rights.

6.1. Professional women with free legal assistance

The users interviewed in the judicial setting[90] were mainly women between the ages of 35 and 40 who had attended college and worked as professionals or freelancers.

These users were responsible for caring for their children and used the judicial route because their former partner, spouse, or the other parent of their minor children: (i) failed to meet the terms of the economic agreement that had been reached when they separated -a verbal agreement that was not handled through the judicial path or that was agreed to in an extrajudicial conciliation- or (ii) "disappeared" from the family environment, making alternative dispute resolution impossible. Furthermore, some users requested custody of their children and/or established visitation guidelines.

90 The interviews were conducted when the system users went to court.

According to the judges interviewed, in most cases, the users file their claims through free MINJUSDH legal services.

6.2 Extrajudicial conciliation: Description and critical analysis

The system users interviewed were mostly women between the ages of 30 and 55. The sample included a couple of approximately 70 years of age. These users had not attended institutions of higher education and were in medium to low economic tiers. Each of them had some sort of (insufficient) monthly income to cover their children's basic needs.

These users mainly used public conciliation centers to reduce dispute resolution costs, paying just S/ 10,50 (US$2.80 at the current exchange rate) to obtain certified copies in the National Identification and Civil Status Registry (Registro Nacional de Identificación y Estado Civil, RENIEC).

The sample also showed that, in cases of family violence, and as reported by system users, conciliators, and judges, the person who is the aggressor is generally not open to using any path to conciliation with regard to their support obligations.

In terms of compliance, the research found that regardless of whether they reached an agreement, they did not always comply with the terms because: (i) the obligated party simply stopped doing so; or (ii) discrepancies emerged in regard to the execution process. This occurred because the conciliation formula was ambiguous or did not cover the various possibilities that were actually available, causing the stakeholders to have to go before the judicial agency in order to execute the conciliation certificate. In other words, they had to go to court so that the judge could order the party to comply.

6.3 Women in community justice

The interview respondents were women between 28 and 64, had no university education, and, in some cases, only completed elementary school. Most performed paid domestic work, and the respondents who were mothers worked in that capacity in addition to managing the care and feeding of their own children.

When family or housing conflicts arose, these system users turned to peace judges in their towns because of their proximity and because they were recognized and respected by the community, which gave them a feeling of having a better chance to resolve their disputes. However, the interview respondents would sometimes have to go to court as well because of non-compliance with the conciliation agreement reached before the peace judge or because the children's father was not forthcoming with child support payments.

7. DESCRIPTION OF THE PATHS TO DISPUTE RESOLUTION

7.1. Judicial paths: Description and critical analysis

7.1.1. Methodologies: Why and for what purpose?

The interviews conducted reveal a substantial difference between civil and family proceedings. This is mainly due to two factors. The first has to do with the use of oral proceedings as a methodology that substantially reduces their duration. This is a progressive effort whose success will depend on the rigor with which it is implemented.[91]

The second differential factor is related to the differences between the two types of cases. The civil process is guided by strict respect for diverse legal formalities in alignment with the adoption of the position regarding the private, available, and patrimonial nature of the dispute. On the contrary, family proceedings are more flexible based on the public nature of the matter or certain rights involved, the aggravation of the controller's authority due to their preferential protection or for involving sensitive issues where the idea that one has rights -for example, the right to adequate food- is not mercantilist. All of this in addition to other factors including the "humanity" or "emotional burden" that they establish, which makes judicial officials focus more on the core or substance of the problem, its reason for being, or its solution than on procedural formalities.

Family judges from the three regions studied -one with over 20 of experience and another with more than 10- stated that (i) experience has taught them that their role is more similar to that of a psychologist

91 It is worth noting that the Arequipa Superior Court Oral Litigation Corporate Model was created by the judiciary on December 12, 2018 through Resolution No. 312-2018-CE-PJ. This project was promoted by JSCA and is designed to recover the use of oral procedures as a primary methodology, redefining and developing a hierarchy for judicial and case management as central elements of the proportional and adequate composition and processing of the dispute. The goal is to drive comprehensive systemic change, which is not limited to changing rules, but includes rethinking the very organization of justice and the type of practices that are built through the introduction of a formal regime of adequate incentives and disincentives. It is worth noting that, in addition to the Superior Court in Arequipa, the project has been implemented in 31 of the country's 34 superior courts.

than that of an attorney; and (ii) that the use of virtual methods due to COVID-19 has allowed them to improve service times. In many cases, however, this prevents them from addressing the cases in a human way given that the channel makes it difficult to implement useful actions that are facilitated by the use of in-person proceedings. For example, the use of strategies like suspension of the session to "let people calm down" or conduct interviews separately with the parties to give them more detailed information on dispute resolution channels is not regulated. Their use depends on the experience and good will of the judge.

They also noted the importance of having the technical and multidisciplinary teams -mainly psychologists, social workers, and doctors- required, though they also said that it is difficult for those teams to manage the caseload. For example, one family court judge said that technical assistance gives her more clarity about the dispute being addressed, but the high workload causes the staff to use standardized forms, which gloss over valuable information about each individual case.

Another lack identified in several interviews is related to the insufficient training of family court judges in the area of soft skills (communication with the parties, conciliation techniques, approaches to family issues, etc.). Judiciary training courses focus on more legal issues, which are important but not to the inclusion of other matters.

The use of these strategies in civil court cases is limited because -based on legal concepts or interpretations- the judge's actions are much more limited to the procedural initiative of the parties. The exception to this is civil courts that are part of the civil oral proceedings pilot project promoted by the Peruvian judiciary since 2018 with the collaboration of JSCA. The pilot project began in the Superior Court of Arequipa and was progressively extended to all of the superior courts in the country.

