



# Alternatives for Conflict Resolution and Restorative Justice, in Cases of Domestic Gender Violence in Ecuador

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**ABSTRACT:** The following research proposal has as its main objective the realization of a deep analysis of the alternatives of conflict resolution and restorative justice, in relation to the problem of intimate partner violence in Ecuador. In order to achieve this goal, a qualitative, theoretical-normative methodology has been used, which has been complemented with statistical data, based on the legal method of comparative law and supported by relevant interdisciplinary literature, including perspectives from sociology, criminology, and gender studies. This approach allows a broader understanding of the structural factors that influence the perpetuation of violence. As a result, the findings show that although the predominant punitive response constituted an advance in terms of the purpose of denaturalizing this social phenomenon, this response is still not sufficient in relation to obtaining a more humane response to domestic violence against women. Restorative justice, which is currently established in the Comprehensive Organic Criminal Code of Ecuador (COIP) (2014), is only provided for comprehensive reparation, once the criminal process and its respective sanction have been fully developed, being that it is imperative to concretely direct the direction towards other forms of treatment of violence in the family, as has been the case in the Mexican State.

**Keywords:** Conflict resolution alternatives, restorative justice, violence, gender, family, fundamental rights.

**Received:** 06/06/2025

**Received:** 06/06/2025

**Accepted:** 09/06/2025

## 1. Introduction

Within a social structure designed by and for men, throughout the history of humanity, women have permanently suffered their human rights violation. Precisely, in Latin America and the Caribbean until the 90's decade, violence against women in the family was considered a private matter, in which the State should not intervene. Therefore, the conception of violence occurred in an isolated form<sup>3</sup>. As a consequence, the family space was the first place where women were at constant risk of violence.

At the end of the 70's decade, violence in the family was addressed through international legal instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the United Nations General Assembly in 1979<sup>4</sup>, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) in 1994 by the

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<sup>3</sup> Yina Quintana Zurita, José Rosero Moncayo, and José Serrano Salgado, *La violencia de género contra las mujeres en el Ecuador: Análisis de los resultados de la Encuesta Nacional sobre las Relaciones Familiares y Violencia de Género contra las Mujeres* (Quito: El Telégrafo, 2014), [https://oig.cepal.org/sites/default/files/violencia\\_de\\_gnero\\_ecuador.pdf](https://oig.cepal.org/sites/default/files/violencia_de_gnero_ecuador.pdf).

<sup>4</sup> United Nations, *Convention on the Elimination of All Forms of Discrimination against Women*, 1979, <https://n9.cl/tgr5c>.

Organization of American States<sup>5</sup> and the Beijing Action in 1995<sup>6</sup>. This international norm obliged the States to take measures to stop violence against women in the family environment.

In Ecuador, the Code of Criminal Procedure <sup>7</sup> prohibited reports between spouses, ascendants or descendants, and in the absence of criminalization of violence against women, this was invisibilized and naturalized. However, thanks to the actions undertaken by women's movements, the dissemination of the first investigations and studies carried out by civil society organizations and the international community's calls for attention regarding the exercise of violence in the public and private spheres<sup>8</sup>, the country assumes the responsibility of confronting discrimination against women.

The first action taken by the country was the creation of the Women's and Family Police Stations (CMF) in 1979. However, it was with the Law against Violence against Women and the Family (No. 103) in 1995 that resources were allocated to protection and access to justice and the establishment of sanctions for aggressors<sup>9</sup>. With the Organic Code of the Judicial Function of 2009, the competence and jurisdiction of judges of violence against women and the family is established to know misdemeanors, apply protection measures and establish alimony, comprehensive care for victims through the creation of Technical Offices composed of doctors, psychologists, and social workers<sup>10</sup>.

Currently, with the Código Orgánico Integral Penal (COIP) (Translated to english as Comprehensive Organic Penal Code) approved in 2014, Law 103 is eliminated and violence against women or members of the family nucleus is typified as a crime, as well as the crime of femicide<sup>11</sup>. Also, the Prevention and Eradication of Violence against Women Law, since 2018, defines the types and areas of violence; establishes 4 lines of action: prevention, training and awareness; contemplates legal attention, psychological, social and medical care; provides, in addition to protection measures, proportional and integral reparation; and establishes the creation of a National System<sup>12</sup>.

For 50 years, Ecuador, like the rest of Latin American countries, opted for a punitive response to gender violence in the family. Although this was a very important step to make violence visible and denaturalize it, this approach presents several flaws: the inability of the criminal justice system to successfully address violence between partners<sup>13</sup>; the ineffectiveness of a state justice system with one single approach to all cases and that does not consider the needs of women to ensure aspects such as housing, finances and

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<sup>5</sup> Organization of American States, *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women "Convention of Belem do Pará"*, 1994, <https://n9.cl/6srr>.

<sup>6</sup> United Nations General Assembly, *Beijing Declaration and Platform Action*, 1995, <https://n9.cl/kzar>.

<sup>7</sup> National Congress of Ecuador, *Código de Procedimiento Penal*, Pub. L. No. Official Register Supplement 360 de 13-ene-2000 (2000), <https://www.ministeriodegobierno.gob.ec/wp-content/uploads/downloads/2014/03/CODIGO-DE-PROCEDIMIENTO-PENAL-2000.pdf>.

<sup>8</sup> Quintana Zurita, Rosero Moncayo, and Serrano Salgado, *La violencia de género contra las mujeres en el Ecuador: Análisis de los resultados de la Encuesta Nacional sobre las Relaciones Familiares y Violencia de Género contra las Mujeres*.

<sup>9</sup> Congreso Nacional del Ecuador [National Congress of Ecuador], *Ley 103*, Official Register No. 839, December 11<sup>th</sup> 1995, [https://www.defensoria.gob.ec/images/defensoria/pdfs/lotaip2014/infolegal/Ley\\_contra\\_violencia\\_mujer\\_familia.pdf](https://www.defensoria.gob.ec/images/defensoria/pdfs/lotaip2014/infolegal/Ley_contra_violencia_mujer_familia.pdf).

<sup>10</sup> Asamblea Nacional del Ecuador, [National Assembly of Ecuador], *Código Orgánico de la Función Judicial* [Organic Code of the Judicial Function], Official Register Supplement No. 544, March 9th, 2009, <http://surl.li/cwhjdb>.

<sup>11</sup> Asamblea Nacional del Ecuador, [National Assembly of Ecuador], *Código Orgánico Integral Penal* [Comprehensive Organic Criminal Code], Official Register Supplement No. 180, February 10th, 2014, <http://surl.li/opfqjd>.

