

El Salvador

1. Discrimination in the family

a) Overarching legal framework for marriage

In El Salvador, women and men have the same rights to enter into marriage. The Family Code stipulates that equality between men and women is the underlying principle of all provisions in the Code (Family Code, Art. 4), and that marriage is formed by the free and mutual decision of the bride and groom (Family Code, Art. 12). All marriages must be registered before the Attorney General of the Republic, the notary, departmental governor, municipal mayor or auxiliary departmental attorney (Family Code, Art. 13 and 21). Informal, de-facto unions are regulated by law (Family Law, Title IV).

Forced marriage is criminalised in article 54 of the Special Law on Human Trafficking and punished with 10 to 14 years of imprisonment (Ley Especial contra la Trata de Personas, Art. 54). It is defined as action by which a person is promised against her will or forced to marry, or to hold a de facto relationship for the benefit of the trafficking person or a third party (Ley Especial contra la Trata de Personas, Art. 5h, author's translation).

b) Child marriage

Article 14 of the Family Code sets the legal age for marriage at the age of 18 (Family Code, Art. 14). However, women and men under the legal age of marriage can marry with the consent of their parents, legal guardians or of the Federal Attorney General in case they have reached the age of puberty, if the future spouses have a child together or if the woman is pregnant (Family Code, Art. 14).

Early marriage is criminalised under the Law on Human Trafficking: Article 55 of this law stipulates that human trafficking (which includes, according to Article 54 of the same law, forced marriage and forced union) is punishable with 16 to 20 years of imprisonment if the victim is a girl, boy or adolescent (Ley Especial Contra la Trata de Personas, Art. 55).

The obligation to register all marriages (Family Code, Art. 21) and to provide for measures that allow pregnant and nursing girls to continue their education (Ley General de Educación, Art. 76A) could be considered as measures to prevent early marriage, however, they are not declared as such.

The Law on Equality, Fairness, and the Elimination of Discrimination Against Women and the Law for the Integral Protection of Children and Youth do not provide for awareness-raising or education programmes on the legal age of marriage (Ley de Igualdad, Equidad y Erradicación de la Discriminación Contra las Mujeres and Ley de protección integral de la niñez y adolescencia).

Early marriage is common in El Salvador (Salvadorian Ministry of Health/National Health Institute, 2015). Very high rates of adolescent pregnancies are one of the important drivers of early marriage in the country (Girls not Brides, 2017). There are reports of parents pressuring their pregnant daughters

to marry the father of the child or to live with him in order to avoid social stigmatisation (Girls not Brides, 2017). Furthermore, discriminatory gender roles encourage early marriage: the sociocultural environment often considers marriage and motherhood as the only path for girls' self-fulfilment (Salvadorian Ministry of Health/National Health Institute, 2015). Sometimes, girls may choose to get married early to gain respect of the society or to find more freedom when their families place strong restrictions on their sexuality (Girls not Brides, 2017). In the contexts of gang criminality, early marriage is widespread: many girls marry gang members either because they consider the marriage as a safety measure for themselves and their families or because they cannot refuse a proposal from a gang member since this could be life threatening for them and their families (Girls not Brides, 2017).

c) Household responsibilities

The Salvadorian Family Code stipulates that spouses have equal rights and duties (Family Code, Art. 36). It does not oblige a woman to obey her husband and provides women with the same rights to be the legal guardian of their children during marriage. The Family Code also stipulates that the spouses shall choose their place of residence together, that spouses have to treat each other with respect and tolerance and that neither spouse can prevent the other from receiving education or carry out other legal activities (Family Code, Art. 207, 36, 37 and 39).