Other areas relevant to the object of study include the provision of user services by the judiciary given that it comprises one of the first spaces in which they receive information and connect to the judicial process. Three critical aspects were mentioned in the interviews that should be evaluated from a management perspective:

i. When information is provided, staff use technical language that is unintelligible to anyone who is not an attorney.

ii. The way that people are treated may be considered distant, hostile, and/or discriminatory, which does not contribute to litigants' ability to confidently ask questions about matters that they do not understand.

iii. The rigorousness of the court schedules prevents litigants from asking judicial operators about the status of their case or recurring processes such as sentence execution in the case of child support.

Average times: Delay as a symptom

The information gathered suggests that case resolution times far exceed the time frames outlined in the law,[92] and that they depend heavily on the tools available to judicial officials and their willingness to use them.

A judge from Arequipa told us that he organizes his office so that he can ensure that he will issue 50 sentences each month. Another reported that he schedules hearings both in the morning and the afternoon, leaving one day open for "closed door office time." During those blocks, he does not hear daily hearings. In other words, he hears 32 cases per week, while colleagues hear just three or four per day (15 to 20 per week).

However, excessive workloads continue to generate substantial delays, mainly in the qualification of the complaint, the response, notifications of procedural acts, hearing scheduling processes, and the issuing of sentences.

In cases in which oral proceedings are used, as is the case in Arequipa for civil and family matters, deadlines tend to be shorter. This allows the sentence to be issued during the hearing, with the drafting and written

92 These may have decreased over the past few years depending on the strategies that the superior courts use to discharge matters.

notification stages happening later. However, interviews with judges and experts reveal that child support proceedings -family law matters- can last for over two years even though the law establishes an average timeframe of five months for their complete processing.

Judges and experts report that the time frames for eviction proceedings can extend to over four years.[93] For example, the qualification of a claim by a judge can take between one week and over one month depending on the case even though the legal time frame is 48 hours (Article 143, Organic Judiciary Law).

The lack of court staff was mentioned as a critical issue by interview respondents because it impacts adequate completion of the assigned tasks, particularly in notification centers.

Delays in notifications can be attributed to several causes. Beyond the workload itself, administrative inefficiency or the responsibility of the parties, the most important factor is the lack of specific information about the respondent. The matter will be delayed if their domicile is not confirmed because the respondent must be notified through edicts in order to ensure that their right to mount a defense is protected. The time required to complete a notification process can range from one week to two months.

Other leading causes of delays include the material impossibility of scheduling more hearings than the workday permits. According to the judiciary administrative body, hearings can be scheduled one to six months after the subpoena resolution is issued.

A family court judge from Callao said that some family court judges who process cases quickly. However, hearing scheduling is subject to forces that they cannot control, such as workloads or lack of staff. This raises questions about the perspectives of operators regarding the factors that explain the issues: Is it a lack of staff, or is the main problem

93 These time frames aligns with the data presented in a 2015 study that stated that eviction due to precarious occupation and many summary proceedings take over four years to be processed (Gaceta Jurídica, 2015).

the case management modes and bureaucracies that shape staffing? For example, we must determine whether the issue is related to the practice of privileging the preparation of a case file over the dispute that it addresses or spreading actions out through written documents, provisions, and notifications that align with the structure of a written system.

Another Iquitos family court judge said, "We schedule our hearings to last 75 minutes. Sometimes it is impossible because it is tough to convince the parties. That takes longer. It is the main obstacle. In addition, parents often think that the person who is awarded custody wins. When they see their child as an object, as a prize, they are not focusing on their wellbeing." (Our translation.)

She also said that by holding six or seven hearings per day, her staff has a limited opportunity to engage in other types of work -like drafting sentences. This also causes delays and is exacerbated in cases in which the hearing has to be rescheduled because the respondent fails to appear -in an attempt to create delays- and conciliation or sentencing cannot be achieved due to a lack of evidence.

This type of testimony suggests that it is important to think about: (i) the need to review how to structure the proceedings or which actions, elements or evidence are necessary to build more rational dispute resolution and case management, particularly approaches that weaken arbitrary positions that go against the party's own interests; (ii= providing (dis)incentives that promote conducts that are deferential to institutional goals, which should be effective; and (iii) training on negotiation, litigation, and hearing management techniques in order to improve how cases are handled.

One example offered is the implementation of the pilot project on the use of oral proceedings. Their introduction -in alignment with the cultural and institutional challenge that it posed- was accompanied by a structural transformation in organizational terms (with the approval of corporate oral litigation modules), regulatory terms (with the approval of a protocol that introduced a double or single hearing system), and practical terms.

Given the comprehensive nature of the reform, its design included monitoring, training, assessment, and changes to the roles of interdisciplinary technical teams. As such, even in a context of economic limitations, with no budget for results for the civil area and multiple internal and external conditioning factors (i.e., the lack of training of attorneys in litigation techniques, the workload, resistance among operators, or vested interests in maintaining the status quo), the reform was implemented progressively and successfully.

In this sense, the Arequipa Superior Court reported that there has been a decrease in the time frame for issuing sentences following the single hearing in family and civil cases.

