

Plurinational State of Bolivia

Non-discrimination is a fundamental right entrenched in the Bolivian Constitution. Article 14 states that the State forbids and sanctions all types of discrimination on the basis of sex, colour, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language, religious belief, ideology, political or philosophical affiliation, civil state, social or economic condition, occupation, formal education level, disability, pregnancy or any other type of distinction used to impair recognition or fruition of an individual's fundamental rights.

1. Discrimination in the family

a) Overarching legal framework for marriage

In order to harmonise Bolivian legislation with the Constitutional provisions, as well as with international norms, a new Family Code has been approved in 2014. Article 137 of the new framework establishes equality of rights between man and woman as the basis of marriage and informal/de-facto union (*unión libre*).

No legislation mentions forced marriage or harmful practices against widows, but CEDAW shadow reports have not identified those subjects as an issue in the Plurinational State of Bolivia (hereafter, Bolivia).

b) Child marriage

The 2014 Family Code revoked different minimum age for men and women to enter marriage, which is now 18 years old for both women and men. The second paragraph of article 139 allows for exceptions for individuals who are 16 years old, with the parents' or guardians' authorisation or, in the absence of these, the authorisation from the *Defensoria de la Niñez y Adolescencia*. The same article states that boys under 16 and girls under 14 are barred from marrying, at the same time creating the possibility for judicial exceptions in case of "grave and justified causes". Article 81 of the Civil Code establishes that marriage contracted by women under the legal age will not be void if the woman gets pregnant.

No legislation or action plan to avoid child marriage exists. Bolivia appears as one of the countries with a significant percentage of young women married before 18 (Girls not Brides, 2017).

Early marriage is still a common practice, as in most of Latin America, especially in rural areas. Early marriage is sometimes seen as a means of escaping poverty and improving socio-economic status, in particular in rural areas (ECPAT, 2014).

c) Household responsibilities

Article 63 of the Bolivian constitution defines marriage as an institution based on the equality of rights and duties between spouses. The 2014 Family Code reiterates this definition in its articles 35 and 175. Article 35, regarding the protection of children, places responsibility in the authority of both parents -- with the mother being cited first in the text of the law. Article 175 on spousal duties refers to the mutual agreement of the spouses on choosing where to live, in the absence of an agreement, a recourse to the judge is possible.

Studies have shown a high proportion of women heads of household, especially amongst the indigenous population. They have low levels of education but elevated levels of economic activity. Analysis based on the national 2001 census show that married indigenous women declare themselves heads of household more frequently than non-indigenous women – 40% for indigenous women against 28% for non-indigenous (Oyarce and Del Popolo, 2009). Divorced and single women, indigenous and non-indigenous women alike will declare themselves heads of households more frequently than men (Oyarce and Del Popolo, 2009).

d) Divorce

Article 207 of the Family Code gives women the same rights as men to initiate divorce procedures. Article 206 creates the possibility for a non-judicial divorce in case of couples without property to share, who renounce any demands for alimony and who do not have children or whose children are over the age of 25. This is seen as an important advance for women since it avoids complex divorce procedures concerning property divisions (National Report to CEDAW, 2014).

Article 207 establishes that guardianship will be chosen with the best interest of children in mind, and the guardian can either be the mother or the father. The choice of one or the other as a guardian does not annul the other parent's responsibility in the moral and material well-being of the child.

e) Inheritance

The Constitution recognises the government's obligation to protect women's access to land ownership and inheritance (art. 402).

In practice, different patterns of inheritance exist according to ethnicity. While in the *altiplano* inheritance practices tend towards patrilineal patterns, in the Andes' valley, gender neutral practices in relation to inheritance will be more commonly found. Patrilineal patterns impact widows' and divorced women's access to land (FAO, 2017).

Under the Bolivian Constitution (art. 2), the existence of populations pre-existing the colonial conquest and establishment of the Bolivian State is recognised and determines important juridical effects; the Bolivian State is defined as Plurinational and legal pluralism is considered as the basis for interpretation of the national Constitution. This means that constitutional requirements of non-discrimination have to be harmonised with the autonomy of regions and indigenous collectives. 2010's Law n° 073, known as Ley de Deslinde Jurisdiccional defines the terms for coordination and cooperation between these different jurisdictions. This impacts inheritance rights since these rights

are very often governed by the indigenous jurisdictions. On the other hand, the Constitution and the law n° 073 also establish gender equality as a principle that should govern all forms of community organising in Bolivia. Jurisdiction on law n° 073 defines then that indigenous and autonomous mechanisms do not exclude possibilities for women to claim their rights to land and inheritance inside these traditional mechanisms (CIDH, 2007).

