

## Costa Rica

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

Costa Rica recognises the Catholic Church as religion of state (Constitution, art. 75). The Constitution also affirms that marriage is “the essential basis of the family” (art. 52), and marriage and family relations are regulated by the Family Code (1973). The Code recognises both civilian (art. 11) and religious marriages for the Catholic Apostolic Roman Church (art. 23).

Women and men have the same right to enter marriage, which is based on the principle of mutual consent (Family Code, art. 11 y 13). Women are not required to obey their husband, and marriage, according to the Family Code, has for object “life in common, cooperation and mutual support” (art. 11). However, the Code imposes a restriction on women who want to re-marry: they must wait at least 300 days after the dissolution of their previous marriage (art. 16-2).

The article 15 provides a list of cases where the marriage is null: if one of the spouses consented to marriage under fear or threat, if one of the spouses is disabled to the point that he/she cannot express consent, if one of the spouses has a severe disease that was contracted before the marriage and cannot be cured, or if the marriage has not been celebrated by a competent civil servant.

De facto unions are also recognised and regulated by the Family Code (art. 242 to 246), and are entitled to the same patrimonial rights as married couples. To be recognised as a de facto union, the couple must have been in a stable relationship for at least 3 years (art. 242).

#### b) Child marriage

The legal age to marry is 18 years old, for both men and women (Family Code, art. 16-1). Minors of 18 need the authorisation of their parents to get married (art. 21 and 22). Child marriage is prohibited (art. 14 and 64). The Penal Code establishes a sentence of up to six years of prison against those who marry knowing it is unlawful (art. 177 and 178), and the dismissal of the civil servant who authorises a marriage knowing it is unlawful (art. 179). Marriage between same sex couples, members of the same family, brothers and sisters, or between parents/legal guardians and their children is also strictly prohibited (Family Code, art. 14).

The CEDAW Committee (CEDAW, 2015) notes that the government has proposed a draft law to eradicate child marriage (Process 19.333). However, no public measures or campaigns against child marriage could be found. Child marriage of girls continues to be practiced, with almost one fifth of girls marrying before the age of 18 (Girls not Brides, Costa Rica).

#### c) Household responsibilities

Men and women have the same right to be head household, and are jointly responsible for the administration of the family, the regulation of domestic issues and the education of their children

(Family Code, art. 34). Women can freely choose where to live (art. 34), and are not required to obey their husband. However, husbands are expected to be the main provider for the family, while wives are only expected to contribute in proportion of their own capacity if they have the means to do so (art. 35).

Parents have the same rights and obligations towards their children (art. 34), and this also applies to children born out of marriage (Constitution, art. 53). Nevertheless, Costa Rica lacks of a universal care system of children and elderly people (Dighiero, 2015), which leads to an excess of care and unpaid work undertaken by women in comparison to men. Indeed, women take on twice as much unpaid work as men (ECLAC, 2017). In 2010, the president Chinchilla created a national care network for children and older adults, with the aim to extend existing services and provide a better coverage nationally. The programme focused specifically on provision of care services for children between birth and the age of six, and had the objective of increasing coverage by 75% (Dighiero, 2015). No evaluation of the programme could be found.

#### **d) Divorce**

Women and men have the same right to initiate divorce, but unless they divorce by mutual consent, only the injured part can demand a divorce within a year after having been made aware of the facts that motivate the demand (Family Code, art. 49). Are motives for divorce (art. 48): adultery, the attack of one of the spouses against the life of the other or of their children; the attempt of one of the spouses to prostitute or corrupt the other spouse and the attempt of corruption of the children; the prejudice to the other spouse or their children; the judicial separation for a period of no less than one year, and if during that period there has been no reconciliation between the spouses; the absence of the legally declared spouse. The Code imposes a restriction on women who want to re-marry: they must wait at least 300 days after the dissolution of their previous marriage (art. 16-2).