<sup>12</sup> Asamblea Nacional del Ecuador, [National Assembly of Ecuador], *Ley Orgánica Integral para Prevenir y Erradicar la Violencia contra las Mujeres* [Comprehensive Organic Law to Prevent and Eradicate Violence against Women], Official Register Supplement No. 175, February 5, 2018, [https://www.igualdad.gob.ec/wpcontent/uploads/downloads/2018/05/ley\\_prevenir\\_y\\_erradicar\\_violencia\\_mujeres.pdf](https://www.igualdad.gob.ec/wpcontent/uploads/downloads/2018/05/ley_prevenir_y_erradicar_violencia_mujeres.pdf).

<sup>13</sup> J.H. Garner and C.D. Maxwell, "Prosecution and conviction rates for intimate partner violence". *Criminal Justice Review* 34, n.º 1 (2009): 44-79, <https://doi.org/10.1177/0734016808324231>.

children<sup>14</sup>; the non-compliance of the protective measures and revictimization in judicial environments<sup>15</sup>; the mandatory imprisonment that does not rehabilitate, nor effectively prevent recidivism<sup>16</sup>. Hence, the justice system does not contemplate the possibility of permanence of the couple's relationship or placement in distant communities from justice services or other forms of conflict resolution closer to the cultural formats of other communities, such as rural and indigenous communities.

Mediation is a non-punitive form of conflict resolution; its application in cases of gender violence in the family is a much-discussed issue, due to the imbalance of power<sup>17</sup>, the vulnerability of the victim<sup>18</sup>, the confusion of roles in the practice of restorative justice<sup>19</sup>. However, the application also has advantages and should be allowed in adults<sup>20</sup>.

## 2. Methodology

The following research, based on a qualitative, normative theoretical design, complemented with statistical data, with a descriptive scope and the application of the comparative law method that reflects on the alternatives of conflict resolution and restorative justice in cases of intra-family gender violence in Ecuador. To this end, in a first moment, state justice in gender violence in the family setting is presented in order to answer the question: What is the paradigm of state justice to the problem of intra-family gender violence? Subsequently, is sought to know what are the alternatives for conflict resolution and restorative justice in the case of intrafamily gender violence? Finally, this question is raised: What are these new regulations and how can they be related to Ecuador?

## 3. Discussion

### 3.1 The paradigm of State Justice in gender violence in the family sphere

Criminal law is the expression of the renunciation of private vengeance and the granting of the power to punish to the State on behalf of the community, traditionally known as *Ius Puniendi*. Thus, the transgression of public law is a crime<sup>21</sup> to which a penalty corresponds; with this, the need to equate the punishment to the crime committed arises<sup>22</sup>. Therefore, that historically, the purposes of state punishment are based on retributionism and prevention; and, from the twentieth century onwards, on neo-retributionism.

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<sup>14</sup> D. Epstein and L.A. Goodman, "Domestic Violence Victims' Experiences in the Legal System", in *Stress, Trauma, and Wellbeing in the Legal System* (Oxford: Oxford University Press, 2013), <https://doi.org/10.1093/acprof:oso/9780199829996.003.0003>.

<sup>15</sup> L.B. Gezinski and K.M. Gonzalez-Pons, "Legal Barriers and Re-Victimization for Survivors of Intimate Partner Violence Navigating Courts in Utah, United States", *Women and Criminal Justice*, 2021, <https://doi.org/10.1080/08974454.2021.1900991>.

<sup>16</sup> E. Nahmias and E. Aharoni, "Communicative theories of punishment and the impact of apology", en *Rethinking Punishment in the Era of Mass Incarceration*, 2017, 144-59, <https://doi.org/10.4324/9781315170602>.

<sup>17</sup> K. McMaster, "Restoring the balance: Restorative justice and intimate partner violence", in *A Restorative Approach to Family Violence: Changing Tack*, 2016, 93-106, <https://doi.org/10.4324/9781315565156-23>.

<sup>18</sup> O. Sitarz, D. Bek, and A. Jaworska-Wieloch, "Mediation and domestic violence: Theoretical reflection on the Polish background", *International Journal of Criminal Justice Sciences* 13, n.º 2 (2018): 356-69, <https://doi.org/10.5281/zenodo.2657631>.

<sup>19</sup> S. Balser et al., "Restorative Justice in Cases of Intimate Partner Violence in the United States: A Metasynthesis", *Families in Society* 105, n.º3 (2024):384-401, <https://doi.org/10.1177/10443894231212546>.

<sup>20</sup> Sitarz Bek and Jaworska-Wieloch, "Mediation and domestic violence. Theoretical reflection on the Polish background".

<sup>21</sup> Immanuel Kant, *The Metaphysics of Morals*, trans. Adela Cortina Orts and Jesús Conill Sancho, 4th ed. (Madrid: Tecnos, 1989), 166, [https://www.academia.edu/31993440/metaf%C3%ADsica\\_de\\_las\\_costumbres\\_Immanuel\\_Kant](https://www.academia.edu/31993440/metaf%C3%ADsica_de_las_costumbres_Immanuel_Kant).

<sup>22</sup> Kant, *The Metaphysics of Morals*, 166

In retributionist thought, "the meaning of punishment is that the culpability of the perpetrator is compensated by the imposition of a penal evil"<sup>23</sup>. For the main representatives of this current, Kant<sup>24</sup> and Hegel<sup>25</sup>, the basis of punishment is the correspondence between the crime committed and the punishment. This aspect was pointed out, at the time, by Thomas Hobbes<sup>26</sup> and later configured the principles of legality, jurisdiction and proportionality of punishment. In synthesis, the retributive theory proposes the need for a punishment in accordance with the culpability of the crime committed, which protects society and limits the punitive function of the State<sup>27</sup>.

But, the retributionist response from its own ethical starting point of seeking justice as such, raises the problem of the purpose of punishment under the assumption of the existence of an order of absolute values for a complex and relative social system<sup>28</sup>, because it does not have certain pragmatic objectives<sup>29</sup>. In this regard, positivism seeks determinants of criminality by identifying first individual factors<sup>30</sup> and then social ones<sup>31,32</sup>; for their part, the supporters of the finalist theory of criminal law base the need for the prevention of harm<sup>33</sup>.

More recently, variants of retributionism have emerged that attempt in some way to justify the usefulness of punishment. On the one hand, the liberal neo-retributionism based on the theory of unjustified or unfair advantage, the penalty comes to compensate the situation of unfair advantage produced by the crime, overcoming the Kantian idea of justice with the search for equity<sup>34</sup>. And, on the other hand, the community neo-retributionism that combines retributive elements of the punishment as a communicative contradiction, where the protection of the validity of the norm is the basis of this system, which is no longer determined based on the capabilities of the perpetrator of the crime, but according to social needs<sup>35</sup>.