2. Restricted Physical integrity

a) Violence against women

With the approval of law n° 1599 in 1994, the Belém do Pará Convention was incorporated into Bolivia's domestic law. It takes precedence over other domestic laws (Constitution, art. 256).

A law addressing violence against women, the "Ley Integral para Garantizar a las Mujeres una Vida Libre de Violencia", was approved in March 2013. The law was regulated through presidential decree n° 2145. In article 6, violence is defined as any action or omission that causes death, suffering or physical or psychological damage to a woman, generating losses in patrimony, economy, work or in any other area. Article 7 recognises 16 forms of violence: physical, femicide, psychological, media violence, symbolic, against dignity and honour, sexual, reproductive, in healthcare services, economic, in the workplace, in the educational environment, related to women's political exercise and leadership, institutional, in the family and against sexual freedom.

The law defines violence against women as a criminal offence. It creates new penal types, such as: femicide, sexual harassment, domestic violence, forced sterilisation, abusive sexual acts, among others. It also determines that the crimes mentioned in the text of the law are to be considered public offences and as such will be investigated by the *Ministerio Público* in coordination with a special force on violence against women, *Fuerza Especial de Lucha contra la Violencia*. Penal type "femicide" excludes the possibility for avoiding penalty for reasons of "violent emotion" (article 254).

Title 4 establishes provisions for prosecution and punishment of perpetrators of violence against women. It determines that municipal and plurinational services, as well as child services and indigenous authorities are all capable of receiving claims filed by women in situations of violence. Article 43 also determines that women should receive free and speedy legal assistance, as well as have access to integrated services for medical, judicial and psychological care. It provides for interdisciplinary integrated services at the municipal level and an integrated system to centralise and keep record of cases and proceedings — the *Sistema Integral Plurinacional de Prevención, Atención, Sanción y Erradicación de la Violencia en razón de Género*, SIPPASE.

Article 46 establishes that conciliation and mediation are excluded in issues of violence against women and article 47 states that in case of conflict between individual and collective rights — in case of indigenous women and autonomous regions — the defence of women's rights will take precedence.

In relation to prosecution, article 53 creates a special force for combatting violence against women inside the Bolivian police structure. At the judicial level, article 68 creates special courts for judging

violence against women. Article 35 creates immediate protection measures aimed at safeguarding the physical, sexual and psychological integrity as well as work and economic rights of women in situations of violence.

Decree n° 26350 from 2011 creates a National Plan addressing violence against women, “*Plan Nacional de Prevención y Erradicación de la Violencia en Razón de Género y el Programa de Reducción de la Pobreza Relativa a la Mujer*”. The plan is under supervision of the *Viceministerio de Género y Asuntos Generacionales*. Its six action axes include specific benchmarks and the executive organs responsible for each one.

Even though neither the law nor the plan have included budgetary provisions, article 13 of the 2014 decree n° 2145 does establish that at the local level, the *gobiernos autónomos departamentales*, must dedicate 30% of their security budget to assure the creation of infrastructure to answer the needs of women in situations of violence. After a year of using the budget to create infrastructure, 10% of the security budget has to be allotted for its maintenance. Also, 5% of the police budget should go to the special taskforce on violence against women. In practice, the *Centro de Promoción de la Mujer Gregoria Apaza* (CPMGA, 2016) analysis of the budget used for gender policies points to 15 cities that haven’t executed the budget allotted by decree n° 2145. For the total of local government, 47% of the funds were used for the creation of support services for women victims of violence.

The Bolivian gender observatory identifies awareness about the legislation as one of the major challenges faced to ensure its applicability. CEDAW Shadow Report (2014) also mentions the lack of knowledge among operators of justice negatively affects women’s access to justice and the law’s effectiveness.

The *Ley del Deslinde Jurisdiccional*, which establishes terms and conditions of cooperation between indigenous and state law in the context of the judicial plurality that constitutes the Bolivian state, recognises in its article 10 the seriousness of certain forms of violence against women. Femicide, crimes against young women and girls, as well as human trafficking, have to be dealt exclusively in State courts. Special Agreements between the Bolivian government and the Guarani People’s Assembly have been taken up in order to adjust and apply all legislation for the eradication of violence against women to the context of Guarani women.