After the divorce, both parents have the same right to be legal guardian of their children, and the judge can decide which of the parents will have full custody taking into account the interests of the children (art. 56). The injured spouse, or the one who has full custody, can ask for alimony (art. 57). Assets acquired through marriage must be split evenly (art. 41 and 42).

A distinct procedure exists to annul religious marriages, and in order to be able to re-marry in the church, the spouses must provide tangible grounds for the annulment of their marriage according to Canon Laws. Either spouse can contact his/her local church to ask for advice. They need to answer a questionnaire to establish the validity of their demand, and if only of the spouses is declared responsible for the end of the marriage, the other one, declared innocent, will be able to re-marry religiously. The spouse deemed guilty, on the other hand, won't (The Costa Rican Times, 2015).

#### **e) Inheritance**

Women have the same rights as men to inherit land and non-land assets (Civil Code, art. 572-573). The Civil code provides a reserved share of the assets for the surviving spouse, unless they have been separated or divorced (art. 572-a), and a reserved portion for the children, regardless of their sex. There is no distinction between daughters and sons (Civil Code, art. 572). Women also have the same

right to make a will (art. 577). Partners in a de facto union, if it is a heterosexual union, have the same succession rights as married couples (Civil Code, art. 572-c; Family Code, art. 246).

No customary practices or rules preventing women from enjoying their inheritance rights could be found (FAO, Gender and Land Rights database). One of the indigenous groups of Costa Rica, the Bribri people, has a matriarchal structure clan and a matrilineal system of inheritance (Lopez, 2014).

### *More*

The CEDAW Committee report (CEDAW, 2015) notes some progresses made towards the legal recognition of same-sex unions, even though marriage remains illegal: Process 18.481 Draft Law for recognizing firms of convenience consisting of same sex couples; and Process 18.483, Draft Law for recognizing de facto unions between same sex couples.

## **2. Restricted Physical integrity**

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

The law n. 8589/2007 (Ley de Penalización de la Violencia contra la Mujer) addresses violence against women, and recognises physical, emotional, sexual and economic forms of violence (art. 1). It provides criminal penalties ranging from prison, community service, estrangement or deprivation of rights over the children and family (art. 9).

The National Institute for Women (Instituto Nacional de la Mujeres, INAMU) is responsible for the coordination of policies relative to gender equality and the provision of guidelines for public institutions and bodies. The INAMU is also in charge of monitoring the National Plan for Gender Equality 2007-2017 (Política Nacional para la Igualdad y Equidad de Género -PIEG).

The 10 years plan main objectives are: care as a social responsibility, paid work of quality, education and health of quality, effective protection of women's rights and against all forms of violence, and political participation of women for an equalitarian democracy (INAMU, 2007). The plan provides a clear mechanism of monitoring and accountability involving Ministries and civil society organisations, and it details for each of its objectives the proposed mechanisms to achieve them. As regarding violence in particular, the plan establishes three priorities: improve access to justice so women can effectively exercise their rights, promote a better and more efficient judicial system, and emphasise information and prevention to eradicate all forms of violence (INAMU, 2007, pp. 73-75).

A balance of the PIEG was published in 2014, showing that between 2012 and 2014, 71% of the planned actions had been fulfilled, which represents an improvement compared to the 2008-2012 period where the fulfilment rate was 62% (CEDAW, 2015). Amongst the key actions highlighted by the government are: the approval and implementation of a school programme on emotional development and sexuality, in conjunction with the INAMU and the Ministry of Public Education, and the creation of the Comprehensive Platform of Services to Assist Victims of Violence (PISAV) in the Judiciary branch (CEDAW, 2015).

In 2013, the INAMU launched an emergency plan against femicide containing an emergency kit, legal and psychological assistance to victims of violence and special assistance in shelters (UN Women

Global Database on Violence Against Women). Local committees to provide immediate care in cases of high risk of violence were established in ten local territories (CEDAW, 2015).