However, from the point of view of criminal guaranty and minimum criminal law, Beccaria questioned the thinking on the origin of penalties and their proportionality<sup>36</sup>. And, more recently, Ferrajoli did the same regarding to neo-retributionism. First, by considering the protection of the weaker against the stronger, the weak offended or threatened by the crime, as the weak offended or threatened by revenge; against the stronger, who in crime is the offender and in revenge is the offended party. And, secondly, by maintaining

<sup>23</sup> Claus Roxin, "Sentido y límites de la pena estatal", in *Problemas básicos del Derecho penal*, trans. and notes by Diego-Manuel Luzón Peña (Madrid: Reus S. A., 1976), 12. <https://toaz.info/doc-view-3>.

<sup>24</sup> Immanuel Kant, *The Metaphysics of Morals*, trans. Adela Cortina Orts and Jesús Conill Sancho.

<sup>25</sup> G.W.F. Hegel, *Philosophy of Right* (Buenos Aires: Claridad S.A., 1968), <https://n9.cl/94n0t>.

<sup>26</sup> Thomas Hobbes, *Leviathan*, (1651), p. 12. <https://www.suneo.mx/literatura/subidas/Thomas%20Hobbes%20Leviatan.pdf>.

<sup>27</sup> Santiago Mir Puig, *Introducción a las bases del Derecho*, 2da ed. (Buenos Aires: IB de f, 2003), <https://proyectozero24.com/wp-content/uploads/2021/09/Mir-Puig-2003-Introduccion.-Bases-Derecho-Penal.pdf>.

<sup>28</sup> Mario Durán Migliardi, "Teorías absolutas de la pena: Orígenes y fundamentos", *Revista de Filosofía* 67 (2011): 123-44, <https://doi.org/10.5354/0718-4360.2011.18131>.

<sup>29</sup> Gunter Stratenwerth, *Derecho penal. Parte general I: El hecho punible*, trad. Mabel Cancio Mejía y Marcelo A. Sancinetti (Buenos Aires: Hamurabi s.r.l., 2026), p.30 <https://n9.cl/xg3rn>.

<sup>30</sup> César Lombroso, *Los criminales* (Barcelona: Centro Editorial Pesa, 1876), <https://www.araujoasociados.net/blog/wp-content/uploads/2013/07/Cesare-Lombroso-Los-Criminales.pdf>.

<sup>31</sup> Enrico Ferry, *Sociología Criminal* (Madrid, n.d), <https://archive.org/details/BRes141046/page/n3/mode/2up>.

<sup>32</sup> Rafael Garófalo, *La Criminología* (Madrid, 1912), [https://www.academia.edu/40664670/LA\\_CRIMINOLOG%C3%ADA\\_Vol\\_II\\_RAFAEL\\_GAR%C3%93FALO](https://www.academia.edu/40664670/LA_CRIMINOLOG%C3%ADA_Vol_II_RAFAEL_GAR%C3%93FALO).

<sup>33</sup> Hans Welzel, *El Derecho Penal*, trans. Carlos Fontán (Buenos Aires, 1956), [https://www.derechopenalened.com/libros/DERECHO\\_PENAL\\_PARTE\\_GENERAL\\_HANS\\_WELZEL.pdf](https://www.derechopenalened.com/libros/DERECHO_PENAL_PARTE_GENERAL_HANS_WELZEL.pdf).

<sup>34</sup> Eduardo Demetrio Crespo, "Crítica a la retribución como fin de la pena", *Anales de la Cátedra Francisco Suárez*, n.º 1 (September 2, 2021): 107-29, <https://doi.org/10.30827/acfs.vi1.17980>.

<sup>35</sup> Mariana N. Solari Merlo, "Los paradigmas del derecho penal: 'el progreso de la ciencia a través de las revoluciones científicas'", *Derecho Penal y Criminología* 41, n.º 110 (May 19, 2021): 91-118, <https://doi.org/10.18601/01210483.v41n110.05>.

<sup>36</sup> Cesare Beccaria, *Tratado de los delitos y de las penas* (Madrid: Universidad Carlos III de Madrid, 2015), [https://e-archivo.uc3m.es/bitstream/handle/10016/20199/tratado\\_beccaria\\_hd32\\_2015.pdf](https://e-archivo.uc3m.es/bitstream/handle/10016/20199/tratado_beccaria_hd32_2015.pdf).

that fundamental rights constitute parameters that define the spheres and limits that, as goods, it is not justified to offend with crime or punishment<sup>37</sup>.

However, neither ancient nor modern retributive theories have been able to overcome the criticisms formulated time ago by Roxin and other authors<sup>38</sup>. Thus, punitive justice is subject to a number of questions. As for the justification of the imposition of a state penalty on the basis of the absolute theory of punishment, it cannot be justified, for three reasons.

First, the theory of retribution presupposes the existence of a penalty, but does not explain the presuppositions of human culpability that authorize the State to punish<sup>39</sup>. Thereupon, the legitimacy of the principle of legality, of a formal nature, is not sufficient, being necessary to resort to instrumental foundations such as the preventive nature of punishment<sup>40</sup> to support the effect of punishment as prevention or re-education of the offender<sup>41</sup>.

Second, the possibility of guilt presupposes freedom of will, free agency<sup>42</sup>, which is based on the classical retributive theory, but its existence is undemonstrable. As is known, there is no biological determination for crime, but rather cultural behavioral patterns<sup>43</sup>, therefore, in human behavior individual and social aspects converge, which question the freedom to make a decision at a given moment<sup>44</sup>.

Third, the retributionist theory cannot be based on atonement, understood as moral purification to justify that before an evil committed, another one is added, to suffer a penalty, which is undoubtedly related to revenge. That is to say, the ideal of justice is based on the perpetrator of a crime suffering a penalty, which basically "serves no purpose, but carries its end in itself"<sup>45</sup>.

On the other hand, criminal law is "totally ineffective for the solution of a concrete conflict that is framed within the criminal precept by not proposing other alternatives than the imposition of a penalty that appears only as a retributive response but not as a real solution to that conflict"<sup>46</sup>. Rather, the retributive response is the demonstration that the State has not been able to provide a solution to the conflict by other means, constituting a state failure<sup>47</sup>.

The retributive paradigm prevailing in current criminal law, consisting of "the set of legal rules that associate penalties or security measures with the crime committed or likely to be committed (post-crime and pre-crime)"<sup>48</sup>, gives rise to procedures, systems and subjects that specialize in the practice and justification of punishment in response to the fact that those who break the law do so again. Hence, to every infraction or crime corresponds a sanction. Precisely, this has been the established response to the phenomenon of gender violence in the family, being the case of the Ecuadorian State.

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<sup>37</sup> Luigi Ferrajoli, "El Derecho penal mínimo" in *Prevención y teoría de la pena*, ed Juan Bustos Ramírez, (Santiago de Chile: ConoSur Ltda., 1995), <https://es.scribd.com/document/431597351/Bustos-Ferrajoli-Bergalli-Baratta-y-Otros-Prevencion-y-Teoria-de-la-Pena-pdf>.