Despite these provisions, women spend disproportionately more time than men on unpaid care and domestic work (CEDAW, 2017). In families consisting of a father, mother and their children, it is mainly men who assume the role of heads of the household and women are responsible for taking care of the children (UNICEF and FUSADES, 2015).

d) Divorce

According to the Family Code, women and men have the same rights to initiate divorce (Family Code, Art. 106 and 107) and to be the legal guardian of their children after divorce (Civil Code, Art. 111).

e) Inheritance

El Salvador's legislation recognizes women's and daughter's equal rights to inherit land and non-land assets (Civil Code, Art. 988). However, cultural factors that limit women's land inheritance rights persist: the patriarchal structure of the society assigns women to the home and the private space, while men are considered responsible for public space and land. Therefore, men are often privileged when it comes to land inheritance, even in cases where there is no testimony and intestate succession should apply (IFAD, 2014). Women rarely claim their rights to land inheritance, as they are unaware of them and often consider inheritance as a right of men and land as men's property (IFAD, 2011). While property grabbing is not criminalised in the Penal Code, Article 927 of the Civil Code stipulates that whoever has been deprived of his or her possession has the right to restitution and compensation (Civil Code, Art. 927).

2. Restricted Physical integrity

a) Violence against women

Violence against women is a major problem in El Salvador. According to a 2015 study of the Geneva Declaration on Armed Violence and Development, the country has the highest rate of gender-based

killings of women (femicide) in the world. Most of the killings occur in connection with the ongoing gang conflict and not as intimate partner femicides (Geneva Declaration, 2015). Sexual violence against women is also widespread and has been increasing since 2011, it is often used as punishment or threatening mechanism by gang leaders (Ormusa, 2016).

A Comprehensive Law for a Life Free of Violence against Women (*Ley Especial Integral para una Vida Libre de Violencia para las Mujeres*) has been in force since 2012 (UN Women, n.d.). It contains 61 articles that address the question of violence against women, including sexual harassment, stereotyping, misogyny, sexism, pornography, femicide and rape (*Ley Especial Integral para una Vida Libre de Violencia*, Art. 1-61) and obliges the State to provide for budgets to guarantee the application of the law (*Ley Especial Integral para una Vida Libre de Violencia*, Art. 34). In the national budget of 2017, El Salvador assigned USD 58 million for the implementation of programmes to guarantee women's fundamental rights, including their right to a life free of violence (Salvadorian Ministry of Finance, 2017).

The National Policy for Women's Access to a Life Free of Violence (*Política Nacional para el acceso de las mujeres a una vida libre de violencia*) and its 2013 - 2015 and 2016 - 2021 Action Plans (Plan de Acción de la Política Nacional para el Acceso de las Mujeres a una Vida Libre de Violencia) support the implementation of the Special Law for a Life without Violence for Women (ISDEMU, 2013). ISDEMU, the Salvadorian Institute for the Advancement of Women (*Instituto Salvadoreño para el Desarrollo de la Mujer*) is mandated to monitor and review the implementation of the national policy and action plan (ISDEMU, 2013). The Institute is also tasked to receive complaints related to violence against women (ISDEMU, 2016c). It operates a free hotline for women victims of discrimination and violence and also offers a free mobile application software called "SOS Mujer" (SOS Woman) that allows women to denounce violence directly (ISDEMU, 2015).

Despite all these legislative and institutional efforts of the government to tackle violence against women, the numbers of prosecutions and convictions in cases of violence against women and femicides are very low (CEDAW, 2016).

b) Domestic violence

Domestic violence is criminalised in the Law against Family Violence (*Ley contra la Violencia Intrafamiliar*). It is defined as any direct or indirect action or omission that causes harm, physical, sexual or psychological suffering or death of family members (*Ley contra la Violencia Intrafamiliar*, Art. 3). Domestic violence is punished with imprisonment of one to three years (Penal Code, Art. 200). The law against Family Violence covers physical, sexual, psychological and economic abuses within the family and from former partners (*Ley contra la Violencia Intrafamiliar*, Art. 1 and 3). The Comprehensive Law for a Life Free of Violence against Women forbids mediation in case of domestic violence or other forms of violence against women (*Ley Especial Integral para una Vida Libre de Violencia para las Mujeres*, Art. 58) and provides specific provisions for investigation, prosecution and punishment of perpetrators (*Ley Especial Integral para una Vida Libre de Violencia para las Mujeres*, chapter 3).

