

## Argentina

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

Under the Constitution of Argentina, all citizens are equal before the law (art. 16). Family relations and marriage are governed by the Civil Code (Código Civil y Comercial de la Nación, as amended in 2015). The code grants men and women, heterosexual and same-sex couples, the same right to enter marriage (Código Civil y Comercial de la Nación, art. 402). Marriage is based on the principle of mutual consent (art. 406), and article 402 further states that no norm can be “interpreted or applied in the sense of limiting, restraining, excluding or removing equality of rights”. The code also recognises and regulates de facto unions (art. 509 to 528).

Forced marriage is not directly addressed by the law. Article 403 gives a list of restrictions impeding a lawful marriage to take place: consanguinity between ascendants and descendants without limitation, consanguinity between brothers and sisters or half brothers and sisters, affinity in a direct line in all degrees, being minor of eighteen, a former marriage as long as it remains in force, the fact of having been a voluntary principal or accomplice in the homicide of one of the spouses, and the temporary or permanent lack of mental health which prevents consenting to the act of marriage.

#### b) Child marriage

Argentina is signatory of the United Nations Convention on the Rights of the Child since 1990, and passed the Law 26.061 in 2005 on the integral protection of children and teenagers, which includes dispositions to protect their dignity and personal integrity. The minimum legal age of marriage is 18 for both women and men (Código Civil y Comercial de la Nación, art. 403 and 404), but under certain circumstances can be lowered to 16 by a judge and with the consent of the parents or the legal guardians. Marriage involving minors under eighteen is prohibited (art. 403-f).

The Penal Code (art. 136) also sanctions civil servants who authorise an unlawful marriage, as defined in the articles 403 of the Civil Code. However, there is no clear policy or means on the ground to prevent child marriage, and a CEDAW report published in 2016 expresses concerns about the lack of gender-based criteria and legal advice for marriages under 18 (CEDAW, 2016).

#### c) Household responsibilities

No restriction could be found on the right of women to be head of household, and the Civil Code grants them the same rights and duties as spouses and parents as men. The spouses owe each other fidelity and assistance (Código Civil y Comercial de la Nación, art. 431), and they share the responsibility to administer the household and common property. There is no restriction regarding women’s ability to decide where to live. Women and men have the same right to be legal guardian of their children, and children born within marriage or a de facto union are by default the responsibility of both parents (art. 641). Extra-marital children are the responsibility of the biological parent (art. 641 – c).

Unmarried couples have the same rights and duties as married couples, they owe each other support and financial contribution towards the common expenses of the household (art. 519). Article 518 specifies that a pact of coexistence can be signed between both parts, but in the absence of this, each member of the household remains free to exercise his/her rights to administer and make decisions over their common property.

The CEDAW 2016 report notes that there is an increasing number of women head of household. The introduction of the Universal Child Benefit in 2009, targeting women who are unemployed or work in the informal sector, is an important economic relief for mothers and their children. The benefit is paid directly to mothers, except when the father is the legal guardian of the children (CEDAW, 2016).

#### **d) Divorce**

Women and men have the same right to initiate divorce since 1987, and the article 436 of the Civil Code (as modified in 2015) grants citizens an unconditional right to demand divorce. A divorce can be initiated by either or both the spouses (art. 437), on the basis of mutual agreement or for a cause, in which case a petition has to be presented to a judge. If the divorce negatively affects the living conditions of one of the spouses, or if the children remain under the responsibility of only one parent, he or she is entitled to a financial compensation (art. 441). Adultery was considered as a crime until 1995 (law 24.453), and could lead to a jail sentence. Under the current law, adultery remain a cause for demanding divorce. In 2014, only a minority of the population (17%) thought that divorce was morally wrong (Pew Research Centre, 2014).

Men and women have the same right to become the legal guardian of their children after divorce, and unless specified otherwise by a judge, the responsibility for the children remains shared, except for children under the age of 5 who are by default the responsibility of the mother (art. 641).

#### **e) Inheritance**

Women have the same rights to inherit, and no distinction is made in the Civil Code between land and non-land assets. There is a reserved portion for the surviving spouse (art. 2433): when there are no descendants, the surviving spouse is entitled to 50% of the assets and estates, and when there are other descendants, the highest reserved proportion applies and is split between them as intestate succession. Article 2444 reiterates that spouses and children are entitled to a legitimate portion of inheritance which cannot be annulled; they are considered as 'forced heirs'. The Civil Code makes no distinction between men and women, or sons and daughters.

The code excludes 'in extremis' marriages from the right to inheritance (art. 2436): if the marriage was settled within a period of 30 days before the death of one of the spouses, and if the death results from a condition that was known before the wedding, the surviving spouse does not have any inheritance right. Cases of mutually agreed divorce also annul any right to inheritance for the surviving spouse (art. 2437).

