

Peru

1. Discrimination in the family

a) Overarching legal framework for marriage

Although there is no official State religion, the Peruvian Constitution (art. 50) recognises a special role to the Catholic Church: “Within an independent and autonomous system, the State recognizes the Catholic Church as an important element in the historical, cultural, and moral formation of Peru, and lends the church its cooperation.” The Constitution (art. 4) also posits marriage and family as “natural and fundamental institutions within society”. The rules governing marriage and family relations are contained within the Peruvian Civil Code (1984).

Women and men are equal in civil law. They have the same rights to enter marriage (Código Civil, art. 234 and 239), and marriage is based on the principle of mutual consent (art. 234). The notion of forced marriage is not explicitly mentioned in the Civil Code, however, article 241 stipulates that those who are aged under 16, are mentally disabled, are deaf and/or mute in a way that prevents the clear expression of their consent, or those who have contracted a sickness representing a danger to their offspring, cannot enter marriage. Articles 242 and 243 further prohibits consanguineous marriages or marriages between a tutor and his/her adoptive child. Article 243 establishes an additional restriction for widows and divorced women, who cannot re-marry within the first 300 days following the death of their husband or the divorce.

De facto unions are recognised (Constitución del Estado, art. 5; Código Civil, art. 326) and regulated by the law 30.007/2013. A couple must have lived together for a continuous period of 2 years to be legally recognised as a de facto union (Law 30.007/2013). They are not entitled to the same rights as married couples; indeed, they do not have an automatic right to inheritance, or to filiation in the case of fathers. Children born from an unmarried couple must be recognised as “extra-marital” children (Código Civil, art. 388).

b) Child marriage

The legal age to get married is 18 for both women and men (Código Civil, art. 241). It can be lowered to 16 with parental consent and the approval of a judge (art. 244). A National Plan of Action for Children and Adolescents (2012-2021) has been adopted in 2012, and its implementation is under the responsibility of the Ministry of Women and Vulnerable People (MIMP). Amongst its key goals, the plan lists the reduction of teenage pregnancy and the increase of school attendance, but does not directly mention early marriage.

The Penal Code establishes sanctions against civil servants who authorise an illegal marriage (Código Penal, art. 141), including under-aged people, or marriages where one of the parts could not explicitly express their consent. But there seems to be no targeted measures regarding child or early marriage, or programmes to raise awareness of the law.

c) Household responsibilities

The Civil Code (art. 290) gives the same rights to married men and women to be head of household and to choose where to live. The law does not require a married woman to obey her husband, and recognises husband and wife as equals; article 288 stipulates that “the spouses owe each other assistance and fidelity”. Married women have the same right as men to work, however, the law specifies that if one of the spouses chooses to dedicate him or herself to domestic life, it becomes the responsibility of the other spouse to provide for the family (art. 291 and 293). And in fact, women spend disproportionately more time than men on domestic tasks (ILO, 2013).

Married men and women have the same rights and duties regarding their children, including providing for them (art. 287), being their legal guardians and taking decisions relative to the wellbeing of the household (art. 290, 292). Children born within marriage are automatically recognised as the natural offspring, and responsibility, of both the father and the mother (art. 361 and 362). However, for children born in de facto unions, the proof of parenthood falls under the rules of “extra-marital filiation”, and the recognition of only one of the parents is required (art. 387 and 388). Parents have the same right to be the legal guardian, and they have to provide a proof of filiation to the judge.

d) Divorce

Men and women have the same right to initiate and finalise a divorce, and in case of divorce by mutual consent, their assets must be evenly split (Código Civil, art. 332, 333, 334, 335). The law 29.277/2008 establishes two procedures for divorcing: divorce by mutual consent (after 2 years of marriage and if there are no children under the age of 18), or divorce with cause (which includes adultery, violence, or de facto separation). The rights of the spouses in cases of divorce with cause are determined by their responsibility for the ending of the marriage, for instance, in case of infidelity, the injured spouse is entitled to a compensation. The spouse who is judged responsible for the ending of the marriage loses his/her rights to inheritance (art. 343).

Women and men have the same rights to become legal guardians of their children, provided that they have not committed a fault deemed cause for divorce, in which case the children become the responsibility of the injured spouse. If the spouses are equally responsible for the ending of the marriage, the sons aged over seven years old remain the responsibility of the father, and the daughters aged under 18 and the sons under seven remain the responsibility of the mother, unless specified otherwise by a judge (art. 340).

e) Inheritance

The Civil Code (art. 660) guarantees men and women the same rights to inherit, and does not make the distinction between land or non-land assets. Men and women have the same right to make a will (art. 686). Article 724 defines the spouse as a “forced heir”, together with the children and other descendants of the defunct. A share of the assets (land or non-land) is guaranteed to the spouse (art. 730), while the article 816 states the succession order in which the children come first, followed by the parents and the spouse in third position. When the spouse is in concurrence with the children, he or she inherits an equal share to that of each of the children (art. 822); when the spouse is in concurrence with other descendants he or she inherits a share equal to one of the other heirs (art.