<sup>38</sup> Eduardo Demetrio Crespo, "Crítica a la retribución como fin de la pena,". *Anales de la Cátedra Francisco Suárez*, no. 1 (September 2, 2021): 107-29, <https://doi.org/10.30827/acfs.vi1.17980>

<sup>39</sup> Roxin, "Sentido y límites de la pena estatal", in *Problemas básicos del Derecho penal*. trans. and notes by Diego-Manuel Luzón Peña .

<sup>40</sup> Juan Bustos Ramírez, *Manual de Derecho penal* (Barcelona: PPU, 1994), <https://n9.cl/ne08nz>.

<sup>41</sup> Luigi Ferrajoli, *Garantismo penal* (México: Universidad Nacional Autónoma de México, 2006), <https://n9.cl/rnb76v>.

<sup>42</sup> Roxin, "Sentido y límites de la pena estatal", in *Problemas básicos del Derecho penal*. trans. and notes by Diego-Manuel Luzón Peña

<sup>43</sup> Mario Durán Migliardi, "Teorías absolutas de la pena: Orígen y fundamentos". *Revista de Filosofía* 67 (2011): 123-44, <https://doi.org/10.5354/0718-4360.2011.18131>.

<sup>44</sup> Gunter Stratenwerth, *Derecho penal Parte general I el hecho punible*, trans. Mabuel Cancio Mejía and Marcelo A. Sancinetti. (Buenos Aires: Hamurabi S.R.L., 2026), <https://n9.cl/xg3rn>.

<sup>45</sup> Roxin, "Sentido y límites de la pena estatal", in *Problemas básicos del Derecho penal*. trans. and notes by Diego-Manuel Luzón Peña.

<sup>46</sup> Juan Bustos Ramírez, *Manual de Derecho penal* (Barcelona: PPU, 1994), 40.

<sup>47</sup> Ibid

<sup>48</sup> Mir Puig, *Introducción a las bases del Derecho*, 2da ed.

In Ecuador, in the COIP, violence against women or members of the family are classified as criminal offenses and contraventions. Among the crimes is femicide, considered the most extreme act of violence against women. It should be emphasized that in this type of offense there is no room for conciliation or any other alternative conflict resolution mechanism, as expressly prohibited (ibidem arts. 641 and 663, sub 2) <sup>49</sup>.

Violence against women or members of the family nucleus is defined as “any action consisting of physical, psychological or sexual mistreatment executed by a member of the family against the woman or other members of the family nucleus” <sup>50</sup>. And by members of the family nucleus are considered:

the spouse, common-law partner, cohabitant, ascendants, descendants, sisters, brothers, relatives up to the second degree of affinity and persons with whom it is determined that the defendant maintains or has maintained family, intimate, affectionate, conjugal, cohabitation, dating or cohabitation ties<sup>51</sup>.

For each type of violence a sanction is contemplated: for physical violence the same sanction as for injuries increased by one third and, in the case of injuries or incapacity not exceeding 3 days, the penalty will be from 7 to 30 days; in psychological violence, from 30-60 days, from 6 to 12 months, or from 1-3 years, depending on the psychological damage caused; and, in sexual violence, the penalties foreseen in crimes against sexual and reproductive integrity are applied<sup>52</sup>.

With the reform to the COIP, in 2019 a unified, special and expedited procedure is established for crimes of violence against women or members of the family<sup>53</sup>. This procedure differs from the others established in terms of the celerity with which it is intended to apply in the trial of criminal conduct through a single hearing before the competent criminal authority.

For the substantiation of the procedure are competent until the evaluation and trial preparation stages, judges specializing in violence against women or members of the family nucleus and criminal guarantees. In the absence of specialized units, criminal guarantee judges will be competent for: a) Fiscal investigation, evaluation and trial preparation; b) Causes of femicide crimes; c) Crimes of violence against women or members of the family nucleus; and d) Crimes against sexual and reproductive integrity, with the exception of statutory rape. The trial stage will be heard by the Criminal Guarantees Court<sup>54</sup>.

The abbreviated procedure, in which the defendant assumes his responsibility, on the other hand, will be applied in cases in which the custodial sentence is more than ten years, except in the case of sexual crimes against women or members of the family. Likewise, in the abbreviated procedure, the victim, in the case of requesting it, will be heard so that her agreement or disagreement in the application of the procedure can be assessed. In the same way, the judge must consider the opinion of the victim and may request, if necessary, the opinion of the technical support team on the reparation to be included in the sentence<sup>55</sup>.

Although the response to violence from the penal sphere aims to dissuade violence in the family environment, pointing out the behaviors that are not acceptable in society and establishing the right to a free violence life in the family environment, being considered as a conquest that has allowed the visibility and therefore the denaturalization of violence, it is no less true that by itself, it does not offer the possibility of a change of behavior, since it does not favor the deconstruction of beliefs and stereotypes that modify

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<sup>49</sup> Asamblea Nacional del Ecuador, [National Assembly of Ecuador] *Código Orgánico Integral Penal* [Comprehensive Organic Criminal Code], Official Register Supplement 180, February 10, 2014.

<sup>50</sup> Asamblea Nacional del Ecuador, [National Assembly of Ecuador], *Código Orgánico Integral Penal* [Comprehensive Organic Criminal Code], art. 155.

<sup>51</sup> Ibid

<sup>52</sup> Ibid

<sup>53</sup> Asamblea Nacional del Ecuador, [National Assembly of Ecuador]. *Código Orgánico Integral Penal* [Comprehensive Organic Criminal Code],. Pub. L. No. Registro Oficial No. 107. December 24, 2019. <http://surl.li/saghtl>.

<sup>54</sup> Corte Nacional de Justicia del Ecuador, [National Court of Justice of Ecuador]. *RESOLUCIÓN No. 10-2020*. August 18, 2020. <https://n9.cl/kl30s>.

<sup>55</sup> Asamblea Nacional del Ecuador, [National Assembly of Ecuador]. *Código Orgánico Integral Penal* [Comprehensive Organic Criminal Code], art. art. 651.1,13 and 15.

violent behavior; It also produces revictimization and emotional exhaustion in the assaulted persons as a consequence of the established process.

### 3.2 Conflict resolution alternatives and restorative justice

Traditionally, criminal justice from the retributive paradigm applies a sanction to every infraction of the criminal law: crimes and misdemeanors. Violence against women, since its incorporation as a matter of public interest in the legal orbit through criminal law, contemplates a state response based exclusively on punishment. This totally excluded the possibility that all types of aggressions committed between family members could be known through alternative mechanisms of conflict resolution or restorative justice. Nevertheless, the role of criminal law is drained in the realization of justice, so the most suitable means to achieve prevention, rather than punishment, must be sought<sup>56</sup>.