Other superior courts also have resolved the dispute by using oral proceedings like conciliation hearings. One family court judge from Callao reported that her court seeks to go to hearing within two months from the admission of the claim. However, she also stated that this is frequently not the case due to procedural burdens. It can take up to four months for the multidisciplinary support team to schedule visits or assessments.[94]

Key strengths and critical nodes

Despite the overall distrust of the judicial path, it continues to be the most familiar option to members of the public and the one with the most legitimacy in regard to resolving a dispute. This is due in part to the litigious culture that characterizes dispute resolution practices.

One of the main obstacles in family proceedings is their cost. For example, although complainants' child support claims are legally exempt from payment of fees and the obligation to engage an attorney, most people end up hiring counsel. This mainly occurs because (i) the system continues to be perceived of as inaccessible in formal, legal, organizational, linguistic, and communications terms; (ii) the persistence of distrust in judges' impartiality, which leads complainants to seek out technical assistance in order to mitigate that perception; and (ii) in many

94 Interview with Callao Family Court Judge Dr. Yency Carpio.

cases, low-income women receive assistance from public defense agencies, but the quality of that assistance and duration of the proceedings negatively impacts the development of the proceedings, creating an additional cost that is difficult to quantify.

In this context, the cost of an attorney is one of the factors that encourages complainants to choose free extrajudicial conciliation. There are, however, other factors related to costs that also influence this decision. These include the income that the users fail to earn due to missing work to participate in the proceedings or the months during which they do not receive child support because the request is being processed.

This has an especially significant impact on women who live in poverty or extreme poverty. This reality has been mentioned repeatedly by the staff of free conciliation centers in Lima, Arequipa, and Iquitos.

It has been determined that family courts frequently hear matters involving back child support. Although requests for payment of back child support can be processed through extrajudicial conciliation, the coercive capacity of the courts makes them preferable to conciliation agreements.

User testimonies suggest that bringing a case to family court can cost between S/500 (US$135) and S/3,000 (US$811). The amount varies by judicial district, and Lima and Callao are the regions with the highest costs.

The cost of the proceedings in civil disputes is determined by the amount (economic value) of the claim. This amount is used to calculate attorney fees and court rates. For example, in rental cases, the claim is based on the monthly rent, while it is based on the cost of the asset in cases involving property ownership.[95]

95 Judicial fees range from S/51.50 (US$14) to file a complaint when the amount involved is under S/51,500 (US$14,000) to S/133.9 (US$36) when it is over S/ 2,317,500 (US$626,350). In other types of proceedings, such as nullity or cassation, in cases involving the same amounts, the fees can range from S/ 824 (US$222.70) to S/18,025 (US$4,872.60). The official table of judicial fees for 2024 is published online at https://www.bn.com.pe/tramites-entidades-publicas/tupa/poder-judicial.pdf.

7.1.2. Effectivity or efficacy of judicial solutions

Our research has shown that the judiciary faces two types of problems that have impacted the effectivity of judicial solutions:

(i) the execution of sentences does not play a key role in the institutional structure and presents various deficits. For example, judges are evaluated based on the number of sentences that they issue and their length instead of how many sentences are executed and how clear they are. Execution also becomes a rigid and bureaucratic process.

(ii) It lacks supervision and accountability mechanisms. There are no specific public policies for monitoring or holding judges accountable for the decisions that they make, their execution, and/or compliance with them.

The judges and users interviewed stated that civil proceedings are highly effective because, if necessary, police agencies can be called on to execute sentences. By contrast, a high level of non-compliance is perceived in family matters, although no one has a precise notion of its magnitude. One indicator of this is the number of complaints filed for non-payment of family assistance, a crime committed by anyone who fails to pay child support amounts ordered in a sentence or extrajudicial conciliation agreement.

7.1.3. Judicial conciliation: Reducing litigiousness without techniques or information?

The interview respondents stated that judicial conciliation has a high level of ineffectiveness in civil judicial proceedings. The results are better for family proceedings. However, this depends more on the ability of the judicial authority to guide the parties, bring them closer, or facilitate understanding between then than the virtues or advantages of procedural regulation, as those rules authorize judges to encourage agreements but not suggest formulae for reaching them. Most judges report that litigiousness is one of the main obstacles to conciliation, which is attributed to both the parties and their legal defense.

Two Callao family court judges reported that the parties expect to "receive a ruling." That is, disputes should be resolved by a third party with legal power. Our interviews also show that experts and judges believe that magistrates who have more experience achieve higher levels of conciliation.

7.1.4. Debts: Delays and treatment received

The judiciary lacks a mechanisms needed to evaluate user satisfaction. Judges believe that "the party that wins is satisfied, and the losing party is not." They do, however, recognize that the **main source of dissatisfaction** across the board is processing delays.

As we have stated previously, while the courts that have incorporated the use of oral proceedings and courts whose lead judges have established a method for better managing cases and caseloads, general dissatisfaction persists.

The system users interviewed in child support cases expressed their displeasure with how long it took to receive a sentence (six months to four years) and with the consequences of that delay, such as having to cover costs related to their children themselves. However, some system users stated that this path was necessary to ensure that set child support amounts would be paid in a timely manner because only a court ruling can be used to garnish formal workers' wages.

The second major reason for dissatisfaction is the way that people are treated in judicial agencies. Users repeatedly report that judicial staff were neither cordial nor empathic, particularly given their lack of knowledge of the proceedings. One interview respondent said that she felt "impotent" because she could not complain because "they fight with you and don't provide the services to you."

Some people also report that discrimination is a major issue. Several mention experiencing discrimination, saying "Those of us with few resources are not heard." One respondent complained, "They should listen more to moms. I don't feel heard- they ignored me. That's how I feel about the judiciary."