Cooperation between the National Statistical Institute and the Information Development Centre for Women has improved record keeping of domestic violence numbers (CEDAW, 2014). The gender observatory mentions pervasive patriarchal attitudes as being the root causes for this kind of violence, but also for the impunity of perpetrators (Bolivia, 2012).

b) Domestic violence

The 2013 *Ley Integral* addresses domestic violence (article 272). Anyone who has attacked physically, psychologically or sexually someone with whom the accused has been married to or has shared an affective, intimate relationship, having lived together or not, having had children or not, and members of the family of the victim, can be punished with two to four years of imprisonment.

All previously mentioned guarantees established by the *Ley Integral* are also to be applied in the case of domestic violence; for example, the provisions for *Casas Comunitarias de la Mujer* to be built in rural areas, with the assistance of autonomous local governments. The law also addresses the issue of aggressors' rehabilitation. Nonetheless, data from 2016 shows that the budget that was supposed to be invested in these *Casas* was not executed by most or the regions (CLADEM, 2016).

Access to health services for women victims of domestic violence is also a part of the *Ley Integral*. Article 20 determines that a unified guideline for healthcare workers dealing with victims of sexual violence is to be drafted and implemented by the Health Ministry, as well as training and capacity building. It also states that women are entitled to access public health services and that all cases must be declared to the Information Service on gender violence.

Article 19 of the law tasks the Ministry of Education with the responsibility for awareness-raising campaigns. The Ministry will also ensure non-sexist bias in the public education system.

CEDAW Shadow Report (2014) mentions poor execution of this legislation, especially in rural areas. Discrimination on the basis of gender is recurrent in the judicial system, and little has been done to replace, according to the law, the State system with communal mechanisms. It also mentions lack of specialised human resources, infrastructure and equipment for the integrated services supposed to attend and care of women in situations of violence. Furthermore, these services are present in only 150 of the country's 339 municipalities.

Data from the Gender Observatory affirm that domestic violence was the most reported crime in 2015 (Bolivia, 2017a). Studies about women's perceptions of violence revealed that a woman's value in every social stratum is still linked to marriage, which will determine very unequal relations in the couple, often accompanied by different types of violence, and women would nevertheless hesitate and prefer not to leave their husbands or even report them (Derks, 2009).

c) Rape

Law n° 2033 of 1999, the *Ley de la Protección a las Víctimas de Delitos Contra la Libertad Sexual* establishes rape as a criminal offence punishable with prison sentences ranging from 5 to 15 years. Rape is defined by law as employing physical violence or intimidation to force carnal conjunction with a person from either sex; anal or vaginal penetration or introduction of objects with libidinous ends.

Sentences can be increased in cases where the victim suffers from any kind of mental disability or in cases where the aggressor is related to the victim. Penalties can then go from 15 to 20 years of prison in the first case, and additional 1 to 6 years, in the second.

The national plan *Mujeres construyendo la nueva Bolivia para vivir bien* and the *Ley Integral para Garantizar a las Mujeres una Vida Libre de Violencia* also comprise measures for dealing with sexual violence. Protocols and guidelines, specialised tribunals, medical and legal assistance, as well as awareness-raising campaigns are meant to support women victims of sexual violence in a similar manner to women victims of domestic violence. Also decree n° 2145, including a minimum of 30%

start in the security budget going to building infrastructure to guarantee security for women, will contemplate sexual violence.

d) Sexual harassment

Article 312 of the Ley Integral defines sexual harassment as threats or any action from a superior that constraint someone to perform sexual acts to which this person would not otherwise have consented. Sexual harassment is a criminal offence to be penalised with 4 to 8 years of imprisonment. Article 98 of the law allows for, other than criminal penalties, civil remedies. Article 21 focus particularly on sexual harassment in the workplace, and mentions the need for the Ministry of Labour to adopt measures that will guarantee respect to women and specific procedures for denouncing, investigation and prosecution of sexual harassment in the workplace. As with sexual violence, the previously mentioned national plan *Mujeres construyendo la nueva Bolivia para vivir bien* and the *Ley Integral para Garantizar a las Mujeres una Vida Libre de Violencia* also include measures for dealing with sexual harassment. Also decree n° 2145, including a minimum of 30% start in the security budget going to building infrastructure to guarantee security for women, will contemplate this issue. Cases of cyber stalking and cyber harassment, even though not directly mentioned in the law, will be considered to be going against article 23 and 25 of the Bolivian Constitution in relation to right to intimacy and privacy of personal communication.