Alternative dispute resolution mechanisms, within the criminal field, represent a challenge, since they represent the overcoming of the logic of punishment, from the understanding of the criminal phenomenon as a conflict, in which the parties are directly affected, but also the community<sup>57</sup>. Alternative mechanisms include mediation, conciliation and arbitration mainly, as they are regulated in the different justice systems. In Ecuador, mediation and conciliation are prohibited in domestic violence cases. In the case of arbitration, since it is not included in the subject matter of the agreement, it is understood that it does not proceed either. However, mediation can be used with a restorative approach as in the case of juvenile justice.

In mediation, conflict resolution basically consists of the search for agreements through dialogue with the help of an impartial third party<sup>58</sup> that meets your needs<sup>59</sup>. On the other hand, Restorative Justice is a philosophy, which allows for an "evolutionary response to crime that respects the dignity and equality of each person, creates understanding and promotes social harmony through the healing of victims, offenders and communities"<sup>60</sup>.

In the last decade, States have opted to include restorative justice in the school, community, juvenile justice, minor crimes and, as in the case of Ecuador, in crimes of violence against women and other members of the family for the stage of comprehensive reparation, but not for the family sphere. Nonetheless, Villavicencio specifies that:

Restorative justice can adopt as its surname the family matter, as long as its philosophy, principles, objectives and pillars are respected, which go beyond just thinking of it for the criminal sphere, it can take the surname of school, community, family etc, because it was not made for a matter, if not to identify, address and amend the damage, collectively, assuming responsibilities (para. 7)<sup>61</sup>.

Undoubtedly, in the family environment as in any other, there may be damages that need to be healed. Since the 1980's there have been several experiences around the world on the application of restorative practices in gender violence in intimate partner relationships. Precisely, some examples are: the Intervention Program against domestic violence in the State of Minnesota, "Men against male violence" in the city of Hamburg<sup>62</sup>, the "Intervention Project against domestic violence against women" in the city of Freiburg; the Criminal Mediation Service in Barcelona, Basque Country, Valencia, La Rioja, Valladolid or Burgos<sup>63</sup>; and the

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<sup>56</sup> Mir Puig, *Introducción a las bases del Derecho*.

<sup>57</sup> Rita Mill, *Criminal Mediation* (Buenos Aires: Culzoni, 2013).

<sup>58</sup> Beatriz Martínez de Murcia, *Mediación y Resolución de Conflictos una guía introductoria* (México: Paidós, 1999).

<sup>59</sup> Jay Folger and Alison Taylor, *Mediación resolución de conflictos sin litigio* (México: Limusa, 1992).

<sup>60</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programs, 2011, 4*, [https://www.unodc.org/documents/ropan/Manuales/Manual\\_de\\_Justicia\\_Restaurativa\\_1.pdf](https://www.unodc.org/documents/ropan/Manuales/Manual_de_Justicia_Restaurativa_1.pdf).

<sup>61</sup> Claudia Villavicencio, *"Instituto Internacional de Justicia Restaurativa y Derecho IIDEJURE"*, 2020, <https://n9.cl/rykd4>.

<sup>62</sup> Cited in Cristina Ruiz, *"Justicia restaurativa y violencia de género: la voluntad de las víctimas en su reparación"* (Master's thesis, Universidad Carlos III de Madrid, 2014), <https://n9.cl/0am2u>.

<sup>63</sup> Ibid

Family Restorative Justice Court in Nuevo León, this unit was created with the purpose of dealing with problems in the family nucleus, specifically cases of family violence<sup>64</sup>.

Even so, the applicability of restorative practices in gender violence is one of the debates of the 21st century. In this regard, there are different points of view regarding the approach to gender violence through restorative justice of the mediation mechanism: a) its use is inadequate; b) there is no clear position as to its prohibition; c) its applicability only at the request of the victim; d) each case should be studied individually, since the characteristics of each case are different; and, finally, its application in all types of violent relationships<sup>65</sup>. Even so, it should be pointed out that mediation is one of the mechanisms through which restorative justice can operate, but there are a number of practices, programs or modalities.

For those who can apply restorative justice to domestic gender-based violence, there are several advantages for both the victim and the aggressor. For the victim, encouraging active participation in conflict resolution and allowing them to identify their interests within the process promotes empowerment and prevents secondary victimization. Regarding the aggressor, restorative justice allows them to assume responsibility for the harm caused and promotes their reintegration. Let's not forget the third pillar of restorative justice, the community, as it fosters awareness and sensitivity regarding this social problem. Another advantage of its application is "the opportunity for victims to be heard and express their feelings, a situation that until a few decades ago was neglected under the punitive criminal justice system"<sup>66</sup>.

Positions against the application of restorative justice mention certain practical difficulties, among which three stand out: a) Procedural.- This refers to the approach of incorporating restorative practices into a criminal process that must respect its classic principles; b) Gender violence as a crime.- Mainly, in terms of the psychological connotations of the victim, the characteristics of the aggressors and the social context in which they develop. The psychological effects of the victim that place her in a position of incapacity to participate in a restorative process; and, c) Restoration.- Understood as the possibility of reconciliation and with it, the insertion of the victim back into a violent relationship and her placing at the mercy of the aggressor and the idea that gender violence is a crime and not a conflict<sup>67</sup>. Regarding this last difficulty, it is emphasized that it can constitute an easy or cheap way out for the aggressor, "accustomed to asking for a forgiveness request as a common way of manipulating the victim, and mechanisms should be in place to monitor compliance with the agreements. In the event of non-compliance, the adverse consequences that this would entail for the offender should also be anticipated"<sup>68</sup>.

In the family setting, mediation and restorative justice have different applicability. Mediation is applied in co-constructed conflicts, while restorative justice is applied in those cases in which a notable asymmetry has been caused in the relationship between people; where violence is part of the family dynamics, meaning the family lives in constant normalized violence; where it is necessary an accompaniment with a gender perspective, which goes beyond a measure of restriction in criminal matters or a sentence because very rarely this can produce a restorative effect for the families<sup>69</sup>.

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<sup>64</sup> Roberto Guerrero- Vega, "Justicia restaurativa aplicada a los casos de violencia intrafamiliar y de género: una visión comparada entre México y Nicaragua", *Revista Criminología y Ciencias Forenses: Ciencia Justicia y Sociedad* 1, n.º 1 (s. f.): 15-29.

<sup>65</sup> Saioa Anduaga, "Violencia de género y prácticas restaurativas, ¿una combinación posible?" (Universidad del País Vasco, 2016), <https://n9.cl/ituw8>.

<sup>66</sup> Yahaira Martínez Pérez, "Evolución de la justicia restaurativa en el sistema penal con aplicación al derecho comparado", *Revista Ciencias Jurídicas y Políticas* 4, n.º 8 (2018): 12-28, p.26.

<sup>67</sup> Anduaga, "Violencia de género y prácticas restaurativas, ¿una combinación posible?".