## **b) Domestic violence**

The law n. 6586/1996 addresses domestic violence (ley Contra la Violencia Doméstica), which is defined as: “Direct or indirect action against a relative by consanguinity, affinity or adoption, by legal or de facto bond, or by a relationship of guardianship, and that results in the impairment of their physical, sexual, psychological or patrimonial integrity. The bond by affinity will subsist even when the relationship that originated it has ended” (art. 2-a).

It provides for the removal of the perpetrator from the home and measures of immediate protection of the victim such as prohibition of contact or loss of legal rights over the children (art. 3). Criminal penalties are specified in the law 8589/2007, art. 9, and include prison or other alternative penalties such as community service. The law n. 6586/1996 covers physical, sexual, emotional, economic violence (art. 2), and protects former partners and unmarried intimate partners (art. 2).

The INAMU has launched two national plans to combat violence: the National Plan for Gender Equality 2007-2017 (Política Nacional para la Igualdad y Equidad de Género –PIEG) and the National Plan for the Care and Prevention of Domestic Violence 2010-2015 (Plan Nacional para la Atención y la Prevención de la Violencia Intrafamiliar - PLANOVI).

The general aims of the PLANOVI are: “to propose simultaneous, coherent and articulated responses, at the interinstitutional and inter-sectorial level, based on the Gender and Human Rights Approaches (...) in order to provide timely, comprehensive and quality care for women in situations of violence in family and intimate relationships, as well as in cases of sexual harassment and rape; to develop substantive and sustained actions in the field of human rights’ promotion and gender equity, as well as prevention of violence against women” (INAMU, (<http://www.inamu.go.cr/pieg-y-planovi>)). The PLANOVI also offers specific norms and guidelines in the prevention and eradication of VAWs for the police, the Ministry of Education, the Ministry of Health and Social Security, the Secretariat of Childhood, the Municipal Offices of Women, and the Judiciary (INAMU, 2010, pp. 36-38). In addition, the INAMU provides an emergency line (911) which deals with between 10,000 and 50,000 calls a year (INAMU, 2010), free legal advice, and delegations of women to support victims of violence (<http://www.inamu.go.cr/pieg-y-planovi>).

In 2015, 18,693 cases of domestic violence were opened at the judiciary level, but only 859 led to a trial and 517 of those cases led to a sentence for crime of violence against women (U.S. Department of State, 2016). According to the Attorney General’s Office, victim frequently refuse to continue with the legal process under fear or pressure (U.S. Department of State, 2016).

The CEDAW Committee (CEDAW, 2015) notes progresses in terms of inter-agency coordination with the creation of local committees of prevention of violence in ten territories, combining judicial and health professionals. It also highlights the role of Temporary Care and Shelter Centres for Women (CEEAM), which have provided shelter to 1 339 women and 2 133 children in situation of domestic violence between 2011 and 2014. In terms of data collecting and monitoring, the report notes the creation of a Unified System of Statistics on Gender Violence (SUMEVIG), which encompasses the Ministry of Public Security, the Office of the Ombudsperson of the Inhabitants of the Republic, the

National Institute of Statistics and Censuses, the 911 emergency system, the Central American Population Centre of the University of Costa Rica, the Ministry of Justice and Peace, the Ministry of Health, and the judiciary. The SUMEVIG is under the coordination of the INAMU (CEDAW, 2015).

A support programme for women living in poverty was also set up, with priority given to women victims of violence. Between 2011 and 2014, an investment of USD 953 607 was made and benefited 1 602 women victims of violence living in conditions of poverty (CEDAW, 2015). However, overall, actions proposed in the PLANNOVI reached only 55% of compliance rate (CEDAW, 2015).

