

Uruguay

1. Discrimination in the family

a) Overarching legal framework for marriage

Uruguay was among the first countries of the Latin American region to recognise gender equality. In 1946, law 10.783 on women's civil rights stated women's and men's equal civil capacity before the law. This recognition gave Uruguayan woman the same rights as men to enter marriage and equal rights in marriage, divorce, retain control of property, receive inheritance and be legal guardians of the children.

Law 18.246 on "Union Concubinaria" recognizes informal, de-facto unions. Article 1 defines "union concubinaria" as uninterrupted co-habitation and "community of life" for at least five years. It doesn't distinguish between sexes, gender or sexual orientation, giving a status that is equivalent to marriage to any relationship that is based on sexual as well as affective, stable and permanent partnership.

b) Child marriage

Legal age of marriage, according to article 91 of the Uruguayan Civil Code, is 16 years old. This Civil Code article was amended in 2013. Until that date, legal age of marriage for women was 14 years old, and until 1994, 12 years. There are no statistics or information available, either by the government or by civil society, about early marriage.

c) Household responsibilities

The Civil Code's article 33 has been amended by the 2013 law n° 19.075, and now states that married women have the same rights as married men to choose where the family should live. The 1946 law on women's legal capacity determines that unmarried women have also the same right as unmarried men to choose where to live.

Article 129 of the Civil Code establishes equality of rights and duties between man and woman in marriage. Article 41 of the Constitution determines that parents have equal rights and responsibilities as legal guardians of children, and article 42 determines that this responsibility is the same for children born in or out of wedlock.

Studies show a regular increase in the number of common law marriages in Uruguay, as well as a regular increase in the number of and divorces. The number of women heads of household has also regularly increased in the last decades (Almeida Mello, 2014, p. 3).

According to the CEPAL (1996), three factors have determined changes in the social norms and attitudes regarding family in Uruguay in the last decades: the sexual revolution, divorce and gender equality movements. For a part of Uruguayan women, a rise in educational levels, as well as incorporation in the labour market, have meant that the age for marriage and having kids has increased, and co-habitation and other family arrangement outside marriage have become more tolerated and common. This change in mentality and attitude is seen commonly among middle class women but not exclusively. Women with lower incomes and educational levels have also been more

prone to entering informal unions, with the major difference between them being the increase in the levels of teenage pregnancy in the second case.

UNICEF (2003) also points to the fact that Uruguay presents the highest rates of female occupation in Latin America and of male unemployment, in relation to balancing work and household responsibilities. Consequently, the current social norms diverge greatly from the “1950s model” (UNICEF, 2003, p. 141), with roles in the home changing, as attitudes around the importance of domestic work and child rearing.

d) Divorce

In 2013, law 19.075 on equality in marriage reformed the country’s Civil Code. It legalized same-sex marriage (art. 1). It also changed marriage laws regarding alimony, separation and divorce. Articles 10 and 13 establish clearer criteria for the definition of alimony. Mentions to “disorderly life” for the women as a reason for exempting husbands from paying alimony have been erased. Divorce caused by adultery is still defined in terms of guilty and not-guilty parties, with these definitions having implications in the definition of alimony. According to González Perrett and Deus Viana’s (2015), these references to guilt from the parts in divorce proceedings reflect patriarchal attitudes in society. These still tend to blame women for failures in marriage and mean that divorced women usually have less resources available to them, while at the same time being the sole responsible for childcare.

e) Inheritance

Law 10.783 on women’s civil capacity has annulled all provisions that infringed on women’s inheritance rights. Inheritance laws in Uruguay are gender neutral, but in practice, they privilege children rather than spouses, which has a negative effect on women, who statistically tend to live longer than men (FAO-INMujeres, 2015). Up to 75% of all propriety, land and non-land assets go to descendants, depending on the number of children. Spouses are thus most commonly entitled to only a quarter of inheritances and considered after descendants (art. 881 of the Civil Code) (FAO-INMujeres, 2015).

2. Restricted Physical integrity

a) Violence against women

Jurisprudence from Uruguayan courts consider that article 72 of the Constitution is to be interpreted as establishing that human rights conventions are equivalent to constitutional norms (Cajarville-Pelufo, 1998, p. 488). Uruguay has ratified the Belém do Pará Convention that has been included in its national legal framework through law n° 16.735 from 1995. Article 8 of the Uruguayan Constitution’s states “all persons are equal before the law, no other distinctions being recognized among them save those of talent and virtue”, but no direct mention is made to the principle of non-discrimination against women (CEDAW, 2007).