The lower house of the congress is evaluating a bill on street harassment to amend the penal code to add the crime of street harassment that includes verbal acts as well as video recording, violent approaching or public masturbation. The crime would be punishable with a fine, or up to 8 hours of detention. In the case of verbal harassment, public excuses could replace the punishment.

e) Female genital mutilation

There are no reported cases of female genital mutilation in Bolivia.

f) Abortion

According to article 263 of the Bolivian Penal Code, abortion is an offence punishable with 2 to 6 years of prison for the person practicing the procedure, if the woman has not given her consent, and one to three years if she has given her consent, and the same penalty applies to the woman herself. Article 266 establishes three possible exceptions: rape, incest or danger to the life and health of the woman. There is no time limit explicit set by the Penal code. Sentence n° 0206 from the country's highest court establishes the UN definition of 22 weeks as the limit.

Sentence n°0206 was a response to a demand to the country's highest court about the constitutionality of the illegality of abortion. Even though the sentence has confirmed the existing penal code, there is a project for a new penal code, which extends possibilities for abortion in its article 157. New exceptions for abortions during the first 8 weeks would include situations of extreme poverty, already having three children or more or being a student. New exceptions at all points of the pregnancy would include health dangers, malformation incompatible with life outside the womb, rape, incest or teenage pregnancy.

IPAS report (2014) links the fact that Bolivia has the highest maternal mortality in the Americas to the restrictive legislation on abortion. It also mentions the great difficulty women seeking legal abortions face, and the fact that often they will risk serious health consequences for fear of seeking help and being prosecuted or criminalised.

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Law n° 1257 has ratified ILO convention 169 and incorporated it in the domestic law.

Following the Constitution (art. 14), the Family Code (art. 1) guarantees equal rights and non-discrimination as the foundation of the family. As such, spouses, in matrimony as in informal unions, are entitled to the same rights in relation to the management of family assets.

Article 116 defines that each spouse will keep complete control over their own assets, and article 22 of the Civil Code states that the principle of equality confers unmarried women the same rights as unmarried men in relation to property of land and non-land assets. The 1996 law n° 1715, *Ley del Servicio Nacional de Reforma Agraria* explicitly mentions the need for privileging women, independently of marital status, in all matters relating to distribution, management, use and land inheritance.

Nevertheless, FAO reports the unequal access to inheritance as a result of discriminatory cultural values, usually depending on the country's region, which also impact access to land. The *Plan Nacional de Políticas Públicas para el Pleno Ejercicio de los Derechos de la Mujer* mentions as one of its objectives to increase women's access to land property.

The 2006 law n° 3545, that changes some of the provisions for the 1996 law, maintains the provisions regarding gender equality, and also determines the participation of women's groups in the National Agrarian Commission.

b) Secure access to formal financial resources

Under article 14 of the Constitution and article 22 of the Civil Code, no formal discrimination restrict women's rights to access formal financial institutions.

The *Plan Nacional de Políticas Públicas para el Pleno Ejercicio de los Derechos de la Mujer* mentions as one of its objectives increasing women's access to credit and financial resources. The Plan itself acknowledges in its text the de facto difficulty they usually have for accessing said resources. The *Ley de la Revolución Productiva Comunitaria Agropecuaria* is also criticised for not considering women specifically when it comes to access to credit.

A 2014 shadow report to the CEDAW indicates that statistics on national cash-transfer plans produced by the Ministry of Economy show a positive bias towards women, who comprise, in general, 61% of the beneficiaries of this sort of programme. Furthermore, the advances presented by the Agrarian

Reform law have not impacted Afro-Bolivian women, who are not included in the provisions for indigenous peoples (CEDAW, 2014). The report also brings attention to the fact that Afro-Bolivian women are touched by the same discrimination and conditions that halter access of indigenous women to better working conditions: discrimination, poverty and higher illiteracy rates than average.

c) Workplace rights

Bolivia has ratified ILO conventions 100, 111, 156, 189, but has not ratified Convention 183.

The *Ley Integral para Garantizar a las Mujeres una vida libre de Violencia* includes provisions on workplace rights (art. 21), but these are not always reflected in the *Ley General del Trabajo*.

The Labour Code (art. 21) establishes that the Labour Ministry is responsible for establishing mechanisms to eliminate discrimination and ensure that, in the private as well as in the public sector, equal work will correspond to equal pay. The Code also mentions measures to avoid discrimination in recruitment, promotions, payment or job stability.

Article 61 of the Labour law, together with article 37 of the Social Security Code, mandates a 60 days maternity leave, with full pay plus a 70% of added salary subsidy, the total to be paid by the government. Decree n° 1212, from 2012, has created a three-day paternity leave.