### **c) Rape**

Rape is a criminal offence, and is defined as: “The following shall be punishable by a sentence of imprisonment of ten to sixteen years. The person who has access to, or has sexual access by oral, anal or vaginal route, with a person of either sex: when the victim is under thirteen years old; when taking advantage of the vulnerability of the victim or if the victim is found unable to resist; when using bodily violence or intimidation. The same penalty shall be imposed if the action consists in introducing to the victim one or more fingers, objects or animals, by the vaginal or anal route, or forcing her to be introduced by herself” (Penal Code, art. 156). Penalties increase if the victim is the spouse, an intimate partner or someone from the same family (art. 157-159).

The law n. 8589/2007 (art. 29) against VAWs further penalises marital rape: “Whoever introduces the penis, orally, anal or vaginal, to a woman with whom he has a marriage relationship, a union with a declared fact or not, against her will, shall be punished with imprisonment from twelve to eighteen years. The same penalty shall be applied to anyone who introduces any object, animal or part of the body, through the vaginal or anal route to the offended person.”

No specific campaign or provision against rape could be located within the national plans of action for gender equality and against domestic violence. Rape remains underreported due to fear of retribution from victims, social stigma and lack of trust in the judicial system (U.S. Department of State, 2016).

### **d) Sexual harassment**

The law n. 7476/2010 (Ley contra Hostigamiento o Acoso Sexual en el Empleo y la Docencia) addresses sexual harassment at work (art. 2, 3 and 12) and in education establishments (art. 2, 3 and 13). The article 3 stipulates: “Sexual harassment is understood as any sexual conduct that is unwanted by the recipient, repeated and that causes harmful effects in the following cases: A) Material conditions of employment or teaching; B) Performance and compliance with work or education; C) General welfare. Sexual harassment is also considered to be a serious misconduct which, having occurred only once, harms the victim in any of the indicated aspects”.

Victims of harassment are provided with civil remedies (art. 34 to 37), and in particular, harassment in the workplace is considered as a cause for fair dismissal, and the victim is entitled to financial compensations for the moral or physical damages provoked by the harasser. The boss or hierarchical superior in a company is liable, and responsible for taking seriously complaints from the employees (art. 12). The fight against sexual harassment at work is part of the objective II of the PIEG: paid work of quality for women, and objective IV: protection of women’s rights and against all forms of violence (INAMU, 2007-2017).

The CEDAW Committee (CEDAW, 2015) reports that in 2011, 402 complaints of sexual harassment have been filed in the public sector, resulting in 65% of the cases being absolved or thrown out and

34% leading to a sanction. The absolute majority (97%) of individuals subject to a complaint were men. In the private sector, 61 complaints of sexual harassment had been filed between 2011 and 2014, and in 50% of the cases, the dispositions implemented by the Labour Inspection Department of the Ministry of Work and Social Security had been fulfilled (CEDAW, 2015).

#### **e) Female genital mutilation**

There is no evidence that FGM is practiced in Costa Rica and no specific law addressing it (UNICEF, 2016).

#### **f) Abortion**

Abortion is illegal and can lead to up to three years of imprisonment (Penal Code, art. 119). The person who causes the abortion, with or without the consent of the pregnant woman, faces a penalty of up to ten years of prison (art. 118). Abortion is not criminalised if it is done in order to avoid a danger to the life or health of the woman, and if this danger could not have been avoided otherwise (art. 121).

However, legal abortion is not fully enforced as most hospitals refuse to offer the procedure. The definition of life threatening danger also excludes cases of rape or foetus malformation. In 2017, the case of a 12 years-old girl who had been raped by her father and denied access to abortion has brought attention again to the issue of reproductive rights, and gave visibility to campaigns in favour of legalising abortion (Navarrete, 2017).

#### **More**

A law was approved in 2013 (ley n. 9095/2013) to prevent and punish human trafficking. It includes dispositions on forced marriage, forced prostitution, slavery, traffic of organs and unlawful adoptions.

### **3. Restricted Access to productive and financial resources**

#### **a) Secure access to land and assets**

Women, whether married or unmarried, have the same right as men to own, use and make decisions over their land and non-land assets (Constitution, art. 43; Civil Code, art. 287 – 294; Family Code, art. 40 y 41). The article 45 of the Constitution declares private property as inviolable.