## **2. Restricted Physical integrity**

### **a) Violence against women**

Argentina signed the Convention Belém do Pará in 1995. A comprehensive legislation against

violence against women was adopted in 2009 - the law n. 26.485 on the “integral protection of women”. It provides an extensive definition of violence as physical, psychological, sexual, economic, and symbolic, and defines as potential sites of violence public spaces, family, the workplace, as well as violence from the state. The Law 27.210/2015 further establishes a body of specialised attorneys to provide legal aid to victims of gender-based violence, and the Supreme Court of Justice of the Nation has an office specializing in gender issues, as well as an office devoted specially to cases of domestic violence (CEDAW, 2016). However, the law 26.485/2009 only provides civil rather than penal remedies to victims of violence, and sanctions against the perpetrator are not defined.

The National Council of Women (Consejo Nacional de las Mujeres, CNM) provides a list of resources by province on its website, such as specialised police stations and shelters. A 24 hour hotline (line 144) for victims of gender-based violence was created in 2013, and the CNM estimates that it has received 60,533 calls between 2013 and 2015 (CNM, Informe 2015). The CNM launched a National Plan Against Violence for the period 2017-2019, which sets as its three main objectives: permanent training, strengthening institutions, monitoring and evaluation (CNM, 2016). Data on domestic violence is now collected through the calls made to the 144 hotline, and in partnership with the National Institute of Statistics. The plan also sets clear targets, such as the construction of 36 Integral Protection Homes by 2019. The Integral Protection Homes are emergency places to attend women victims of violence and their children, provide them with training and counselling, and support them with their legal procedures.

The CEDAW committee notes that efforts have been made in terms of campaigns and education programmes (CEDAW, 2016). In 2014, the government implemented a campaign called “Show abusers the red card”, disseminated through television and radio spots, in which public figures commit themselves to fighting abuse. The report notes that 50,000 people participated in the campaign.

## **b) Domestic violence**

The Law 24.417/1994 on Violence within the Family penalises domestic violence. It is defined as “lesions or mistreatments, both physical or psychological, perpetrated by a member of the family” – the family is here understood as originating in a marriage or stable union (art. 1). The law is not gender specific, it comprises any form of violence inside family including domestic violence for married couples or de facto unions. However, the law only provides civil remedies, and falls under the jurisdiction of the Civil Code and family laws. The judge can take emergency measures such as removing the perpetrator from the home (art. 4), and mediation can be sought by both parts (art. 5).

These dispositions are complemented by the law 26.485/2009 which defines domestic violence as a crime, and defines it in as “any form of violence perpetrated against women by a member of the family group, that affects her dignity, wellbeing, physical integrity, psychological, sexual, economic or patrimonial, her freedom, including her reproductive freedom” (art. 6). The law only gives rights to civil remedies for victims. The law further creates a special unit within the police force (art. 10). The Penal Code (art. 80) criminalises cases of homicide committed on a member of the family, which can lead to a sentence of life imprisonment.

Measures targeting domestic violence are included within the National Plan Against Violence 2017-2019 (CNM, 2016) of which the key measures are the emergency line 144 and the construction of 36 Integral Protection Homes. Domestic violence is reported as being the most common type of gender-based violence by the CNM, who estimates that 98% of the calls received through the hotline refer to a case of domestic abuse (CNM, 2016). The law 26.485/2009 provides protocols and guidelines for the state, the Ministry of Social Development, the Ministry of Education, the Ministry of Health, the Ministry of Justice and Human Rights and the Secretaria of Security (Chapter II, art. 10).

### **c) Rape**

Rape is a criminal offense, leading to a sentence of minimum 6 months and up to 4 years of imprisonment (Código Penal, art. 119). Rape is defined as “any person who sexually abuses a person of either sex when he or she is under the age of thirteen, or when committed with violence, threat, coercive or intimidating abuse of a relationship of dependence, authority or power, or by taking advantage of the fact that the victim for any reason could not freely consent to the action” (art. 119). Marital rape and abuse between unmarried partners is also recognised (art. 119). If the act is committed by a member of the family with authority on the victim (such as parent or tutor), with a weapon, or on a minor of 18, it is considered to be aggravating circumstances and the penalty can increase to 20 years of imprisonment.

Prevention and eradication of rape are included within the National Plan Against Violence (CNM, 2016, p. 16): “the state must revise the national laws relative to domestic violence and other types of violence against women, including rape” but no specific measures or targets are provided for rape. It is comprised as a form of sexual violence and part of the broader plan of action as such.