<sup>68</sup> Carolina Villacampa, "Justicia restaurativa en supuestos de violencia de género en España: situación actual y propuesta político-criminal", *Polít. Crim* 15, n.º 29 (2020): 47-75, p. 67.

<sup>69</sup> Claudia Villavicencio, "Modelo de Impartición de Justicia desde la restauración familiar", *Revista Judicial, Poder Judicial de Costa Rica*, n.º No 132 (2022), [https://escuelajudicialpj.poder-judicial.go.cr/images/DocsRevista/revistajudicial\\_132\\_2022.pdf](https://escuelajudicialpj.poder-judicial.go.cr/images/DocsRevista/revistajudicial_132_2022.pdf).



On the other hand, there are those who argue that: "Reparation cannot be considered as a penalty, because it lacks a threat potential, and therefore, it is useless as a general negative prevention" <sup>70</sup>. Precisely, the Ecuadorian State, in the last reform made to the COIP, in 2019, expressly introduced restorative justice through the mechanism of mediation for the case of crimes of violence against women or members of the family environment, as part of the stage of execution of the sentence, only at the request of the victim and with the acceptance of the accused party. However, it does not replace the sanction, nor is it a mitigating factor to reduce the sentence. Restorative justice at this point in the process aims to give the victim an opportunity to express the impact that the offense has had on his or her life, and to the offender an opportunity to recognize his or her responsibility and point out the commitments he or she can assume, which are recorded in a document, in addition to the recording of the mediation process, without necessarily requiring a meeting of the parties.

### 3.3 State response to intrafamily gender-based violence in Ecuador and Mexico

The American Convention on Human Rights (Pact of San José) states that the family is the natural element and foundation of society, which must be protected by the State<sup>71</sup>. Hence, States must take appropriate measures to ensure the equality of rights and responsibilities of spouses in marriage and in the event of divorce. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), approved in 1979 by the United Nations General Assembly<sup>72</sup>, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará), signed in 1994 by the Organization of American States (OAS)<sup>73</sup>, oblige States to direct their efforts to guarantee women, and therefore families, a life free of violence. In the last five decades, the States have enacted regulations aimed at complying with international commitments, as in the case of Ecuador and Mexico; however, the data show that violence in the family is exercised mainly against women.

In Ecuador, the latest 2019 National Survey on Family Relations and Gender Violence against Women provided accurate data on violence in the family. The survey shows that 42.7% of women suffer violence throughout their lives and by their partner or ex-partner. Violence is divided into: psychological with 40.8%; physical with 25%; and patrimonial with 14.6%. However, only 11.4% report psychological violence; 17.6% report physical violence; and 19.5% report patrimonial violence. There is no major difference between rural areas (43.2%) and urban areas (42.6%). Violence is more frequent in African descent women (52.7%), indigenous women (47.1%) and mestizo women (42.2%). Violence in married or free union women is 46.7%; separated, divorced or widowed women 65.7%; and single women 17%. Therefore, violence is exercised principally against women; psychological violence is the most frequent, but is less reported; the incidence is higher in Afro-Ecuadorian and indigenous women; and in women in a situation of separation or divorce<sup>74</sup>.

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<sup>70</sup> Villacampa, "Justicia restaurativa en supuestos de violencia de género en España: situación actual y propuesta político-criminal".

<sup>71</sup> Organization of American States (OAS), "American Convention on Human Rights (Pact of San José)", 1978, <https://n9.cl/780p>.

<sup>72</sup> United Nations, "Convention on the Elimination of All Forms of Discrimination Against Women."

<sup>73</sup> Organization of American States (OAS), "Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ('Belém do Pará Convention')."

<sup>74</sup> Instituto Nacional De Estadísticas Y Censos (INEC) [National Institute of Statistics and Census], "Encuesta nacional sobre relaciones familiares y violencia de género contra las mujeres (ENVIGMU)", 2019, <https://n9.cl/b1ah>.

Unfortunately, the data on femicides registered in the country between 2014 and 2024 are not consistent. Thus, the figures published on the website of three state institutions do not coincide: Attorney General's Office<sup>75</sup>, National Council for Gender Equality<sup>76</sup> and Ministry of Women and Human Rights<sup>77</sup>:

Table N.- Cases of femicide in Ecuador:

Institution	Femicide cases	Period
Attorney General's Office	730	February 2014-November 2024
National Council for Gender Equality	749	August 2014 – March 2024
Ministry of Women and Human Rights	757	August 2014- May 2024

Source: Prepared by the authors based on data from the websites of state entities.

From the data presented in the preceding table it is clear that, although the source of the information is the Special Statistical Commission on Security, Justice, Crime and Transparency, of which the State Attorney General's Office is part, each entity has a different cohort month, without being able to know exactly the total number of cases of femicide in the aforementioned period.

Regarding the relationship between the victim and the perpetrator, the 2019 survey shows that in 31.7% of the cases it is the cohabitant; in 15.1% the spouse; in 13.8% the ex-cohabitant; and the partner in 12.5%. It also reveals the background of the perpetrators of violence against the woman or members of the family nucleus: psychological in 63.3%; physical in 10%; and attempted femicide in 3.33% of the cases. In other words, a large percentage of femicides are perpetrated by the persons with whom the women live, followed by the people with whom they had a sentimental relationship; likewise, the perpetrators had a history of violence against women and even attempted femicide before, which is extremely serious, taking into account that they were prosecuted prior to the femicide and the justice system did not achieve a change in behavior; on the contrary, they ended the women's lives<sup>78</sup>.

In the Federal State of Mexico, the problem of gender violence in the family is very similar to the Ecuadorian case. Precisely, the National Institute of Statistics and Geography (INEGI) in 2020, shows that 39.9% of women between 15 and 17 years old suffered intimate partner violence during their current or last relationship. Violence is divided into: psychological with 35.4%; physical with 16.8% and patrimonial with 19.1%. However, violence is only reported in 20.5% of cases. The survey also reveals that, according to marital status, 66.9% of married or single women reported violence, 47.7% psychological violence, 32.9% physical violence and 25.7% economic, patrimonial and/or discriminatory violence; 74.0% of separated, divorced or widowed women. 0%, in the psychological type 59.6%, in the physical type 43.9% and in the economic, patrimonial and/or discriminatory type 44.9%; and, in single women 73.8%, in the psychological type 53.3%, in the physical type 31. % and in the economic, patrimonial and/or discriminatory type 16.9%<sup>79</sup>.

There is no specific information available on the incidence of intimate partner violence by geographic area; however, in general, 73% of the women who experience more violence are those who live in urban areas,

<sup>75</sup> Fiscalía General del Estado del Ecuador [Office of the Attorney General of Ecuador], "Análisis muertes de mujeres en contexto delictivo", 2024, <https://www.fiscalia.gob.ec/analitica-muertes-de-mujeres-en-contexto-delictivo/>.