While the National Policy for Women's Access to a Life Free of Violence guarantees existence of emergency shelters for women victims of domestic and other forms of violence, only one shelter

currently exists (ISDEMU, 2016c). Other protection measures provided by the State include a 24-hour hotline, health services and legal assistance (ISDEMU, 2016c). The Women City programme (Ciudad Mujer), an initiative by the Social Inclusion Secretariat, provides for six centres with integrated services for women, such as crisis intervention, self-care groups and psychological counselling. The centres also aim to help women in other areas of life, and provide, among other measures, capacity building for economic autonomy, health services for pregnant women and nurseries (Social Inclusion Secretariat, n.d.).

Domestic violence is widespread (The Advocates for Human Rights, 2016). According to the 2015 yearly report on violence against women in El Salvador, 81.5% of victims of domestic violence are women and girls and 8 628 cases of domestic violence against women were reported in 2015 (ISDEMU, 2016b). The actual number of cases might be much higher, as impunity for domestic violence offences is widespread (The Advocates for Human Rights, 2016).

c) Rape

Salvadorian Law criminalizes rape (Penal Code, Art. 158) and the Penal Code's definition of rape includes spousal rape (Penal Code, Art. 162). The penalty for rape is 6 to 10 years of imprisonment or up to 20 years for rape of certain victims, including children and persons with disabilities (Penal Code, Art. 161).

The Action Plan of the National Policy for Women's Access to a Life Free of Violence (*Plan de Acción de la Política Nacional para el Acceso de las Mujeres a una Vida Libre de Violencia*) aims to support the implementation of the existing legislation on rape and sexual violence by improving prevention of and expanding protective mechanisms for victims. It provides, among other measures, for training for professionals who deal with sexual violence and for awareness-raising campaigns for sexual violence (ISDEMU, 2016d).

The Decree No. 286 of 25 February 2016 on the Creation of Specialised Courts for a Life Free of Violence against Women (*Decreto para la Creación de los Tribunales Especializados para una Vida Libre de Violencia y Discriminación para las Mujeres*) establishes the creation of specialized courts that deal with cases of domestic violence and violence against women (Decree No. 286 of 25 February 2016, Art. 1-4) and requires all legal staff of these courts to acquire the necessary knowledge on women's right to a life free of violence and discrimination and on human rights (Art. 6). The Comprehensive Law for a Life Free of Violence against Women foresees State responsibility to provide medical support and legal assistance for women victims of rape and other forms of violence and includes provisions for awareness-raising and education campaigns (Ley Especial Integral para una Vida Libre de Violencia para las Mujeres, Art. 17 and 57).

Rape is widespread and impunity is high (LAWG, 2016). While rape was primarily committed by family members in the past, it is now frequently committed by gang members: young girls face high risk of being raped or murdered by gang members or to be claimed by a gang member as "novia de las pandillas" (girlfriends of the gangs) (LAWG, 2016). According to the 2015 report on violence against women in El Salvador, 18 658 cases of rape or other forms of sexual violence against women were reported between 2013 and 2015 (ISDEMU, 2016b). The National Civilian Police received 3 065 reports of rape from January to November 2016 (ORMUSA, 2016).

d) Sexual harassment

Sexual harassment is considered a crime in article 165 of the federal Penal Code and is punishable by three to five years in prison (Penal Code, Art. 165). It is defined as unwanted or uninvited sexual behaviour that includes words, touching, gestures or other unambiguous behaviour of sexual nature or content (Penal Code, Art. 165). The Penal Code establishes sanctions without precisions on settings or environments where the harassment takes place, such as workplace or public places, however, harassment in educational settings is specifically covered in the Law on Teaching Career (Art. 56 (19)) and the Comprehensive Law for a Life Free of Violence against Women mentions workplace harassment (Article 8(b)). The Special Law on Computer-related Crimes that entered into force in 2016 covers cyber harassment (Ley especial contra los Delitos informáticos y conexos, Art. 27).