### **d) Sexual harassment**

Sexual harassment is included within the definition of psychological violence (art. 5-2) and sexual violence (art. 5-3) in the law 26.485/2009. The law also attributes as a specific task to the Ministry of Labour the prevention of all forms of harassment on the work place. The decree 2.385/93 (Decreto sobre acoso sexual en la administración pública nacional) stipulates that harassment by a member of the public administration on an employee or colleague is an act of gross misconduct that can lead to disciplinary sanctions. Harassment is defined as: “the actions of an employee with the intention to take advantage of his relation of power or hierarchy in order to access sexual favours from another, whether with or without carnal access” (art. 1). The prevention of sexual harassment on the workplace is defined as a priority in the National Plan Against Violence 2017-2019 (CNM, 2016), but no specific measures or targets are mentioned.

The Ministry of Labour has an Advisory Office on Labour Violence (OAVL), which promoted a Minute of Commitment for Decent Work Without Labour Violence in 2014, signed by 114 trade unions and 72 employers’ organisations (CEDAW, 2016). In 2016, the city of Buenos Aires has adopted a law penalising street harassment (law n. 5.306) with a fine going up to 1,000 Pesos to be paid by the perpetrator but this remains, so far, an initiative limited to the capital city.

### e) Female genital mutilation

There is no evidence that FGM is an issue in Argentina, and no specific law addresses it. Nonetheless, Argentina is signatory of the 2012 UN motion “Intensifying global efforts for the elimination of female genital mutilations” (UN, 2012).

### f) Abortion

Abortion is penalised and defined as a “crime against the life” in the Penal Code (art. 85 to 88). Women having an abortion can face up to 4 years of prison. There are two exceptions: if the abortion is to save the pregnant woman’s life or, if it is the result of a rape committed on a mentally disabled woman, in which case the consent of her legal guardian is necessary to proceed to an abortion (art. 86).

Human Rights Watch (2006) estimates that despite being illegal, about 500,000 women have an abortion every year in Argentina, representing about 40% of all pregnancies. The unsafe conditions under which abortion is performed as a result of being illegal constitute an important cause of maternal mortality, accounting for about a third of maternal mortality (WHO, 2007).

### *More*

In 2012, the article 80 of the Penal Code was modified by the Law 26.791 in order to add the recognition of femicide as an aggravated type of homicide. The perpetrator can face life imprisonment. The CNM (2016) estimates that a woman is victim of femicide every 30 hours in Argentina. The issue of femicide was raised again by feminist organisations in 2016, when a 16 years-old girl was gang raped and murdered, leading to a wave of mass protest under the slogan “Ni Una Menos” (No One Less). These mass protests spread to other Latin American countries increasing in size (Gordon, 2016).

## 3. Restricted Access to productive and financial resources

### a) Secure access to land and assets

Women have the same rights as men to secure land and non-land assets, and there are no differences between married or unmarried women. The Constitution guarantees the principle of equality between all citizens, including the right to dispose of one’s property (art. 14), as well as the inviolability of private property (art. 17). The article 18 further guarantees the right to land to indigenous communities. The Law 11.357/1968 that modifies the civil code in order to extend women’s civil rights stipulates: “the woman major of 18 (single, divorced or widow) has full capacity to exercise all the rights and civil functions that the laws recognise to men major of 18.”

The default regime in marriage is the partial community of property. The allocation of assets is to be decided upon by a civil court in case of divorce but divorced spouses retain the ownership over their property (Código Civil, art. 505). Goods and assets acquired during the marriage remain the collective property of the household (art. 464). The goods and assets acquired before marriage remain the sole property of each of the spouses (Ley 11.357/1968, art. 5 and 6). There is no

distinction between land and non-land assets when it comes to property rights.

Right to land is granted to indigenous communities, without distinction by gender, by the law 23.302/1985. This Law guarantees them access to land and the right to subsistence farming, and the law 25.510/2001, of transfer of lands in community property of the Mapuche groups. Data compiled by the National Ministry of Agriculture in 2013 shows that 47% of all family farmers are women, and that 44% of organized family farmers are women (CEDAW, 2016). The CEDAW committee also highlights the dissemination of relevant material to raise awareness of rural women's rights, produced by the Ministry of Agriculture, such as: Gender and rural property – second edition, 2013, Gender and rural property in the North-western Argentina, 2013, and Rural development from the gender perspective – Practical guide for rural technical workers, 2014. An Indigenous Peoples Directorate, attached to the Family Farming Secretariat in the National Ministry of Agriculture, Livestock and Fishing (MAGYP) was created in 2014, with a woman of Mapuche origin at its head (CEDAW, 2016). Argentina is also signatory of the ILO Convention 169 on the rights of indigenous and tribal peoples.

However, the FAO notes that a gender bias amongst rural and indigenous communities continues to legitimize a higher male concentration of land and ownership (FAO, Gender and Land Rights Database). The organisation launched the campaign “rural women, drivers of development” in 2016, in order to increase the visibility of rural women and their role in food production (Fraynisset, 2016).