In December 2017, the Uruguayan Parliament passed a comprehensive law on violence against women. Article 4 of the Law n° 19580 defines gender-based violence as “every conduct, action or omission, both in public and private spaces that based on a power imbalance between the gender, aimed at curtailing or blocking women’s access to their human or fundamental rights”. Article 6 and 7 of the bill characterises different types of gender-based violence. First, by type: physical, psychological, sexual, economic, patrimonial, symbolic, medical, political, media; second, by the space it takes place in. Gender-based violence is then understood as possibly being domestic, community or institutional.

The bill also enumerates what are the particular rights of women who have suffered gender-based violence. The bill's article n° 8 ensures every woman victim of violence the right to free and immediate judicial assistance. Article n° 54 creates special courts for judging gender-based violence, and article n° 51 states that all institutions, private or public, have to create special mechanisms that make it easier for women to report gender-based violence.

The bill, which has over 100 articles, also gives women the possibility to be accompanied by someone of her choosing at all steps of the legal process. Article n° 9 reinforces the importance of listening and giving credit to women's testimony in gender violence criminal proceedings, and that State agents that minimize or discredit women denouncing violence increase the suffering of victims and are, in themselves, exerting a form of gender-based violence.

It also introduces a multidisciplinary response to the issue. Article n°34 creates a network of services aimed at women victims of violence (psychosocial services, healthcare services, mobile units for rural women with mobility problems).

It prohibits mediation and conciliation, and extends protective measures to the victims for a period of 180 days. According to Uruguayan women's organisations, prohibiting conciliation as a solution to gender violence crimes is especially important. Judges are said to often rule that the parts should "try and live harmoniously" or "provoke less conflict", which tend to blame the victim for the violence (González Perrett and Deus Viana, 2015).

A national plan for combatting gender-based violence is already in place. The "Plan de Acción 2016-2019: por una vida libre de violencia de género, con Mirada generacional" was elaborated by the Consejo Nacional Consultivo de Lucha Contra la Violencia Domestica, together with UN Women, and civil society organisations (CNCLVD, 2015). It sets 12 specific benchmarks for combatting gender-based violence. These include; expanding and improving access to services for women and girls; expanding and improving services that respond to gender-based violence; expanding resocialisation services for men who have committed gender-based violence; improving data-collection mechanisms on gender-based violence, among others.

Almost seven in every ten women in Uruguay state that they suffered from gender-based violence at some moment in their lives, be it sexual, physical, psychological or patrimonial (Barrig and Mazzitelli, 2015, p. 8). According to the first survey on gender-based violence held in 2013, violence affects particularly women between 19 and 29 years old, women from African descent and those living in the southeastern part of the country. It touches women from every socio-economic and educational background, even if poorer women will mention family violence more frequently (Barrig and Mazzitelli, 2015, p. 8). Women with higher education levels will mostly mention violence in public spaces, particularly in workplace settings. Psychological violence appears to be the most prevalent type of violence women suffer at every moment of their lives, and in every social strata (Barrig and Mazzitelli, 2015, p. 9).

b) Domestic violence

Data from the Homeland Ministry shows that domestic violence represents half of the crimes against individuals committed in the country, and is the second most common crime in the country (Barrig and Mazzitelli, 2015, p. 7). The same data shows an increase in domestic violence reports, which is usually interpreted as signifying not an actual increase in the number of cases, but that women are

more aware of their rights and trust institutions enough to report violence. Uruguay has one of the highest rates of intimate partner violence in the region (Barrig and Mazzitelli, 2015, p. 8).

Since 2002, the Parliament has approved a law to prevent domestic violence, ley 17.514, “Ley de Prevención contra la Violencia Domestica”. Article 2 of the law defines domestic violence as “any direct or indirect action that limits the free exercise of human rights of a person by another with whom the first has had an affective relationship, based on cohabitation, kinship, marriage or de-fact union” (“acción u omisión, directa o indirecta, que por cualquier medio menoscabe, limitando ilegítimamente el libre ejercicio o goce de los derechos humanos de una persona, causada por otra con la cual tenga o haya tenido una relación de noviazgo o con la cual tenga o haya tenido una relación afectiva basada en la cohabitación y originada por parentesco, por matrimonio o por unión de hecho”).

The law also determined the creation of the Consejo Nacional de Lucha contra la Violencia Doméstica (National Council for Fighting Domestic Violence) and the design and implementation of a National Plan against Domestic Violence.