The law n. 2825/1961 (Ley de Tierras y Colonización) promotes the access to land for peasants and small farmers, and recognises the right to land in the form of individual and collective properties, and the formation cooperatives (art. 2). The law n. 6172/1977 (Ley Indígena) further establishes the principle of reserves for indigenous people and the right for them to manage their land according to traditional community structures. Joint titling for married couples is recognised by the law n. 7142/1990 (Ley de Promoción de la Igualdad Social de la Mujer), and parcels used for self-consumption are considered to be the patrimony of the family, thus giving equal rights to the couple in its administration (art. 7).

The Institute of Agricultural Development launched a land titling programme between 2001 and 2006; 95% of those who were awarded land were registered as a family, 4% were women and 1% men, and 100% of the lease agreements were done in the name of families (FAO, Gender and Land Rights Database). However, women still have lower access to credits and lack of information regarding their



rights, which means that in practice, they have lower access to land compared to men. Besides, levels of illiteracy are particularly high amongst indigenous people, about 30% compared to 5% for the rest of the population, which renders the administrative processes of land attribution and lease agreements more difficult (FAO, Gender and Land Rights Database).

There are also frequent reports of attacks on indigenous communities and forced expropriation from their lands, making the land redistribution policies ineffective (Forest People Programme, 2013; McPhaul, 2015; Mathiesen, 2016). A report published by the Forest People Programme in 2013 further shows that in some regions, indigenous land-tenure is lower than for non-indigenous groups, and that in the region of Térraba, the portion of the territory occupied by indigenous people has actually decreased.

In cases of divorce, the spouses have the right to an equal share of the assets acquired through marriage, unless one of the spouses has been recognised guilty during the procedure of divorce, in which case he or she owes a compensation to the injured part (Family Code, art. 40). Each spouse remains the sole owner of the goods and assets they had acquired before marriage (art. 41). Family estates cannot be alienated or sold without the express consent of both spouses (art. 42).

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

No legal restrictions could be found regarding the possibility for women to open a bank account or access credits (World Bank, 2016). However, as mentioned in the previous section, the high levels of illiteracy among the indigenous population means that in practice it is harder for them to access formal financial institutions (FAO, Gender and Land Rights Database). In 2013, 41% of women had an account in a formal financial institution compared to 60% of men (World Economic Forum, 2013).

#### **c) Workplace rights**

Costa Rica is signatory of the following ILO Conventions: C100 – Equal remuneration, C111 – Discrimination at work, C189 – Decent Work for Domestic Workers. The Labour Code protects pregnant women against unfair dismissal (art. 94), and mandates a maternity leave of four months, paid at 100% of the woman's wage, funded both by the employer and the government through social security contributions (art. 95). There is no paternity leave.

Women are not allowed to take on night shifts except for few occupations such as domestic workers or nurses (Labour Code, art. 88), and they cannot work in jobs considered dangerous or insalubrious (art. 87). The law does not mandate equal pay for work of equal value, and there is no law against sex-based discrimination at work.

The Government has promoted measures to achieve equality in employment such as the approbation of a national standard for private companies (INTE-38-01-01 2013) which serves as a guideline for non-discriminatory practices in micro and small enterprises (CEDAW, 2015). In 1998, the Government had also launched a programme of reduction of women's poverty called "Creciendo Juntas" which promoted the training of women in situation of extreme poverty to enable them to have a better insertion in the labour market (FAO, Gender and Land Rights database). However, no clear measures or campaigns have been developed to improve employment rates or close the gender gap on the

labour market (CEDAW, 2003 and 2015). In 2014, women earned on average 18% less than men (U.S. Department of State, 2016). Women do on average 20 hours of paid work per week, compared to 39 hours for men, and a significant proportion does not have an income of their own: 31% of women in rural areas and 46% in rural areas (ECLAC, 2017).