7.2. Extrajudicial conciliation as a path: Description and critical analysis

7.2.1. How much is known, by whom, and why?

One of the most noteworthy findings of this study is that the public is not familiar with the concept of extrajudicial conciliation. All of the interview respondents said that they were unfamiliar with its existence until they had to address a civil or family law dispute. Several experts and peace judges agreed with this assessment, which they link to limited interest on the part of the State in promoting this public policy.

The lack of budgetary resources for adequately disseminating the information was recognized as one of the main signs of the absence of political will. In this sense, peace judges noted that campaigns and other dissemination tools have decreased notably since the pandemic.

Public and private conciliation centers

Another important finding of our research is that the State has better quality information about the operation and efficacy of public and free conciliation centers (84 providers)[96] than private centers (2,366 centers).[97]97 Scant information is available regarding the latter, and the interviews suggest that the public uses them infrequently. For example, several private conciliation centers in Arequipa and Iquitos receive just three to six conciliations per month.

Although the average increased slightly in free centers, the difference is not significant. As of August 2023, there were an average of 900 conciliation proceedings per month nationally in 84 public centers. This is equivalent to 10.71 proceedings per center per month, or 0.49 procedures per day if we use a figure of 22 business days per month.

96 The directory of free conciliation centers is available at: https://cdn.www.gob.pe/ uploads/ document/file/2042058/DIRECTORIO%20DE%20CENTROS%20DE%20CONCILIACIO%CC%81N.pdf. pdf?v=1655753267 (2024).centroMain.xhtml (2024).

97 According to the Extrajudicial Conciliation Centers Directory of the Ministry of Justice and Human Rights. See https://directoriocentros.minjus.gob.pe/directoriocentros/public/centro/ centroMain. xhtml (2024).

Centers that are part of recognized institutions like chambers of commerce or universities have more demand. This may be due to their reputation, prestige, or credibility, as we saw in Arequipa.

Other problems were also identified: (i) although there is a legal observation to supervise private conciliation centers, this is limited, mainly due to the lack of resources; (ii) the national conciliation center registry lacks reliable information on the number of private providers who effectively operate in the system and the quality of the service that they provide, including how attorneys verify the legality of the agreements.

Interviews with judges and stakeholders showed that there is a consensus regarding the low quality of the conciliation agreements drafted in private conciliation centers. This also impacts public centers. The agreements tend to be general, ambiguous, and fail to consider future issues, particularly in child support cases. This makes them difficult to execute and brings the dispute back to the judicial path. Despite the perception that this problem is a recurring one, the State does not have any data on its magnitude.

Timelines and notification issues

Both public and private centers generally meet deadlines for processing cases. The time required varies by case, but if the parties have spoken before the hearing or are willing to reach an agreement, it is likely that the process will be short and completed in a single hearing. By law, this can take up to 14 business days, but under favorable circumstances -like the one described- it may last fewer than five business days.

However, if the request is submitted by only one of the parties, that time is extended, mainly due to the difficulty of notifying the other party or their failure to appear at the first hearing. Despite these complications, the public and private conciliators interviewed stated that the legal deadlines tend to be met, with a total timeframe of around 35 business days (around two calendar months).

When users are notified and appear at the first conciliation hearing, the likelihood of resolving the issue prior to the deadline are greater.

This is due to the fact that the following occurs during that first hearing: (i) clear and precise information is provided on the advantages of the conciliation process; and (ii) communication techniques are used that facilitate the understanding and processing of interests and preferences.

Figure 5
Flow chart or conciliation process

Source: Developed by the authors using official information

Is the expedited mechanism high quality?

According to the interviews, the main strength of conciliation is the fact that who use it believe that they can obtain a swift solution to their dispute. However, this positive perception is limited by objections related to the quality of the processing of the dispute, particularly in regard to the execution of the agreements, which frequently present problems due to how they are formulated.

The weaknesses observed include (i) limited dissemination of and familiarity with the existence and utility of conciliation; (ii) the perception that conciliators are not very prepared and that the State does not meet its supervisory requirements; and (iii) the lack of a national database of conciliation proceedings, which would help conciliators and judges determine whether users have previously engaged in conciliation prior to starting a new case or whether the respondent has engaged in reiterated conflictive conduct in civil or family matters, which would justify the use of strategies other than conciliation.

Costs and opportunity

As we mentioned above, public conciliation centers offer free services. As such, the expenses that users must cover are related to transportation or opportunity costs, that is, what they give up in order to engage in conciliation. For those with limited resources, these are important expenses and significantly impact their lives.

The private centers responsible for the institutions, including universities, offer special rates for child support cases based on the requesting party's economic vulnerability assessment. These centers charge between S/200 and 350 for their services (US$54-95).

Table 2
Costs by type of conciliation center

Proceedings	First instance jurisdiction	Second instance review jurisdiction	Cassation
Rental	Civil courts (with the exception of eviction due to non-payment)	Civil Chamber	Supreme Court
Eviction due to non-payment or expiry of contract, <50 procedural reference units	Professional Peace Court	Civil counts	
Claim of ownership	Civil counts	Civil chambers	Supreme Court
Neighborhood dispute	Contentious-administrative proceeding (Municipalities)		
Fines	Professional Peace		

Source: Developed by the authors using official information.

7.2.2. Conditioned efficacy

The initial perception of users, stakeholders, law school deans, university officials, and law firm directors is that conciliation is valued for its capacity to solve disputes quickly, economically, and definitively. However, this depends to a great extent on the will of the party ordered to participate in the process.[98]

98 According to Article 15, paragraphs d) and e) of Law No. 26872, the conciliation procedure ends if one of the parties fails to appear twice or both parties miss the same session.