This plan has been followed by the approval of protocols and guidelines aimed at professionals working in the security and healthcare sector. Act n° 317, approved by the Homeland Ministry, creates guidelines for police agents dealing with cases of domestic violence. The act also mentions the creation of units specialising in domestic violence to be included in the Police Department structure at the municipal level (CEPAL, 2014). CEDAW (2015) mentions 34 specialised domestic and gender-based violence units in the country, as well as training programs for police officers and justice operators organized by the Homeland Ministry, and a service of re-education and resocialisation for offenders.

The healthcare sector has also developed its own guidelines for responding to situations of domestic violence, regulated by act n° 299 from 2010 (CEPAL, 2014). An emergency shelter was set up in Montevideo in 2012 (CEDAW, 2015) and it can host up to 30 women.

Other laws that address gender-based violence are law n° 17.707, that elevate family courts to the rank of specialised courts, and create the first courts for domestic violence (CNCLVD, 2015). Law n° 16.607 adds to the article 18 of the penal code a mention to domestic violence, punishable with six to twenty-four months imprisonment. Penalties might be increased in cases where the victim is a minor or present any kind of diminished physical or mental capabilities.

CEDAW (2015) mentions six specialised courts in Montevideo; other three capitals have courts able to address cases of domestic violence and offer the services of multidisciplinary teams. In isolated parts of the country, any court can hear domestic violence cases in extraordinary proceedings (CEDAW, 2015). The CEDAW committee reports that because the procedure for hearing domestic violence is in practice often fragmented by justice operators into civil and penal proceedings, offenders are rarely sued for domestic violence. They will often face trial for homicide or battery, which means the gender dimension of the crime is lost and women’s access to justice is impaired (CEDAW, 2015).

Finally, law n° 18.850 determines that sons and daughters of women who died in consequence of domestic violence are entitled to a monthly pension to be paid by the State until they reach the legal age. An evaluation of the Uruguayan framework against domestic law was carried out in 2012. It found that the federal administration had not kept enough records of the amount of budget assigned by different agencies of the government to the implementation of the legislation and plan. Consequently, it was difficult to evaluate the advances in implementation (Herrera et al, 2012).

c) Rape

Rape is a criminal offence regulated by Uruguay's Penal Code article 272. It is defined as the act of forcing someone, with violence or menace, to "carnal conjunction". There is no specific law addressing sexual violence. The law n° 17.514 on domestic violence mentions in its article 3 sexual violence and defines it. An inter-institutional working group was established in 2012 with the contribution from UN Women and Uruguay's Women's Institute. The working group has elaborated a document for the design of a national strategy against sexual violence. It systematises all actions from different organs from the federal government in order to offer a coordinated response that it is centred on the needs of victims and takes into consideration dimensions of prevention, assistance, access to justice, information gathering and awareness-raising (INMujeres, 2014).

Law 17.815, from 2014, is aimed directly at combatting sexual violence against children, and focus mainly on punishing the production of pornographic material and commercial sex. Sexual crimes against minors are penalized with two to twelve years prison sentences.

In practice, according to data from the Uruguayan Homeland Ministry, there were 257 cases of rape reported in the year 2012 (INMujeres, 2014). A study from 2012 points to persistent gender stereotypes that tend to justify and normalize sexual violence, making it harder for women to identify situations of violence and report them (RUVDS, 2012).

d) Sexual harassment

Sexual harassment legislation in Uruguay is aimed mainly at harassment in the workplace. In article 2 of law 18.561, sexual harassment is defined as "all unwanted behaviour of sexual nature whose refusal will damage the victim's working situation or formal education, or any behaviour that creates a hostile or intimidating working environment".

No penal sanctions are included in the law n° 18.561 on sexual harassment. Article 9 of the law establishes that answers to sexual harassment complaints are to be dealt with by the Labour Inspection agency. The Women's Institute has worked together with Labour Inspection for improving the sexual harassment law's implementation. An awareness-raising campaign was carried out following the approval of the law and training programmes for labour inspectors organised (CEDAW, 2015).