823); and when there are no children or other descendants, the spouse is the sole heir (art. 824). Sons and daughters have equal inheritance rights (art. 818).

The Civil Code introduces however one restriction for women: a widow can lose the assets (land or non-land) acquired through marriage if she re-marries before a period of 300 days (art. 243). Besides, customary law tends to favour men, and gives priority to sons over widows for land inheritance. Similarly, in rural communities, sons tend to be favoured over daughters for land inheritance. In Quechuas districts, the system of 'parallel inheritance' prevails, within which sons inherit the property from the father, while daughter inherits the property from the mother. This system tends to favour the oldest child, regardless of gender (FAO, Gender and Land Rights Database).

2. Restricted Physical integrity

a) Violence against women

Peru has signed the Belém do Pará Convention in 1995. However, there is no comprehensive legislative framework against violence against women (VAW), but rather three different legislations addressing an aspect of it: the law n. 26.260/1997 against domestic violence, the law n. 27.942/2003 against sexual harassment, and the law n. 29.819/2012 that incorporates femicide into the penal code. The Ministry of Women and Vulnerable People (MIMP) is responsible for the monitoring of these legislations, and has published two National Plans Against Violence Against Women (2009-2015, and 2016-2021), as well as a National Plan for Gender Equality (2012-2017).

The National Plan Against Violence Against Women (2009-2015) lists three core objectives: guarantee the implementation of public policies against VAW, guarantee women's access to the relevant services, identify and transform the socio-cultural roots that engender and exacerbate violence. The most recent plan (2016-2021), focuses on two core objectives: transform the socio-cultural causes of violence and guarantee access to relevant services for women victims of violence. This latest plan, approved by the decree 008-2016-MIMP, has targeted objective of reduction of violence and social tolerance towards violence, allocates a specific budget to the plan and involves the following Ministries: homeland, justice and human rights, education, health, foreign relations, labour, culture, development and social inclusion.

The MIMP is responsible for overseeing and monitoring the implementation of the legislation and its associated plans of action. Three mechanisms of consultation have been established since 2009 to ensure the implementation of the plans of action (MIMP, Informe Resumido 2012): a dedicated working group within the MIMP, inter-sectorial tables gathering the different Ministries involved in the plans of action, and local and regional consultation bodies. An evaluation report from 2012 (MIMP, Informe Resumido 2012) highlights the launching of the campaign "I have the right to be well treated" in schools, the inclusion of a gender training for police officers, as well as a campaign against human trafficking, and the implementation of an awareness programme on women's rights that reached 5 000 participants in 2012. It was not possible to locate more recent updates from the MIMP.

b) Domestic violence

The Law n. 26.260/1997 on Family Violence recognises domestic violence as a crime, but it is not gender specific and only provides civil remedies to victims, making domestic violence the jurisdiction of family laws and the Civil Code. It defines as family violence: “any action or omission that causes physical or psychological harm, abuse without injury, including serious threat or coercion, occurring between: spouses, partners, descendants or relatives until the fourth degree of consanguinity” (art. 2). It also includes violence committed by former partners and spouses. The Penal Code penalises homicide committed against a member of the family, including the partner or spouse, more severely than a simple homicide, with a privation of liberty of at least 15 years (Código Penal, art. 107).

The National Plans Against Violence Against Women (MIMP 2009-2015 and 2016-2021) have specific dispositions on domestic violence. The MIMP has implemented a number of services targeting domestic abuse, including: a 24 hour hotline, an online chat, an emergency service to intervene directly in the household upon report of an act of violence (for the city of Lima), and the creation of 245 emergency centres across the country (MIMP, Programa Nacional de Lucha Contra la Violencia Familiar y Sexual, 2017). By comparison, in 2004, there were only 38 emergency centres (CEDAW 2004). The proportion of women who sought institutional support after having suffered a form of violence has been increasing; from 19% in 2000 to 27% in 2010.

c) Rape

The Penal Code (Código Penal, art. 170) defines rape as: “Any person who, with violence or serious threat, obliges another person to have carnal access through the vaginal, anal or buccal routes or performs other similar acts by introducing objects or parts of the body through any of the first two ways, will be repressed with imprisonment.” An act of rape leads to a sentence of no more than 8 years of imprisonment, and up to 12 years if the aggressor was armed. Marital rape, rape committed by a partner or a member of the family are considered as aggravating circumstances, and can lead to a sentence of up to 20 years. Higher penalties are specified if the victim is unconscious (art. 171), unable to resist (art. 172), or minor of 18 (art. 173).