We observed that there were no significant delays in hearing scheduling due to a lack of availability on the conciliator or conciliation center's calendar. This was true even in free centers, which tend to have bigger caseloads. This suggests that conciliation does not involve significant delays.

However, the perception of speed in conciliation was impacted by issues related to the efficiency and credibility of the institution. The main problems identified are: (i) the relatively low percentage of conciliation agreements, which ranges from 10% to 40% of the processes initiated according to the interviews; and (ii) deficiencies in the formulation of agreements, their impact when executed, and the lack of monitoring mechanisms for ensuring that the terms are followed. Some interview respondents reported that up to 80% of cases involved agreements that could not be executed.

Both the judiciary and the MINJUSDH lack mechanisms for addressing these issues. One possible solution would be to cross-reference the institutions' data. For example, comparing the number of agreements reached in extrajudicial conciliation by the MINJUSDH with the number of judicial cases initiated due to non-compliance or failure to execute and the reasons for them recorded by the judiciary. Processing this information and other key indicators could offer a clearer perspective on the magnitude of the problem.

7.2.3. User satisfaction

The data suggest that people have positive opinions of public conciliation, mainly due to the fact that it is free. By contrast, perceptions of private centers are more varied and tend to be unfavorable. Many people believe that these centers do not serve a useful purpose and represent additional burdens in terms of both money and time.

Beyond the speed of the procedure, users value the conciliation certificate itself. Various users remarked, "The conciliator told me that it has the same weight as a ruling. That gives me confidence."

However, in many cases, the users are not fully satisfied with the agreements, particularly the amounts set for child support. Despite this, they tend to accept the agreements because, as one interview participant said, "I prefer to have them give me a little to undergoing a judicial process that will cost time and money."

In general, the interviews suggest that the service provided by conciliation centers is adequate in terms of the information about the processes and its usefulness and the quality of the facilities. The private centers that we visited offered basic but sufficient services despite the fact that the spaces met only the minimum legal space requirements and the number of system users was limited.[99] By contrast, conciliation centers that are part of universities, like those found in Arequipa, offered much larger and welcoming spaces.

Although government conciliation centers see little demand, their facilities meet the legal requirements and allow operators to provide services adequately. However, the directors of these centers said that they need larger spaces with better infrastructure, including more hearing rooms, in order to provide better services.

99 According to Article 47 of Supreme Decree No. 014-2008-JUS, the regulations for Law No. 26872, conciliation centers must have at least the following infrastructure: a space that can serve as a waiting room, an administrative office, a bathroom, and a hearing room measuring between three meters by three meters.

7.3. Peace justice: The need to strengthen a community policy

7.3.1. Community stakeholders who resolve disputes

In the three regions of Peru included in this study, community justice is administered by the peace justice system, which is in turn part of the judiciary and linked to each superior court. Peace judges are known and respected in their communities and are elected by popular vote. They need not be judges, but it is essential that they have legitimacy in and are trusted by community members. This legitimacy gives the greater credibility and enhances their capacity to solve the disputes that come before them.

Stakeholder map

Peace judges in peripheral areas of the respective capitals were interviewed in the three regions under study. In all cases, these are urban areas outside of the city in which residents live in poverty or extreme poverty. The Iquitos peace courts analyzed stand out because of a high presence of users who identify as Indigenous or as descendants of Indigenous people and who maintain the cultural legacy of those peoples. In that sense, the courts incorporate community customs into the mechanisms that they use to impart justice.

We note that we have not interviewed people who administer Indigenous or campesino justice.

Custom or traditions as an input for addressing cases

While peace judges need not be attorneys, they are trained by the judiciary to engage in their work without going against the law, mainly in the form of technical/legal instruction.

As we have stated, this approach is criticized because it leaves aside conciliation strategies and soft skills, such as communication and drafting documents, including the drafting of conciliation agreements.

As such, peace judges use "common sense" or their "idea of justice" to do their work, which is built less on technical tools provided by the

judiciary and more on their life experience and community customs. Dispute and solution management brings those elements together to the extent that they do not clash with current legislation.

Given that interviews have not been conducted in rural areas, Indigenous or aboriginal customs or traditions have not been identified as part of the justice provision mechanisms.

Coordination between legal and technical justice: Feedback

The peace judges interviewed in Iquitos mentioned that they apply sound judgment, dialogue, and their knowledge of justice in dispute resolution, but not legal terms or codes. They note that they are lay judges who act in accordance with custom, respecting the laws and the Constitution.

In other cases, like in Callao, a judge told us that she maintained a good relationship with some Superior Court justices, and would regularly consult with them when she had questions about the legal terms that she had to use to settle a case. This coordination between peace justice and specialized justice, which could be considered a best practice, is based on personal initiative and does not form part of public policy in this area.

Community credibility: Public budget?

The main strengths of peace courts are their legitimacy, the trust placed in them by the public, and their deep knowledge of the life and customs of their community, which allows them to better understand disputes and find adequate solutions to them.

In Iquitos, we clearly observed this legitimacy and trust through the work of municipal officials, such as municipal agents, along with the lieutenant governor, public safety staff, and peace court staff, who work closely with one another in the fulfillment of their duties. However, this was not observed in other cities. For example, in Callao, we were told that there was a similar level of coordination prior to the pandemic, but that it has significantly decreased since then.