After the approval of the law, reports of sexual harassment in the workplace have increased steadily. Reporting is more common among private sector employees and in the Montevideo area (INMujeres, 2014). In 2014, the Uruguayan government agency for national education prepared a protocol that allows education institutions to deal with harassment in teacher-student relations (CEDAW, 2015).

e) Female genital mutilation

No cases of female genital mutilation have been observed in Uruguay.

f) Abortion

Uruguay was the first South American country to decriminalise abortion in 2012. Law 18.987 allows for voluntary interruption before 12 weeks, every time a woman finds that her economic, social, family conditions or her age represent an impediment to carrying a pregnancy to term. In this case, the woman is required to consult with a doctor and a multidisciplinary team and has to go through a five-

day reflection period before choosing to terminate the pregnancy. These conditions are excluded only in cases of rape or danger to the woman's life.

Uruguay is a particular case in the South American context. Abortions were legal in the country for a short period between 1934 and 1935. Attitudes in relation to abortion have varied from less to more opposed to it generationally, but abortion has remained a common practice during the period in which it was prohibited. Even though it polarizes opinions in society in general, numbers show that the decriminalization actually reduces the absolute number of abortions, while at the same time dramatically decreasing maternal mortality rates (Johnson et al, 2011).

Protocols and guidelines that assure access to legal abortions are still absent, as well as any framework for dealing with cases not mentioned in the law (Correa and Pecheny, 2016, p. 71). A preliminary study also finds that healthcare professionals in the public health system believe the number of hospitals offering the service has to be increased, because the current available system is at its limit capacity (MYSU, 2017, p. 82). Since its decriminalisation, the number of abortions has been increasing progressively, but the numbers still remain lower than the estimations made before the procedure was legal. According to the Uruguayan Ministry of Health, 9.362 abortions were performed in 2015; 8.537 in 2014 and 7.171 in 2013. The increase is considered to be due to more women being informed of their rights and how to access them (MYSU, 2017, p. 86).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Uruguay has not ratified ILO Indigenous and Tribal Peoples Convention.

Law n° 10.873 on women's civil capacity ensures that married and unmarried women have the same rights regarding access to land and assets as men. It equally establishes that married couples are co-owners of all property and assets acquired during marriage, while at the same time retaining the rights to manage property and assets that were theirs before marriage. Law n° 18.246 on common law marriages extend those rights to informal and de-facto unions.

The Uruguayan Instituto Nacional de Colonización has applied since 2014 a directive that privileges joint land titling in all decisions relating to land reform and distribution (Decreto N° 317/010). Similarly, the First National Plan for Equal Opportunities and Rights has included as its objective improve and expand women's access to property and credit (INMujeres, 2011a).

Together with the Women's Institute, the Agriculture Ministry has designed the "Somos Mujeres Rurales" Programme, aimed at rural women's organisations. The organisations participating in the programme receive funds to implement rural development project aimed at compensating gender imbalances in land ownership and women's participation in the rural economy.

Ingrained patriarchal attitudes in the rural area mean that even when women are the ones in fact responsible for cultivating the land, after the death of the husband, property will go to male sons (González Perrett and Deus Viana, 2010). Census information about rural land ownership is not sex-disaggregated, but the Instituto Nacional de Colonización estimates that less than a sixth of rural properties in Uruguay are owned by women (González Perrett and Deus Viana, 2010).

b) Secure access to formal financial resources

Articles that discriminated against women in the Uruguayan Commercial Code are considered to have been tacitly revoked by law n° 10.873 on women's civil capacity. Women and men have the same rights in relation to access to formal financial resources.

In practice, to compensate for unequal access to credit, particularly in rural areas, microfinancing projects headed by the Planning and Budget Office allocated a particular budget to work with women and to encourage enterprises headed by women (CEDAW, 2015). Particularly in rural areas, the fact that women are usually not officially land owners, even when they are the ones actually working the land, mean they are not able to access formal financial institutions for credit (González Perrett and Deus Viana, 2010).

c) Workplace rights

Uruguay has ratified all of ILO fundamental conventions, except for the ILO Convention concerning the revisions of maternity protection.

Law n° 16,045 prohibits discrimination in any sector or branch of labour activity. Article 2 of the law specifies this to include job advertisement, selection criteria, recruitment, hiring, terms and conditions, promotions, training etc. The Ministry of Labour and Social Security is responsible for enforcing existing labour legislation. It is also responsible for handling complaints of sexual harassment (CEDAW, 2007).