Law 975, from 1988, creates the statute of *inamovilidad laboral*, which determines that pregnant women's contracts cannot be terminated until a year after the birth of the child.

The Labour law prohibits women from occupying certain professions (art. 59) and from working at night (art. 60).

A shadow report to the CEDAW (2014) indicates that in terms of presence in the informal sector, average income and coverage for social security, women are disadvantaged compared to men.

4. Restricted Civil liberties

a) Citizenship rights

Bolivia's constitutional principle of equality and non-discrimination, established in article 14, is echoed in article 144 on nationality laws. It determines that rights to keep, change and confer nationality are the same for men and women, and for married men and women. The Bolivian Gender Observatory mentions the particular importance of the double nationality laws, which guarantee that Bolivian women can retain their nationality if they marry a foreigner (Bolivia, 2017b).

To promote birth registration, Law n° 2616, *de la gratuidad del registro y extensión del certificado de nacimiento* guarantees mothers who receive maternal subsidies after labour and during the lactating period gratuity in issuing birth certificates or duplicates, as well as issuance of identity cards free of charge for the mothers. This is seen as a particularly important measure in order to increase access for women in rural areas to identification.

There are no legal barriers for women to access identity cards or passports. The *Servicio General de Identificación Personal* demands, in order for a Bolivian citizen to apply for an identity card, that a birth certificate, and where it applies, a marriage certificate, photo, labour card and payment of a fee. CEDAW Report (2014) mentions a high number of unregistered Bolivians in the country. It also mentions two national registration programmes in rural areas. Even though women were not specifically targeted, in both iterations of the program they represented more than half of those served by the programs.

The Family Code allows mother or father to register the birth of their children (art. 15). Delayed registration is possible until 12 years with the presentation of a medical certificate that state the baby was born alive.

b) Voting

Article 4 of the electoral law states that men and women are entitled to equality in the exercise of their political rights, both as voters and representatives.

c) Political voice

Women and men have the same rights to be elected.

The 2010 Electoral Law establishes quotas for upper and lower houses of the parliament, as well as at the local level. The quota law provides that electoral lists must be composed of an equal number of men and women in alternation. Article 10 of the law determines that the sanction for non-compliance is the rejection of the list of candidates. After notification, the party has 72 hours to rectify the list in order to avoid exclusion. The Electoral courts are responsible for overseeing and enforcing the new electoral law and its disposition in relation to quotas for women. To ensure enforcement of the quotas for women in the parliament, different stakeholders including politicians, civil society and international organisations, conducted a “50/50 Parity is now” campaign in 2014.

Other than the quota law, Bolivia approved Law 243 against political violence and harassment of women in 2012. It is intended as an instrument to further women’s ability to run for elections and to take office. The law defines, in its article 7 and 8, harassment and political violence as threats or acts of violence carried out against female candidates or politicians in order to hamper or prevent them from exercising their political rights as elected representatives. The *Viceministerio* and the Plurinational Electoral Organ are responsible for overseeing the application of the law, designing and enforcing policies and mechanisms to this end. Even though its full application remains a challenge, this is one of the first laws of the type in Latin America.

The law against harassment also contains provisions to ensure that women understand the right to vote and how to exercise it (art. 12). All public entities, central and local, are charged with creating awareness-raising campaigns about the law for servants working in the public function.

d) Access to justice

Women and men have equal rights to sue, to be sued and to provide testimony in all types of court cases.

Article 48 of the Code of civil process establishes that 50% of the *vocales* at the *Tribunales Departamentales de Justicia* should be women.

The *Ley Integral para Garantizar a las Mujeres una Vida Libre de Violencia* includes a provision for simplified and accelerated processes in order to ensure women's access to justice in cases of gender-based violence. The law also creates special courts and procedures in the same sense.

Monitoring gender equality is the responsibility of the *Viceministerio de Igualdad de Oportunidades*, as defined by decree n° 29.894, from 2009. The same decree also confers the *Viceministerio* with the responsibility of designing, monitoring, enforcing and mainstreaming gender policy, as well as harmonising those with international norms. This entity, along with its homologues at the departmental and municipal levels suffer from insufficient human resources and funding, which has negatively impacted the application of the National Plan or the *Ley Integral*.

The advances made in terms of political representation and fighting against political violence are seldom adapted to indigenous contexts. The parity in the lists are usually, in the case of indigenous women, translated into placing women in the position of replacement to the male representatives. Finally, there are limited available measures for women to use their native languages, or to access documents in those languages (CNAMIB CONAMAQ CIDOB, 2015).

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