On the other hand, one of the main weaknesses of these courts is that, although they are part of the judiciary, they receive less and less support from this branch of government. This situation has become more serious since the pandemic. Peace court officials are not compensated for their work, and the basic requirements for performing their duties are not met. For example, they are not given space in which to work. Most of the judges interviewed work from their home offices. Essential services such as electricity, water, and Internet are not covered. We did observe that some of these individuals were given a computer or printer in Callao, though they did not receive necessary supplies, such as ink or paper.

Time and costs

Cases tend to be delayed because of a lack of State support for this work. In many cases, the officials notify the parties, and the notifications regularly fail because of difficulties locating or determining the recipient's address. The main cause of these delays is notification. However, once this obstacle is overcome, legal deadlines can be met. This ability to adjust to deadlines is also related to the low level of use of these services. Interview participants indicated that they handle three to eight cases per month.

The related costs are minimal. The service is free, does not require legal representation, and transportation costs are low because the courts are located near system users. The user must cover transportation costs only in cases in which notifications must be completed outside of the jurisdiction.

7.3.2. Effectivity or efficacy of the community path

Efficacy tends to be high in cases involving minor disputes. Experienced judges tend to send the case to the professional peace court when they see that a part of the dispute goes beyond their jurisdiction, understanding, or capacity to address the matter.

7.3.3. User satisfaction

Satisfaction levels are high due to the proximity between users and judges, the limited complexity of the cases, and the fact that the services

are free. The users interviewed mentioned that they feel satisfied when they go to the peace courts because they "receive good service." They have managed to reach agreements or receive guidance about their rights or other paths to dispute resolution. They generally feel that judges are willing to be "at their service."

That being said, the State has no public policy focused on enhancing those services and, in general, the potential to create a culture of peace from the foundations of society is not explored.

7.4. Interaction across paths: From where, for whom, and how is it regulated and developed?

One of the main conclusions of the study is that the State lacks systematized data on the problems that impact access to justice, particularly in regard to the impact of extrajudicial conciliation. Despite the perceptions of various operators, no official studies have been conducted and systematized data on this issue have not been collected, which poses problems in two key areas: (i) methodically and empirically studying the dynamics and relationships between the processes; and (ii) addressing problems in a comprehensive and cross-cutting manner. This lack of information contributes to the absence of a public policy that effectively coordinates the three dispute resolution paths.

The specific issues identified in each path, particularly the judicial path, are addressed in isolation with no systemic vision. For example, the impact of extrajudicial conciliation on the effective reduction of the procedural caseload in the judicial path is not evaluated. The same is true of problems that impact its implementation and efficacy even though it is, theoretically, a desirable goal.

The interview respondents identified important judiciary initiatives aimed at strengthening the family and civil courts services provided. This effort has included implementing an oral proceedings project to reduce timeframes and improve access and training actions to explain new legislation and improve judicial management. Furthermore, a significant percentage of judges have valuable experience, especially in the family court system.

However, the judiciary does not offer systematized and reliable information on the conciliation system even though the Electronic Case File System has data on proceedings closed using conciliation and cases of non-compliance. Systematizing and analyzing this information could provide a clear assessment of the current state of and allow for the implementation of measures to improve the system.

According to the interviews conducted with judges, conciliators, and experts, there is no clarity regarding basic matters associated with these paths. Examples of the missing information include the number of conciliation centers effectively operating, the quality of their services, and the real impact of their activities on efforts to decrease procedural burdens.

Field work revealed low use of the service, with private centers reporting that they handle three to eight services monthly. Issues observed in the formulation and execution of agreements are exacerbated by the lack of rigorous oversight of the legality of the agreements even though the legislation requires that centers have attorneys on staff to verify the agreements.

Despite the potential of the community path, it is underutilized and undervalued in public policy. Peace judges note two main problems that were aggravated by the COVID-19 pandemic: (a) the lack of budgetary and logistical support, which impacts their ability to resolve disputes and protect rights; and (b) the reduction in training on and dissemination of the service, which has decreased citizen demand.

These findings suggest that the peace judges are not adequately integrating public policy strategy on access to justice despite its advantages, such as the legitimacy of the decision, community trust, the provision of free services, and proximity. Their potential to raise awareness about and promote dispute resolution based on a culture of peace is not being fully utilized even though it could positively impact social life and the legitimacy of the system.

In conclusion, it is fundamental to reevaluate existing public policy and incorporate concrete measures to strengthen extrajudicial conciliation and community justice.

8. CONCLUSIONS

The study reveals cross-cutting similarities in the findings from Lima and Callao, Arequipa, and Iquitos. This suggests a shared need to focus on public policy on access to justice. However, this does not imply that public policy should be uniform and rigid. The comprehensiveness and systematic nature of public policy should be accompanied by approaches that address pluralism and the different identities and needs of subjects and collectives. It is essential to use a territorial approach that considers longstanding gaps related to poverty and the efficiency of the State in urban and rural areas, and the differences between capital cities (Lima and Callao) and the interior of the country (regions like Arequipa and Iquitos.

This gap is particularly evident in peace justice. Rural areas like Iquitos present greater precarity than the national average. It is also reflected in ADR methods, where the public has little exposure to and understanding of these tools, particularly in rural areas, which limits their use.

The main findings that justify a more exhaustive analysis based on State public policy include:

1) The lack of current information: The Peruvian government lacks quality data on ADR methods and their interaction with the judicial system. Nearly 30 years after the passage of the conciliation law, no complete assessment of its impact has been conducted. Nor is there a public policy for improving its dissemination or access to and quality of the service or to strengthen the role of the peace courts, where budgetary and logistical issues seem to be structural.