### **b) Secure access to formal financial resources**

The law 11.357/1968 guarantees the same civil rights to men and women, and no restrictions could be found regarding the possibility to open a bank account, obtain credits, or access financial institutions.

The government has promoted a programme of access to credit for low-wages or unemployed women called “Ellas Hacen”, managed by the Ministry of Social Development. Ellas Hacen gives preferential microcredits to women in order to build their own cooperatives and provide services to their local communities. The programme has over 100,000 women affiliates, and the National Microcredit Fund counts 60% of women as account holders (CEDAW, 2016).

### **c) Workplace rights**

Argentina is signatory of the ILO Conventions: C100 – on equal remuneration, C111 – against discrimination, C156 – on workers with family responsibilities, and C189 – on decent work for domestic workers (ILO, Normlex, Country Profiles). The Constitution (art. 14) poses the principle of non-discrimination in the work place, as well as the principle of equal remuneration for work of equivalent value.

Argentina adopted a Labour Code in 1974. The article 17 of the Labour Code prohibits all forms of discrimination at work, while the article 172 states the principle of equal remuneration for work of equal value. The article 17-bis of the Labour Code further stipulates that inequalities induced by this law must be considered as legitimate reparation. However, there are no specific law or articles on the terms and conditions of employment.

The articles 177 to 179 guarantee pregnant woman the right to stability and protection against unfair dismissal, and the right to come back to her job after her maternity leave. Women are entitled to 90 days of maternity leave, 45 days before and 45 days after the birth of the child, and they receive the equivalent of 100% of their salary through social benefits (art. 177 to 179). Fathers are allowed 2 days of paternity leave, with a coverage of 100% of their salary (art. 158).

There are no restrictions for women on night shifts or the types the jobs they can chose. Discrimination against employees on the basis of their gender by companies is considered a very serious (third level) infraction, and the company can be forced to pay a compensation of 50% to 2000% of the minimum to the employee affected (Pacto Federal de Trabajo 25.212/1999). However, women still hold fewer executive positions in the private sector than men, and earn approximately 55% of men's salary for similar or equal work (U.S. Department of State, 2015).

## 4. Restricted Civil liberties

### a) Citizenship rights

Women and men have the same rights to acquire, change and confer nationality as men (Ley 23.059/1984 sobre ciudadanía y naturalización). The acquisition of the national identity card is relatively simple; the claimant only needs a birth certificate, and if minor of 16, his/her parents' identity card. Women have the same right as men to apply for identity card, passport, and leave the country (Decreto 261/2011, Anexo I, Arts. 7 y 8).

Women and men have the same right to register their children at birth, and if they are the biological parents, they are automatically considered as equally responsible for their children (Código Civil, art. 565 to 581). Extra-marital children only need to be recognised by the biological parent, but both can claim filiation if they live together.

There do not appear to be any restrictions on these rights in practice.

### b) Voting

Equality also applies to voting and eligibility, and is guaranteed by the Constitution. The article 37 specifies that: "This Constitution guarantees the full exercise of political rights, in accordance with the principle of popular sovereignty and with the laws derived therefrom. Suffrage shall be universal, equal, secret and compulsory. Actual equality of opportunities for men and women to elective and political party positions shall be guaranteed by means of positive actions in the regulation of political parties and in the electoral system."

Voting is compulsory, and an omission to vote can lead to a fine of up to 150 Pesos if the voter fails to justify the abstention (Cámara Nacional Electoral).

### c) Political voice

Argentina is the first country in Latin America to have introduced an electoral quota in 1991 (Piscopo, 2015). The Law 24.012/1991, and the decree 1246/2000, make mandatory a quota of at least 30% of women on electoral lists both at the national and local level. Failure to comply leads to

the invalidation of the list by an electoral judge.

The CNM notes however a gender division of roles within Parliamentary groups, with a higher concentration of women on typically “feminine issues” such as childhood, family, health, and education (CNM, 2016).

#### **d) Access to justice**

Women have the same civil rights as men in virtue of the law 11.357/1968, and no restrictions could be found regarding their right to sue, be sued or bear a testimony in a court of Justice (World Bank, 2015). The CEDAW committee 2016 report notes that there are no discriminations within the law, however, there are no clear or specific programmes to ensure access to justice and equal voice in the public sphere. In particular, the committee expressed concerns about the lack of administrative structures at the local level to guarantee women’s access to justice and their ability to litigate in cases of abuse.

#### ***More***

The law 26.743/2012 on gender identity gives people the right to choose and change their gender identity. The article 1 stipulates that every person is entitled to: the recognition of their gender identity, the free fulfilment of their person in conformity to their gender identity, to be recognised in accordance with their chosen gender identity. No medical intervention, surgery or hormonal treatment is required for a change of gender identity (art. 4).



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