d) Sexual harassment

The law n. 27.942/2003 defines sexual harassment as: “the reiteration of the physical or verbal conduct of sexual nature that is not desired and/or rejected, exercised by one or more person who takes advantage of a position of authority or hierarchy” (art. 4). A relationship of authority or dependency is necessary to qualify the act as an act of harassment. It can involve: the promise of a more favourable treatment in exchange of sexual favours, threats leading to an undesired sexual behaviour from the victim, insinuations or verbal harassment of a sexual nature, groping or other forms of physical abuse, offensive or disrespectful treatment after a decline from the victim of any form of sexual relation (art. 6). The law is not gender specific and qualifies the “harassed” as any man or woman subject to such a practice.

The law provides civil remedies, but no criminal penalties, for cases of sexual harassment. It applies to places of work and study – public and private, the military, and the police (art. 7, 12, 17, 22). Remedies can be sought in the form of a monetary compensation if the act of harassment happens

at the work place (art. 7, 22), or by undertaking a disciplinary procedure against the perpetrator that can lead to his/her suspension or dismissal.

The National Plan for Gender Equality 2012-2017 (MIMP, 2012) mentions the full exercise of women's economic rights as one of its priorities, and identifies sexual harassment at the workplace as a limit to those rights. It affirms that since the promulgation of the law 27.942/2003, many public institutions have adopted preventive measures against sexual harassment, but that unfortunately these tend to be mostly informative and not so much reparative or punitive once an act of harassment has been committed. The regional governments of Ucayali, Ica, Piura, Puno, Cajamarca and Tumbes have also adopted regional decrees to prevent and sanction sexual harassment. The decree 008-2016-MIMP sets the objective of having 50% of public institution adopting measures against sexual harassment by 2021.

e) Female genital mutilation

There is no law addressing female genital mutilation and no evidence to suggest it is an issue in Peru (UNICEF, 2016).

f) Abortion

Abortion is penalised as a "crime against life" in the Penal Code (art. 114), and the woman causing her own abortion or consenting to the act can be punished with a sentence of up to two years of privation of liberty. There are three exceptions. The first is if the pregnancy is the result of a rape or forced insemination committed on a woman outside of marriage, and pending proper police investigation (art. 120/1), in which case the woman faces up to three months of privation of liberty instead of two years. This means in effect that if a married woman is raped by her husband, a possibility that is recognised by the law on rape, she cannot have an abortion. The other two cases are medical: if the foetus is not viable (art. 120/2), in which case the penalty of three months also applies, or if an abortion is the only way to save the woman's life (art. 119), in which case no penalty applies. For these two cases, a medical evaluation and doctor's approval are required.

More

The Penal Code was modified in 2012 to incorporate the recognition of femicide as a crime (law 29.819/2012). However, femicide remains restricted to a form of domestic violence: "if the victim of the crime here described (homicide) is or has been the spouse or the partner of the perpetrator, or has been related to him by a similar form of relationship, then the crime will have the name of femicide."

Forced sterilizations are also recognised as an act of VAW. Indeed, reports estimate that between 200 000 and 314 500 indigenous women have been sterilised against their will under the regime of Fujimori (Miranda, 2015; Puertas, 2002). The decree 006-2015-JUS declares as national priority the provision of services to victims of forced sterilisations, and creates a register for the victims of the Fujimori's area (1995-2001) to be monitored by the MIMP.

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Women are guaranteed the same rights as men to access lands and other assets by the Constitution (art. 2, 5, 70), and the law 24.656/1987 on the autonomy of peasant communities to organise and cultivate their lands. Indeed, the criteria to be part of a *comunidad campesina* (peasant community) are the same for men and women (art. 5): being older than 18, having had stable residency in a community for at least 5 years, not belonging to another community. Peru is also a signatory of the ILO Convention 169 on the rights of indigenous and tribal peoples. The law 27.558/2001 and decree 001-2003-ED promote the education of rural girls and women, with the aims of increasing their levels of education and participation in farms and land-related activities.

Two projects of land titling (Special Land Titling and Cadastre Project/Proyecto Especial de Titulación de Tierras y Catastro Rural – PETT) have been implemented in 1993-2000 and 2000-2006. Although the first phase has been reported to be insensitive to gender, some studies suggest that the second phase helped improving access to property for women through the increase of joint titles for households: 56% of households' plots were joint titles in 2009 (Fuentes and Wiig, 2009).

However, land titling and attribution continues to be influenced by customary practices at the expense of women. The lack of identity documents and high levels of illiteracy in rural areas means that women cannot easily acquire titles of property (FAO, 2013). Besides, the attribution of land within *comunidades campesinas* tend to favour men and/or collective property, thus creating a conflict of norms between the right to private property and the right of indigenous communities to organise their lands (FAO, 2013). Official measures for the agricultural sector consider as producer the person in charge of, or owning, the piece of land; by this definition, women only represent 30% of the farmers. They also tend to owe smaller parcels than men - 1,8 hectares on average compared to 3 hectares for men (INEI, 2015).