   These limitations impact the availability and use of the service. While this improved temporarily at certain points in time, those levels are currently minimal (as has been the case since the COVID-19 pandemic).

2) Persistence of use of the judicial path: Despite the generalized distrust of the judicial path, it continues to be the most familiar to and legitimate in the eyes of the public for definitive dispute resolution. This may be related to the persistence of a litigious culture in Peruvian society that impacts the modes, habits, and approaches used to address and solve disputes. This situation has not been rigorously measured.

   Nearly three decades ago, conciliation and peace justice promotion public policy sought to reduce this litigiousness and establish mechanisms for processing disputes in spaces other than the judicial process. This directly or indirectly contributed to the overload reported in the judiciary.

   Dispute resolution methods were not only expected to resolve a significant number of cases, preventing them from being heard in ordinary justice instances. In addition, they progressively contributed to a social understanding of the value of dialogue as a form of addressing disputes that could easily be resolved using this path.

   This goal was not fully met, and there is no rigorous data to assess the progress made or setbacks met and the factors that explain them.

   The experts interviewed all noted the need for public policy that goes beyond the justice system and contributes to building a culture of peace that helps decrease social conflict and substantially improve personal and community social life.

3) The dominance and hierarchy of the paths: Establishing a hierarchy of these paths continues to be a key factor in the organization of dispute management devices. The conciliation law still refers to alternative paths, which is not only a conceptual issue, but also a multidimensional one.

   There is a process of building meaning that is reproduced through legal education, current rules, and the organization of

the State that introduces certain practices. These are based on the culture of litigiousness and are not mere consequences.

In order to build this culture, disputes must be approached from a more rational and people-centered perspective, offering clear incentives for conciliation.

4) Weaknesses in state supervision: Extrajudicial conciliation public policy faces a series of lacks in regard to state supervision of private conciliation centers. This is the result of a lack of reliable information on the number of active service providers and the quality of the service offered. This situation is related to the idea that the accreditation process to which conciliators are subject is deficient, as it cannot be adequately monitored in practice to determine whether the courses are high quality or the programs are fully developed. Furthermore, the trainings offered by state agencies tend to focus more on legal issues than the development of soft skills.

These concerns were mentioned frequently in our interviews. Judges and experts highlighted the need for legal reform. These proposals vary from adjusting the obligatory or voluntary nature of extrajudicial conciliation to considering the elimination of the system and strengthening of the judicial path.

In this regard, it has been said that mandatory extrajudicial conciliation in civil cases has become nothing more than a simple process that is only completed to be able to access the judicial path. This has created a perception that there is little or no chance of engaging in effective extrajudicial conciliation.

On the other hand, voluntary extrajudicial conciliation in family law cases has seen demand increase due to the nature of the dispute -mainly child support- and the profile of the requesting parties, most of whom are low-income women who urgently need to secure child support for their children.

This has led several interview respondents to suggest that extrajudicial conciliation be made mandatory for this type of case. However, any such decision must be based on an exhaustive public policy assessment based on reliable and current information and framed by a comprehensive reform that prioritizes people and their disputes rather than solely focusing on the authority or hierarchy of paths.

5) Family court case processing: Various judges who work in the judicial system have expressed concern that the training received is mainly focused on legal aspects, leaving aside social, psychological, and human aspects that are also crucial. The interview respondents stated that they have had to learn to handle the latter aspects independently based on their personal experience and intuition because they have no tools or guides to facilitate a deeper understanding of the phenomenon and possible paths to solutions.

   Key knowledge such as an understanding of community culture, the identification of machista biases behind disputes, and recognition of gender-based discrimination as an essential element of this issue has been acquired by judges through what the interview respondents call "trial and error lessons."

   Although judges value the support of interdisciplinary teams in regard to evaluating psychological or social work elements, they recognize that the overload that those teams face negatively impacts the quality of their reports. This has a direct impact on the effectivity and utility of the reports for achieving a quality judicial solution.

   Two judges mentioned that these reports have become nothing more than forms that team members fill out, mainly due to the lack of time necessary to further discuss specific cases. They also report that the overload on interdisciplinary teams seriously limits their capacity to provide quick and effective services.

6) Delays in judicial proceedings: One of the main causes of user dissatisfaction is delays in judicial proceedings. The time frames required to close cases regularly exceed the suggested limits -1 to 2 years for family cases- by 100% or even 200%, and sometimes even last eight times longer than they should (4 years) in civil matters. The causes include the excessive procedural burden and lack of sufficient human resource.

   The litigious culture continues to be an important factor that contributes to this situation. While some judges -based on their experience- use judicial office management strategies that decrease processing times, those cases are exceptional.

   This speaks to the inefficiency of the model and methodology, which must be reviewed. They seem to pose serious problems meeting citizens' rights and institutional goals, such as the existence of reasonable timeframes, transparency, accountability, and fair decisions.

   The oral proceedings pilot project may offer an alternative that involves a different way of organizing, engaging in discussions with, and working closely with people.

7) Satisfaction with extrajudicial and community paths: In the case of the extrajudicial and community paths, the research shows that legal timeframes are met and user satisfaction is high due to the fact that they are free or low cost.

   However, the cost of opportunity and unmet expectation of reaching a solid agreement have a significant impact on low-income women, particularly in peripheral areas of cities and regions with high poverty and extreme poverty levels like Loreto.

   The information that operators offer to users with regard to the extrajudicial conciliation process and the legal value of the conciliation agreement generates trust and satisfaction. However, there are strong indicators that the percentage of

agreements is low and that a large number of people end up turning to the judiciary for help with problems related to the drafting or formulation of the agreements and their terms.