The National Policy for Women's Access to a Life Free of Violence supports the implementation of the legislation on sexual harassment and provides for guidelines, protocols and strategies to prevent sexual harassment in public places, schools and the workplace (ISDEMU, 2013).

Victims of sexual harassment tend not to report it to the police because they fear reprisal or think that the law will not be enforced and therefore, it is difficult to estimate the extent of the problem (The Advocates for Human Rights, 2016). Prevailing sexist stereotypes that consider sexual harassment as normal and socially acceptable contribute to underreporting of sexual harassment (The Advocates for Human Rights, 2016).

e) Female genital mutilation

There is no evidence to suggest that female genital mutilation is practised in El Salvador.

f) Abortion

El Salvador's abortion laws are considered among the most severe in the world (LAWG, 2016): abortion is criminalised even in cases of rape or when the pregnancy threatens a woman's life (Penal Code, Art. 133-137). Practitioners who facilitate abortions are punished with six to twelve years of imprisonment (Penal Code, Art. 135) and women who seek an abortion risk imprisonment of two to eight years (Penal Code, Art. 133) or even more if they are convicted of murder after having had an abortion (Human Rights Watch, 2017). Prosecution, long periods in pre-trial detention and disproportionate criminal penalties are common for women who seek an abortion (CEDAW, 2017). Additionally, numerous women face serious health risks when resorting to unsafe methods of abortion (CEDAW, 2017).

In late 2016, the Vice President of the Salvadoran Congress Lorena Peña introduced a bill to reform Article 133 of the Penal Code to allow abortion in cases of rape, when the woman's health is at risk, or if the foetus is not viable (Human Rights Watch, 2017). It has been met with strong political resistance (Human Rights Watch, 2017).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

According to the Family Code and the Constitution, married and unmarried women have the same rights as married and unmarried men to own and use land and non-land assets (Family Code, Art. 52, 53 and 70 and Constitution Art. 2 and 22). Article 70 of the Family Code stipulates that spouses have the same right to administer their own and common property during marriage. Marital property can be administered under the system of separate property, shared property or deferred property (Family Code, Art. 41). In case of a divorce under the system of separate property, each spouse maintains ownership of his or her property acquired during marriage. This limits women's access to land after divorce, as it is usually the husbands who own land (IFAD, 2011).

There is no Law that specifically provides for joint land titling for married couples, but Article 105 of the Constitution guarantees private, community and other social forms of property rights to land, and the Law on Equality, Fairness, and the Elimination of Discrimination Against Women provides for the promotion of joint land titling (Ley de Igualdad, Equidad y Erradicación de la Discriminación Contra las Mujeres, Art. 37).

The National Equality Plan 2016-2020 (*Plan Nacional de Igualdad 2016 - 2020*) aims to increase women's access to land until 2020 by promoting women's participation in rural committees, facilitating access to credit and capacity building in agricultural techniques, among other measures (ISDEMU, 2016a). The programme *Amanecer Rural* (Rural Dawn) of the Salvadorian Ministry of Agriculture and Livestock, aims to reduce economic inequality and rural poverty by supporting marginalised groups of the society, such as indigenous people and women. It finances projects of rural producer committees and provides capacity building and information for better market access. Participating groups must include at least 30% women and young people (Salvadorian Ministry of Agriculture and Livestock, n.d.).