As regarding non-land assets, women have the same rights as men to acquire and administer property (Codigo Civil, art. 4). For married couples, the default marital property regime is partial community of property, and the administration of the assets is equally shared (Código Civil, art. 301, 302, 313).

b) Secure access to formal financial resources

Women and men have the same rights to open a bank account and obtain credit, in fact, the Civil Code of 1984 grants women legal majority and equal civil rights with men (art. 4). Women do not require the signature of their husband or any male relative to access or administrate financial resources. Similar to land titling, one of the barriers to access financial resources is the lack of identity documents and the low levels of literacy in rural areas (CEDAW, 2004).

c) Workplace rights

Equal labour rights are guaranteed by the Constitution (art. 26), the law n. 26.772/1997 against discriminatory practices, and law the n. 28.983/2007 on equality of opportunities. The law 28.983/2007 (art. 1) stipulates that access to employment and education opportunities cannot contain elements of discrimination or dispositions that would prevent equality of opportunities.

The law 28.983/2007 as well as the decisions n. 0020-2012-PI/TC, 12, 16, 18 and n. 00018-2013-P/TC, 84 and 88 of the Constitutional Court, further mandate equal remuneration for work of equal value. Peru is also signatory of the following ILO Conventions: C100 – Equal Remuneration, C111 – Discrimination, and C156 – Workers with Family Responsibilities (ILO, Normlex, Country Profiles).

The law 26.644/1996 mandates 12 weeks of paid maternity leave for women, with a replacement rate of 100% of their salary paid in the form of social benefits. It also protects pregnant women from unfair dismissal and guarantees that they can return to their position after maternity leave. Fathers are entitled to 4 days of paternity leave, with 100% of salary replacement in the form of social benefits (law 29.409/2009).

Finally, the law n. 26.772/1997 against discriminatory practices imposes a fine to companies that discriminate against their employees on the basis of their sex or gender. The law is to be enforced – and the amount of the fine is to be determined – by the Ministry of Labour (Congreso de la República, Informe Temático N° 43/2015-2016).

4. Restricted Civil liberties

a) Citizenship rights

Women have the same rights as men to acquire, change and confer nationality (Ley de Nacionalidad, n. 26.574/1996). Women have the same rights as men to register their children and to give them their family name (Código Civil, art. 20, 21).

There is however an important problem of access to local registries in rural areas, and a significant number of undocumented people (RENIEC, 2012). As a result, the government has launched two different plans to increase the number of documented citizens: the National Plan for Equality of Opportunities Between Women and Men 2006-2010 to increase access to civil rights and documentation for women in rural areas (MIMP, 2006), and the National Plan of Action Against the Lack of Documentation 2011-2015 (RENIEC, 2012). The lack of proper documentation is a de facto limit to the rights of women in matters relating to civil rights, judicial rights, or rights to possess land or other assets.

b) Voting

The right to vote is guaranteed to men and women by the Constitution, provided that citizens have an identity card: “All Peruvians above the age of eighteen are citizens. To exercise citizenship, they must be registered to vote” (art. 30). Voting is compulsory until the age of 70 (Ley Orgánica de Elecciones n. 26859/97, art. 9), and failure to fulfil one’s civic duty can lead to a fine of between 2% and 5% of the citizen’s income depending on the reason for not voting (Ley 28.859/2006). Civil, administrative and judicial restrictions in case of abstention have been removed by the law 28.859/2006.

c) Political voice

Women have the same rights as men to vote and run for election, at the national and local level (Constitution, art. 30 and 31). A law of quotas was introduced in 1999 (law 26.859) mandating that at least 30% of the candidates on the list be women. It applies to both national and local elections,

and a failure to comply leads to the invalidation of the list. However, the figure of 30% has never been reached yet at the Congress, or at the provincial or local levels, and only 12 regional governments have adopted gender quotas (MIMP, 2012).

d) Access to justice

The Constitution (art. 2) establishes the principle of equality between men and women, as does the Civil Code (art. 4). Women have the same right as men to start a judicial act (Código Civil, art. 140, 141), and no restrictions could be found regarding their ability to sue, be sued or provide testimony in a court case. Although no legal or customary restrictions could be found regarding women's access to justice, Amnesty International (2014) has alerted to the difficulties for indigenous women victim of forced sterilization to pursue their cases in criminal courts. Gender specific trainings for judges and dedicated judicial services for victims of violence were also lacking from the National Plan Against Violence Against Women 2009-2015 (MIMP, 2010).

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