8) Perception of discriminatory treatment: Other causes of dissatisfaction with the judicial path include public perception of a lack of empathy and cordialness among judicial officials providing services to system users. Discussions of this were more common in Lima, though they were present in interviews conducted in all of the cities covered by the study.

Addressing this problem from the field of public policy is crucial because such conditions seriously limit access to justice for especially vulnerable people such as women seeking to secure child support who are unfamiliar with the judicial process. In some cases, this is perceived as discriminatory treatment based on the person's economic status, which may also have racist connotations.

These findings underscore the need for a comprehensive review of public policy on access to justice that incorporates specific measures to strengthen extrajudicial conciliation, community justice, and the efficiency of the judicial path.

9. RECOMMENDATIONS

1) **Strengthening the design and planning of public policies from a people-centered rights approach and based on local contexts.** It is crucial to understand that any approach must address the complex, indivisible, and interdependent nature of rights and realities. Failing to recognize the cross-cutting nature of problems and structural inequities limits the enforceability and justiciability of rights, reducing the effectiveness of rulings. For example, our evidence shows that Peruvian cities have expanded by nearly 50% over the past few decades, and 93% of that growth is informal.

2) **Conducting a rigorous evaluation of access to justice in the judicial and extrajudicial processes analyzed,** particularly in regard to the implementation of legislation on dispute resolution means in general and conciliation in particular.

   This evaluation must have reliable and current data, most of which can be found in the databases of the judiciary and the Ministry of Justice and Human Rights. However, existing data have not been used to measure the impact of conciliation on the achievement of the law's objectives: building a culture of peace and reducing the procedural load. These data are essential to any evaluation and decision about legal or public management improvements.

3) Rethinking the State approach to dispute management. Comprehensive people-centered approaches must be promoted rather than the hierarchization of mechanisms such as the judicial process. This requires that the regulation, design, organization, and forms of coordination be structured based on the disputes, with an adequate set of incentives and disincentives. Furthermore, the approaches must be coherent in their design and practices in order to provide adequate responses through dispute management.

As such, it is problematic that the Peruvian legal system does not currently have a system for exchanging information for the analysis of the conflict, the approach used, and its management, such as the discovery system or proactive evidence system in Brazil.

4) **Evaluating and weighing inequities in the distribution of institutional resources and capacities,** which perpetuate conditions of general subjugation, especially for certain groups. There is a need to review the legal architecture and current practices based on the commitments made by the State in universal and regional human rights protection systems.

   In this sense, it is important to think about legislative and oversight measures that can impact the current situation, addressing lacks in processes, mechanisms, or channels and optimizing tools that are underutilized.

   For example, the opportunity to file complaints over child support without professional assistance using a form facilitates access to justice. However, additional measures are needed to correct possible disadvantages, such as raising awareness of provisional support requests as a protective measure or incorporating precise information into the model. It is important to note that only 18.7% of cases have included advanced orders of child support despite its importance for children and adolescents.

5) **Strengthening methodologies that empower the public, improving transparency and accountability.** The search for fairer and higher quality solutions may benefit from enhancing adversarial and public proceedings. As such, an effort must be made to expand initiatives such as progressive introduction of oral proceedings.

6) **Using the installed capacity of ADRs and community justice** to strengthen public policy on the construction of a culture of peace, emphasizing territories and addressing specific issues that impact rural areas, higher poverty areas, and multicultural regions.

   In the case of peace courts, the State should consider significant improvements to the minimum conditions for performing their work, such as the provision of office space, Internet and basic services, and logistical resources. It is also advisable to expand coverage, improve training mechanisms, and consider the possibility of paying a stipend -but not awarding compensation that could disincentivize those who engage in this highly prestigious work. The strengthening of these roles should be part of a broader public policy focused on guaranteeing access to justice and the culture of peace.

7) **Improving publicity and awareness campaigns** on the existence, availability, and usefulness of ADR methods and community justice. Special attention must be paid to groups that face structural disadvantages.

8) **Evaluating public policy based on the weaknesses identified** in this study in order to implement regulatory or public administration reforms that include:

   a) Strengthening extrajudicial conciliation through more and better awareness. For example, this could be done through schools and institutes of higher education.

   b) Improving the process of skills accreditation for those who engage in extrajudicial conciliation. This could involve increasing the rigor of accreditation courses, improving the curricula, and ensuring strict government oversight of that process.

   c) Strengthening supervision of conciliation centers and the role of conciliators at the regulatory and/or management level.

d) Remedying the perception of a lack of impartiality or independence that exists in regard to justice and improving judge selection and appointment mechanisms. Special attention must be paid to reducing the number of judges who are temporary or provisional.

9) **Guaranteeing more resources and reorganizing institutional capacities** in order to implement substantive reforms of the current justice system.

10) **Strengthening the family subsystem** in order to give officials tools to improve how this type of dispute is addressed, incorporating:

    a) Soft skills and case management techniques that professionalize their work and increase the effectivity of the conciliation process.

    b) Tools linked to rights and gender and diversity approaches.

11) **Improve services for judicial system users,** especially in family court cases, which mainly involve low-income women who are not familiar with the system and do not trust it.

    It is essential that guidelines and protocols for public services emphasize:

    a) Friendlier service that is free of all forms of discrimination; and

    b) The provision of complete and timely information on the processing of their cases and paths to resolution. This will help build more human, egalitarian, responsible, and effective practices.

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