Despite these provisions, deeply rooted cultural norms continue to restrict women's land rights and most land continues to be held by men (IFAD, 2014). When it comes to inheritance, men are usually privileged, even though women have the same right to inherit land according to Article 988 of the Civil Code (IFAD, 2014). Additionally, women often have insufficient financial resources to buy land and face difficulties in accessing credit because they are not property owners or lack information and documentation (FAO, n.d.). Women who try to rent a plot of land often face discrimination, as people don't trust their agricultural competencies (IFAD, 2014).

b) Secure access to formal financial resources

The Family Code and the Constitution do not restrict married and unmarried women's legal rights to access and benefit from financial services: the Family Code stipulates that both spouses have equal rights (Family Code, Art. 36) and the Constitution stipulates that no restrictions based on sex shall be established for the enjoyment of civil rights (Salvadorian Constitution, Art. 3).

In 2014, the Government started the *Banca Mujer* programme (Woman's Bank). It aims to promote the economic autonomy and financial inclusion of women by providing access to credit and guaranteeing capacity building programmes (BANDESAL, 2016). Since August 2015, the Legislative

Decree 72 has been in force: it provides for simplified methods for opening savings accounts and aims to give the marginalised low-income population a less complicated path into the formal financial system (AFI, 2015).

c) Workplace rights

Article 12 and 30(12) of the Labour Code and Article 25 of the Law of Equality, Fairness, and the Elimination of Discrimination Against Women mandate non-discrimination on the basis of sex in employment and specifically cover discrimination in job advertisements, selection criteria, recruitment, hiring, terms and conditions, promotions and training. Article 123 of the Labour Code mandates equal remuneration for work of equal value (Labour Code, Art. 123). Special units of the *Procuraduría Nacional de Justicia* are tasked with receiving and investigating complaints based on sex discrimination in employment and other areas (Procuraduría General de la República, n.d.).

In March 2016, the Salvadorian Labour Code was reformed. It now provides for 16 instead of 12 weeks of paid maternity leave (Decree 143 of the Labour Code). During maternity leave, women are paid 75% of their wage by the employer. Article 42 of the Constitution protects women's employment security when they are on maternity leave. Since March 2013, fathers have had three days of paid paternity leave at their disposal (Decree 332 on the reform of the Labour Code).

Despite these laws, discrimination in the workplace is widespread: according to the Organization of Salvadoran Women for Peace, discriminations include denial of overtime payment, unjustified dismissal and stereotypical distribution of tasks, among others (ORMUSA, 2017). Wage discrimination is also very pronounced (Ministry of Labour and Social Welfare, 2015). Women are over-represented in informal employment, where they face a high risk of exploitation and extortion (CAWN, 2013).

4. Restricted Civil liberties

a) Citizenship rights

The Constitution asserts the same citizenship rights to all individuals: women have the same rights as men to acquire, change or retain nationality and to confer their nationality to their children (Salvadorian Constitution, Art. 91 and 92). The Provisional law on Civil Registration and the Patrimonial Regimes of Marriage stipulates that married and unmarried women and men have the same rights to register the birth of their children (Art. 90).

All Salvadorian citizens who have reached the age of majority are obliged to acquire an identity card used for personal identification and as a permit for voting. Women and men, regardless of their marital status, have the same right and obligation to apply for an identity card (Ley de Cédula de Identidad Personal, Art. 1) and for a passport (Ley de Expedición y Revalidación de Pasaportes, Art. 20). The law does not restrict married (Family Code, Art. 36) or unmarried women's right to travel outside the country (Family Code, Art. 36, Migration Law, Art. 50).

b) Voting

Salvadorian men and women have equal rights to vote and to be elected for all popular election positions (Salvadorian Constitution, Art. 71 and 72). Article 20 of the Law of Equality, Fairness, and the Elimination of Discrimination Against Women (Ley de Igualdad, Equidad y Erradicación de la

Discriminación Contra las Mujeres) stipulates that measures shall be taken to ensure that women exercise their right to vote and to political participation in general (Law of Equality, Fairness, and the Elimination of Discrimination Against Women, Art. 20) and the National Equality Plan (*Plan Nacional de Igualdad*) provides for national campaigns to promote women's political participation across the country (ISDEMU, 2016a). Women's participation in voting processes is generally higher than men's (CLADEM, 2013).