<sup>76</sup> Consejo Nacional para la Igualdad de Género del Ecuador [National Council for Gender Equality of Ecuador], "Homicidios intencionales de mujeres Período: Agosto 2014-31 de marzo 2024", 2024, <https://n9.cl/mqsf7>.

<sup>77</sup> Ministerio de la Mujer y DDHH del Ecuador [Ministry of Women and Human Rights of Ecuador], "Información Estadística de Femicidios a nivel nacional", 2024, <https://n9.cl/2u669>.

<sup>78</sup> Fiscalía General del Estado [Office of the Attorney General of Ecuador], "Análisis muertes de mujeres en contexto delictivo", 2024, <https://www.fiscalia.gob.ec/analitica-muertes-de-mujeres-en-contexto-delictivo/>.

<sup>79</sup> Instituto Nacional de Estadística y Geografía de México (INEGI) [National Institute of Statistics and Geography of Mexico], "Violencia contra las mujeres en México", 2020, <https://n9.cl/gao8z>.

compared to 60.3% in rural areas. Similarly, violence is higher among women who do not speak an indigenous language and are not considered indigenous compared to those who do. In summary, violence is exercised mainly against women, psychological violence is the most frequent, and the most frequent in situations of separation or divorce. In general, violence is greater in women who do not speak an indigenous language and are not indigenous; and, in those who are in urban areas.

Regarding to data on femicides, the same happens as in Ecuador; the figures published by the Executive Secretariat of the National Public Security System and the National Institute of Statistics and Geography (INEGI) <sup>80</sup>, are not consistent:

Table N.- Cases of femicide in Ecuador.

Entity	Femicide cases	Period
Executive Secretariat of the National Public Security System	27.648	2015-2022
National Institute of Statistics and Geography (INEGI)	20.446	2015-2022

Source: Own elaboration based on data from the websites of state entities. As of 2023 the femicide rate in Mexico per 100,000 women amounts to 852.

In summary, in both Ecuador and Mexico, violence is predominantly exercised against women. Psychological violence is the most frequent. The incidence of violence is higher in situations of divorce or separation. While in Ecuador there is no major difference between rural and urban areas and violence is more frequent in Afro-Ecuadorian and indigenous women, in Mexico violence is more frequent in women who are geographically located in urban areas and who do not speak an indigenous language and are not indigenous; and in those who are in urban areas. Data on femicide in both Ecuador and Mexico vary depending on the institution that publishes them, so there is no consistency in the state data on the number of women victims of male violence.

Table N.-2 Regulations regarding gender violence in the family, alternative methods and restorative justice

Ecuador	Regulation	México	Regulation
Constitution of the Republic of Ecuador of 2008	Protection of the Family, Art. 67 Chapter Six: Rights to Freedom, Art. 66.- All persons are recognized and will be guaranteed:  b) A life free from violence in the public and private spheres. The State will adopt the necessary measures to prevent, eliminate, and punish all forms of violence, especially that exercised against women, girls, boys, and adolescents, the elderly, persons with disabilities, and against all persons in situations of disadvantage or vulnerability; identical measures shall be taken against violence, slavery, and sexual exploitation.	Political Constitution of the United Mexican States of 1917	Human Rights and their Guarantees  Article 4th  Equality between men and women.  Substantive equality of women.  Protection of the organization and development of families  A, II: Women's Integrity

<sup>80</sup> *El Sol de México*, "INEGI y Seguridad Pública, con diferentes cifras de feminicidios», 2023, <https://oem.com.mx/elsoldemexico/mexico/inegi-y-seguridad-publica-con-diferentes-cifras-de-feminicidios-16696888>.

	Art. 190: Alternative Dispute Resolution Mechanisms.		Art. 17, paragraph 4. Alternative Mechanisms
Comprehensive Organic Law to Prevent and Eradicate Violence against Women of 2018	Art. 155 et seq.: Violence against women or family members. Art. 161: Unified, special, and expedited procedure.	General Law on Alternative Dispute Resolution Mechanisms of 2024	Art. 81: Restorative Justice in the family sphere.
Comprehensive Organic Criminal Code of 2014	It states that domestic violence is included among crimes against the family. Federal Penal Code, Article 343, "consists of acts or conduct of dominance, control, or physical, psychological, property, or economic aggression against a person with whom the person is or has been in a marriage, blood affinity, or civil relationship, common-law marriage, or a romantic relationship within or outside the family home."  Art. 651.6: Restorative Justice Art. 662: Alternative Mechanisms	National Code of Civil and Family Procedures	Art. 550: II Restorative Justice in the family sphere Art. 558 only exempts sexual violence against girls, boys and adolescents.

Source: Legal regulations in force in Ecuador and Mexico

In the face of the permanence of violence in families, according to statistical data collected in both Ecuador and Mexico, their respective justice systems are trying to counteract this serious social problem. Regarding the current regulations of the Ecuadorian State, the Constitution of the Republic of Ecuador (2008), art. 67, protects the family as the fundamental nucleus of society. It also protects the integrity of citizens in the public and private spheres, with special emphasis on the protection of women to a life free of violence. Likewise, it recognizes alternative conflict resolution mechanisms such as mediation and arbitration as provided by law<sup>81</sup>. However, violence in the family sphere is not within the subject matter that can be settled and there is even an express prohibition of conciliation (Código Orgánico Integral Penal, 2014, art. arts. 641 and 663, inc 2do)<sup>82</sup>. Restorative justice has been incorporated into the Ecuadorian justice system for about four decades. In its beginnings, restorative justice was considered propitious to be applied within the criminal field and in conflicts of minimum amount; but, as the benefits of its application and the needs of restoration in other areas where the ordinary justice system is insufficient have been verified, the applicability of this justice to restore the damage that is produced in spaces of permanent interaction, as is the case of the family, is being discussed doctrinally.

In this sense, Ecuador, taking into account the questions about the application of restorative justice in gender violence in the family setting, has regulated its application through mediation, once the criminal process is practically completed, with which, it is not considered an alternative to the criminal process, but rather complementary to address the reparation of the damage in addition to the comprehensive reparation that must be specified in any sentence (COIP, 2019, arts. 77 and 78.1)<sup>83</sup>.

<sup>81</sup> Asamblea Nacional del Ecuador [National Assembly of Ecuador], Constitución de la República del Ecuador, Official Registry 449 October 20th, 2008, <https://n9.cl/hd0q>.

<sup>82</sup> Asamblea Nacional del Ecuador [National Assembly of Ecuador], Código Orgánico Integral Penal [Comprehensive Organic Criminal Code].

<sup>83</sup> Ibid.