### *More*

Costa Rica has implemented a programme called “Migramóvil Programme” to protect migrant women and in particular those working in domestic services (CEDAW, 2015). These mobile units aim at informing women about their rights and detecting situations of abuse s. The Higher Council of the Supreme Court has also expressed concerns about the lack of right protection for undocumented workers (session 35-13 of 10 April 2013). As a result of this, the judiciary has promoted a series of recommendations to protect migrant women including alternative ways of verifying their identity and a better access to justice (CEDAW, 2015).

## **4. Restricted Civil liberties**

### **a) Citizenship rights**

Women have the same right as men to acquire, change and confer their nationality to their children (Ley de Opciones y Naturalizaciones n. 1155/1950). Women can also confer their nationality to their spouse if the foreigner spouse has lived for 2 consecutive years in Costa Rica and renounced to his other nationality (Constitución Política de la República de Costa Rica, art. 14). They can apply for passports and identity cards in the same way men do, and have no restrictions to leave the country (Passport application procedure: <http://www.migracion.go.cr/nacionales/pasaportes.html>).

The documents required for an identity card are: a copy of the passport or certificate of birth, two pictures, and the applicant must be accompanied by his/her parents, brothers or sisters, or grandparents, who can testify of their identity (<http://www.costarica-embassy.org/index.php?q=node/92#1>).

### **b) Voting**

Women have the right to vote in virtue of the Constitution (art. 93): “Suffrage is [a] primordial and obligatory civic function and is exercised before the Electoral Boards [Juntas] in a direct and secret vote, by the citizens registered in the Civil Registry. Voting is compulsory but this is not enforced and no penalties are applied (The Electoral Commission, 2006).

### **c) Political voice**

A law of parity was adopted in 2009 (law n. 8765/2009) for the legislative assembly and local elections. Candidates’ nomination must comply with the rule of parity and alternation (art. 2 and 148); two persons of the same sex cannot be subsequently included in the list. Failure to comply leads to the invalidation of the list (art. 148-4). The same rules of parity and alternation apply for elections at the local level (art. 2 and 148).

Public funding is allocated in order to provide training for candidates of both sexes, and parties must show certificates of compliance to have their funding reinstated (Quota Project). The law also requires



that parties implement measures for gender equality for the party as a whole, including for internal elections and executive bodies (The Quota Project; law n. 8765/2009, art. 52).

The INAMU has launched a training programme with the Centre for the Political Formation of Women in order to promote women's participation in politics and the development of their leadership capabilities. The Centre has regional and national programmes of formation, and aims at empowering women while challenge gender stereotypes that impede a full active citizenship for women (INAMU: <http://www.inamu.go.cr/participacion-politica>).

Costa Rica has elected its first woman president, Laura Chinchilla, in 2010 (Carroll, 2010), but her action towards women has been limited, in particular regarding abortion and reproductive rights, and she has been criticised by feminist movements for not having legalised abortion (Jalalzai, 2016). Durrett (2013) argues that despite an increase in the number of women elected, the masculine standard for leadership has not been challenged yet, and biases against women during leader selection processes continue. The law is still not fully effective as in 2017, there were only 33% of women legislators – which, although representing an important increase compared to 1990 where this proportion was 10.5%, is still below the mandatory parity stipulated in the law (ECLAC, 2017).

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

No restrictions could be found regarding women's right to sue, be sued or testify in a court.

In terms of access to justice, the INAMU has promoted the creation of a Permanent Commission for the follow-up and prevention of domestic violence within the judiciary in 1998, the opening of an office of information and care for the victim of violence in 2000, the creation of a Gender Commission to standardise gender policies at the state level in 2001, and the instauration of a Technical Secretariat of Gender in 2003 (INAMU, 2007). The CEDAW Committee (2015) reports the implementation of Municipal Women's Offices in 85% of the country's municipalities.

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