In 2014, article 63 of the Constitution was amended and now states "El Salvador recognises the indigenous peoples and will implement measures to maintain and develop their ethnic and cultural identity, worldview, values and spirituality" (Constitution, Art. 63). This amendment entailed numerous municipal ordinances in favour of indigenous people's rights in the municipalities of Nahuizalco, Izalco, Panchimalco y Cuisnahuat and further ordinances are currently being elaborated in Cacaopera, Conchagua and Santo Domingo (CCPR, 2016). The ordinance of Nahuizalco, as an example, stipulates that indigenous women shall participate actively in voting processes and be heard in governmental and communitarian authorities. It also requires that indigenous women be informed about their rights (Ordinance of the Municipality of Nahuizalco concerning the rights of indigenous communities, Art. 22).

c) Political voice

The Salvadorian State is undertaking numerous initiatives to encourage women's participation in political decision-making. Since 2013, article 38 of the Law on Political Parties provides for quotas at national and sub-national levels: political parties must include at least 30% of women candidates in their candidate lists for elections to the Legislative Assembly and municipal councils (Law on Political Parties, Art. 38). Political parties that do not comply with the quota law have to pay a fine equal to 15 to 55 times the basic salaries and correct their candidates list within 15 days (Law on Political Parties, Art. 71 and 73).

In addition to the quota law, political parties are obliged to define measures that promote women's participation in elections and in management positions and to incorporate these measures into their by-laws (Law on Political Parties, Art. 22h and Law of Equality, Fairness, and the Elimination of Discrimination Against Women, Art. 23).

Despite the regulatory developments in favour of women's political voice, women in still face several challenges that impede their full political participation (ISDEMU, 2016a). Due to predominant gender roles, women bear most responsibility for domestic work and childcare and therefore often lack time for political activities. They have limited access to training for political leadership, especially when living in remote areas. Furthermore, women who are politically active often face discrimination and violence and are assigned gender-typical tasks in political parties and institutions (ISDEMU, 2016a).

d) Access to justice

Unmarried and married women have the same capacity as unmarried and married men to sue and to be sued and their testimony carries the same weight in all types of court cases. The Constitution guarantees equality before the law for all citizens, regardless of their nationality, race, sex or religion (Constitution, Art. 3) and the Comprehensive Law for a Life Free of Violence against Women stipulates that all women in the State's territory and Salvadorian women who are outside of El Salvador have

the right to equality before the law and equal protection of the law (Comprehensive Law for a Life Free of Violence against Women, Art. 2 and 3). The Decree No. 286 of 25 February 2016 on the Creation of Specialised Courts for a Life Free of Violence against Women establishes the creation of specialised courts that deal with cases of domestic violence and violence against women (Decree No. 286 of 25 February 2016, Art. 1-4) and requires all legal staff of these courts to acquire the necessary knowledge on women's right to a life free of violence and discrimination and on human rights (Art. 6).

Despite all these provisions, women's access to justice is limited (CEPAL, 2014) and a large number of crimes remain unreported (see chapter *violence against women*). This is due to different factors: sexist stereotypes prevail and violence against women is often considered socially acceptable and is not reported (The Advocates for Human Rights, 2016). Additionally, many women have low confidence in authorities, fear that laws will not be enforced and therefore don't file complaints (The Advocates for Human Rights, 2016). Also, court authorities and the police often don't take account of the special needs of women and don't protect them sufficiently (The Advocates for Human Rights, 2016).

In many indigenous communities, conflicts are mainly resolved inside the community and therefore, indigenous women rarely turn to the police or legal authorities. Additionally, they are often unaware of their rights, have little confidence in the judiciary system and face discriminatory behaviour from the authorities (IIDH, 2010).

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