With this regulation, the Ecuadorian legislation makes available to the aggressor who has effectively repented and wants to take responsibility voluntarily, a process of restorative justice. And in the case of the victim, it offers the possibility of obtaining a restoration that in the future guarantees the non-recidivism of the repentant aggressor, whose motivation is only his contribution to the restoration of the victim to the extent that this is allowed. A criticizable aspect of the regulation is the lack of incorporation of the community, which could well include the families of each of the parties, this "limits the scope to address the underlying causes of the crime and move towards a transformative conception"<sup>84</sup>.

However, the bet is again that criminal punishment alone can generate a change of mentality in the aggressors, which can make this incorporation in the vast majority of cases not applied because, as is known, the use of repressive responses in the regulation of conflicts between people who are in permanent contact as the family serve to temporarily meet the social demand, but cannot constitute an adequate response to the complexity of the conflicts in question<sup>85</sup>.

However, it should not be overlooked that in the case of gender violence there is a set of beliefs and patterns that are transmitted structurally and systematically in society, and that the best tool is to dismantle them through re-education.

As far as Mexican legislation is concerned, Article 4 of the Political Constitution of the United States of Mexico establishes formal equality between women and men before the law and guarantees the enjoyment of women's right to substantive equality, together with the protection of the organization and development of families. Also, in paragraphs 22 and 23, it guarantees the right of every person to live a life free of violence, for which reason the State has reinforced duties of protection towards women, adolescents, girls and boys. The State is obliged to allocate sufficient and timely resources, which in accordance with the principle of progressiveness must be delivered directly, always in amounts that are not less than those of the budget of the previous fiscal year. Likewise, in section A, II, it recognizes the dignity and integrity of indigenous women. On the other hand, the laws shall provide for the application of alternative dispute resolution mechanisms, which in criminal matters shall regulate their application, ensuring the reparation of damages and establishing the cases in which judicial supervision shall be required. art. 17, para. 4<sup>86</sup>.

But, without a doubt, in accordance with the constitutional mandate, the Congress of the Union issued the General Law of Alternative Dispute Resolution Mechanisms of 2024, as a fundamental axis for the resolution of disputes through alternative mechanisms as a human right. The regulation is general in the United Mexican States and of a public nature. This regulation protects five types of mechanisms: negotiation, collaborative negotiation, conciliation, mediation, arbitration and even restorative justice in Article 81, which contemplates restorative justice in the family sphere.

The National Law of Penal Execution, in article 1, section II, establishes restorative justice to solve the controversies derived from the execution of a penal sanction. Thus, in Chapter I of Title Six, in Article 200, it contemplates restorative justice to identify individual and collective needs and responsibilities, in addition to assisting in the reintegration of the victim and the offender to the community, and the recomposition of the social fabric, being applicable in all crimes once the conviction has been issued, according to Article 202<sup>87</sup>.

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<sup>84</sup> Maite García, "Justicia Restaurativa en Delitos de Violencia Contra la Mujer y Miembros del Núcleo Familiar en Ecuador según la Reforma de 2019 al Código Orgánico Integral Penal. Una Aproximación al Ideal Teórico" (Thesis, Universidad de Cuenca, 2022), 108, <https://n9.cl/tkzza>.

<sup>85</sup> Villacampa, "Justicia restaurativa en supuestos de violencia de género en España: situación actual y propuesta político-criminal".

<sup>86</sup> Cámara de Diputados del Honorable Congreso de la Unión de Mexico [Chamber of Deputies of the Congress of the Union], *Constitución Política de los Estados Unidos Mexicanos*, Pub. Diario Oficial de la Federación, February 5, 1917 (updated 2024), <https://www.diputados.gob.mx/LeyesBiblio/pdf/CPEUM.pdf>.

<sup>87</sup> Congreso de la Unión de Mexico [Congress of the Union], *Ley Nacional de Ejecución Penal*, Pub. L. No. *Diario Oficial de la Federación*, June 16th, 2016, <https://www.diputados.gob.mx/LeyesBiblio/pdf/LNEP.pdf>.

Undoubtedly, the Mexican State in the National Code of Civil and Family Procedures, reformed on June 4, 2024, incorporates restorative justice in family matters, as a legislative innovation, but that in some States, it was already being put into practice<sup>88</sup>. Although the code does not define restorative justice, it does open the door to its application in family matters throughout the Mexican Union of States. In Article 550 II and Article 558 it only exempts sexual violence against children and adolescents. Thus, in Article 585, from a multidisciplinary approach, (experts in psychology, social work, mediators or facilitators specialized in family matters)<sup>89</sup> Mexican justice is committed to changing the paradigm of punitive justice in the family sphere in cases in which the conflict has caused damages that must be repaired.

Article 584 and subsequent articles provide that by mutual agreement, the parties may agree to a restorative justice procedure with the purpose of first recognizing the existence of a conflict, subsequently assuming responsibility and finally participating in the reparation of damages and in the restructuring of the family dynamics; therefore, the restorative justice procedure is not mandatory. The parties may or may not establish the suspension of the corresponding judicial proceeding, in which case, the suspension may be for a period not exceeding three months, without prejudice to the maintenance of the precautionary measures declared in a trial. In the event that one or both parties express their desire not to continue with the restorative justice process or have stopped attending the sessions, the process will be concluded, continuing with the trial in the corresponding procedural stage<sup>90</sup>.

#### 4. Conclusions

Since the different States assumed their commitment to guarantee a life free of violence in the family sphere through criminal law, punitive justice seeks to dissuade intra-family gender violence, although this allowed the visibilization and therefore the denaturalization of violence, it is no less true that by itself, it does not offer the possibility of a change in behavior, since it does not favor the deconstruction of beliefs and stereotypes that modifies violent behavior.

Gender violence continues to be a serious social problem that violates the human rights of people in all areas of society. The main victims of gender violence are girls, women and older women, from all social strata and economic conditions. The main aggressors are partners, husbands or boyfriends and ex-partners, husbands or boyfriends. Gender violence in the family environment can lead to the death of women.

At the level of the justice system, both Ecuador and Mexico are committed to criminal procedure and punishment, from the retributive paradigm that bases punishment as a mechanism for crime prevention, reducing recidivism in criminal behavior. In the Ecuadorian case, restorative justice is provided for through mediation. Precisely, the latest reforms in criminal matters in 2019, account for the regulation of restorative justice, specifically for full reparation, in the case of the aggressor who has effectively repented and wants to take responsibility voluntarily. In the case of the Mexican State, it is established in case of difficulties in the execution of the sentence, in all types of crimes.

In Mexico, the incorporation of restorative justice in family matters is established as a legislative innovation incorporated in the National Law of Alternative Mechanisms and the National Code of Civil and Family Procedures, in the year 2024. In this way, Mexican justice is committed to changing the paradigm of punitive justice in the family sphere in cases in which the escalation of the conflict has caused damages that must be repaired.

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<sup>88</sup> Villavicencio, "Modelo de Justicia Restaurativa Familiar".

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