ANALYSIS OF DISCRIMINATORY LEGISLATION ON WOMEN’S ECONOMIC AUTONOMY AND EMPOWERMENT IN LATIN AMERICA AND THE CARIBBEAN

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Objective

Illustrate the existing legislative discrimination in the national laws of Latin American and Caribbean countries that affect women’s economic empowerment and autonomy, and illustrate the laws that are contributing to making progress in this area.

“Laws are the first step towards gender equality”

International conventions

Convention on the Elimination of All Forms of Discrimination against Women (1979) - CEDAW
Discriminatory legislation with regard to economic empowerment and autonomy

Access to goods and resources
- Property regulations.
- Inheritance rules.
- Land tenure.
- Access to credit.

Access to remunerated work
- Employment and occupation.
- Access to employment.
- Equal pay.
- Social security and pensions.
- Protection of domestic workers.

Non-remunerated work
- Maternity protection.
- Shared responsibility of men.
- Right to childcare.
Main finding

In accordance with the development of international norms and conferences, Latin America and the Caribbean has evolved satisfactorily in equalizing the rights of women and men over the last 20 years.

Still, significant challenges persist in which progress is necessary.

1. Ratifying international conventions and agreements
2. Overcoming property and asset discrimination
3. Eliminating discrimination in remunerated work
4. Applying the principle of equal remuneration for work of equal value
5. Eliminating discrimination in terms of social protection and pensions
6. Expanding the rights of domestic workers
7. Better maternity cover and protection
8. Extending and delving deeper into legislation on shared responsibility
1. Ratifying international conventions and agreements

33 countries analyzed

**CHALLENGES**

- 16 have not signed the **Optional Protocol** to CEDAW.
- 22 have not ratified **ILO Convention 156** on workers with family responsibilities.
- 29 have not ratified **ILO Convention 183** on maternity protection.
- 19 have not ratified **ILO Convention 189** on domestic workers.

**PROGRESS**

All of the countries have ratified:

- **CEDAW**.
- **ILO Convention 100** on equal remuneration.
- **ILO Convention 111** on employment and occupation discrimination.
2. Overcoming property and asset discrimination

- Norms persist that link the man as representative of the family home and, only in his absence, the woman.
- In some countries, married women continue to be affected by restrictions, particularly with regard to the administration and enjoyment of assets.
- The rights of women can be affected in the case of divorce (community of property vs. separation of property).

In some countries fewer rights for unmarried women (common law unions are not recognized as having the same rights).

Different countries in the region have legal mechanisms – that need to be activated by the justice system – to put into effect a child support obligation, such as obliging employers to retain a percentage of the worker’s salary for amounts owing when they receive a court order to this effect; registration in list of child support debtors; prohibiting leaving the country or renewing driver’s license; charging interest; civil or penal sanctions or physical detention.

Source: UN Women, 2017
2. Overcoming property and asset discrimination

Access to land

Women represent one third of agricultural land owners in the region, ranging from 8% in Guatemala to 30% in Chile y Panama (OECD, 2014)

Conditions for land access: Work experience in the rural sector required.
Public service practices: Preference for communicating with men when distributing land.

Progress in the agricultural field: recognizing that men and women have the right to land; preference for female heads of household in allocation of state land; establishment of joint titling.

Access to credit

In Latin America and the Caribbean, only 49% of women have a bank account, 11% have savings and 10% have access to credit, values that for men represent 54%, 16% and 13% respectively (World Bank, 2018)

Conditions for access to credit: Guarantees, bank sureties, income levels.
Financial institution practices: Requiring spouse’s signature to grant loans.

BEST PRACTICES. The Consumer Protection Law in Nicaragua prohibits those providing financial services from discriminating for reasons of gender or civil status.
3. Eliminating discrimination in remunerated work

- Women excluded from certain types and modes of work (in 17 countries of the 33 analyzed).
  - Night work, handling a determined amount of weight, in some industries, prohibiting working overtime hours.
  - Protecting health or physical integrity (biological role of child-bearing).
  - Assimilation of women with minors.

- Few legal references on the participation of women in decision-making positions
  - Only 21% of senior positions in companies in the region are held by women (OIT, 2017)

POSITIVE ACTION MEASURES:
- Law N° 56 of 11 July 2017 in Panama: minimum 30% women on Boards of Directors of Central Government institutions, decentralized institutions, public companies, financial intermediaries and those regulated by them

All countries have ratified ILO Convention 111 on employment and occupation discrimination.
4. Applying the principle of equal remuneration for work of equal value

- **Restrictive criteria** in terms of the application of ILO Convention 100:
  - In which must be encompassed any salary or compensation in money or in kind.
  - The majority only apply equal remuneration to equal jobs or jobs with similar characteristics and not as a function of the value they represent.

- Lack of systems to objectively evaluate job posts; limited collaboration with social agents; no mechanisms for inspection or audit.

In Latin America women earn, on average, 15% less than men (ILO, 2017)
5. Eliminating discrimination in terms of social protection and pensions

- Gender discrimination influenced by two routes:

  **Pensions**
  - Contributory pension systems associated with carrying out a remunerated economic activity
  - Systems designed based on the typically “masculine” working life pattern

- Direct discrimination that must also be eliminated:

  - different retirement ages for each sex
    - lower for women > fewer contributions > less savings
  - perception based on sex-specific mortality tables
    - Greater longevity on average for women > less protection

What about non-remunerated work (caregiving)?
What about trajectories interrupted by motherhood or caregiving?
6. Expanding the rights of domestic workers

- Rights not standardized with the rest of categories of workers:
  - Exclusion of specific categories (casual work, rural domestic work)
  - Minimum salary (lower or not regulated)
  - Working days, breaks and vacations (not regulated, less vacations,...)
  - Access to social protection (special regimes with fewer benefits)

14 countries in the region have not ratified ILO Convention 189

Source: (Documentation and Research Centre (CDE) and UN Women, 2016); (ILO, 2018)

Approximately 18 million people in Latin America work in housekeeping, representing 7% of occupations in the region. 93% are women and 17% migrants, of which, in turn, 73% are women (ILO, 2018)
7. Better maternity coverage and protection

- Only 11 countries respect the basic threshold of 14 weeks of maternity leave. (ILO Convention 183)

- Other discriminatory aspects detected are:
  - Pregnancy tests in companies
  - Lack of protection from firing
  - Payment of leave at the employer’s expense
  - Allowance not similar to salary
  - No right to an equivalent post after the period of leave

- Leave focused on the periods of pregnancy, childbirth and breastfeeding.
8. Extending and delving deeper into legislation on shared responsibility

- Paternity leave non-existent or very limited.

Source: (ELA, 2018); (World Economic Forum, 2017)

- Legislation and practices on the right to give and receive care are in their infancy.
- Laws directed at introducing flexible ways to organize work are by far the minority and are, in some cases, directed only at women.

Uruguay. Law 19.353 (2015), recognizes the social value of caregivers’ work and stipulates the need to modify the current sexual division of labour.
Uruguay, Paraguay, Colombia, Costa Rica, El Salvador, Mexico and Dominican Republic are putting into effect National Care Systems.

Source: (ILO, 2018)
Recommendations

Legal equality

- Progressing in ratifying the International Conventions and promoting their effective implementation.
- Eliminating provisions that are directly discriminatory.
- Moving forward legislatively in the field of affirmative action.
- Influence awareness raising and training on gender.
- Greater empowerment of most vulnerable rights' holders.
- Access to justice that is reliable, affordable and adapted to women's needs.
- Go deeper into progress made and existing gaps with respect to gender equality in the enactment and application of laws.

Substantive equality
Thank you very much!

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