In practice, a study carried out by the National Statistics Institute on gender indicators related to the labour market show a consistent gap between men and women in the workplace. Women are still less present in the market than men, approximately 21 percentage points below men's average, which raises in inversely with increasing levels of education (CEDAW, 2007). In terms of sector of activity, women are the majority among teachers, social and healthcare services (76%). They also represent 69% of the workers in the textile industry. On the other hand, they are under-represented in the higher hierarchy of enterprises – only 33% of heads of companies are women. They are also almost absent from the Construction sector, where 95% of workers are men and other industries (ONU, INMujeres, 2016). These differences in levels of occupation and occupation by sector are, according to INMujeres (2011b) are the lasting results of historical attitudes towards women, which discriminate against their participation in the workforce and tends to drive them to “feminine sectors” and lower-paying functions.

Maternity leave and maternity allowance are regulated by law n° 12.572, which determines a six week before and six weeks after birth pause, with the possibility of an extension up to six months in case of health complications. Maternity leave also cover adoptions, according to law n° 17.292. Law n° 17.930 stipulates the 10-day paternity leave, and law 16.045 secure pregnant women's jobs. Any dismissal or suspension on grounds of pregnancy or lactation are considered to be discriminatory. Finally, 2006 Domestic Workers Act extend all normal labour rights to domestic servants, a sector where women represent the vast majority (CEDAW, 2007).

4. Restricted Civil liberties

a) Citizenship rights

Uruguayan laws are gender neutral on nationality issues (articles 74-75 and 81 of the Uruguayan Constitution). Article 10 of the Migration Law that guarantees every foreigner the right to be with his/her family, is also neutral in relation to gender. Foreigners married to a national have a right to a Uruguayan passport, according to Act n° 129/014, art. 15, which is also gender neutral.

According to the article 81 of the Constitution, acquiring a second nationality does not affect the right to citizenship. Article 74 of the same text also confers nationality to every person, no matter what sex, born in Uruguayan territory or to a Uruguayan mother or father. Registering one's children is also a right entrenched in the Código de la Niñez y Adolescencia.

b) Voting

Voting is obligatory in Uruguay. No sex-disaggregated statistics relating to participation in local or national elections are available.

c) Political voice

Article 77 of the Constitution states the right to vote and to be voted. In 2009, a quota law – law n° 18.476 -- was approved to ensure women's equal participation in the legislative power, local level and parties' directions (article 1). Article 3 of the quota law determines that the Juntas Electorales will be responsible for overseeing its implementation and penalising parties that fail to include women in their electoral lists. Parties failing to comply will be excluded from the vote slips. The quotas were applied for the first time in the 2014 elections.

Uruguayan women continue nonetheless to be under-represented in the legislative and executive branches of government. In relation to the quota law, a "minimalist application" of its provisions is systematic since its approving. Parties have included only the minimum number of women in their lists, and rarely as head of the list (ONU, INMujeres, 2016).

Another bill related to political voice was presented to the parliament in 2016, called "Ley de Paridad". It replaces the minimum quota defined by the 2009 law with a parity requirement, which means electoral lists would be composed of an equal number of men and women. The law has been presented to the Parliament and it is currently under review (ONU, INMujeres, 2016).

Women are numerous at the judicial branch, representing 70% of civil servants in this branch. They are less frequent in the higher positions. Women are underrepresented in the local level, even though women's participation in local government has gone from 5% to 28% after the establishment of the quota law (ONU, INMujeres, 2016).

d) Access to justice

In Uruguay, access to justice is a constitutional right established in the Constitution article 254. The law on women's civil capacity also guarantees the rights to sue and be sued, as well as equality in civil processes, which means women's testimonies carry the same weight as men's. Free judicial assistance is available for citizens lacking resources according to article 7 of the same text. But especially in rural areas such assistance is rarely available, which means women that want to initiate judicial processes

have to be able to go to Montevideo in order to be assisted. This proves to be particularly challenging in cases of rural women suffering from intimate partner violence (González Perrett and Viana Deus, 2010).

Law n° 18.104 on equal rights and opportunities article 6 creates the National Women's Institute ("Instituto Nacional de las Mujeres"), which is responsible for coordinating gender mainstreaming at the federal level. The Institute is also responsible for designing the Plan de Igualdad de Derechos y Oportunidades and supervising compliance with international norms and standards in gender equality.

More

In 2013, a gender identity law was approved. Article 1 of law n° 18.620 declares that every person has a right to "freely develop their personality and gender identity". This right includes the right to be identified in national identity cards and civil registry according to one's self-defined identity. No previous medical procedure is necessary for the change in civil register, but a 'persistent dissonant feeling' between birth-assigned sex and lived gender identity that has lasted at least two years (art. 3).

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