



Análisis de legislación discriminatoria en América Latina y Caribe

En materia de autonomía y
empoderamiento
económico de las mujeres



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ANALYSIS OF DISCRIMINATORY LEGISLATION IN LATIN AMERICA AND THE CARIBBEAN

ON THE AUTONOMY AND ECONOMIC EMPOWERMENT OF WOMEN



Written by:

María Ángeles Sallé (coord.); Laura Molpeceres and Estibaliz Infante



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"The opinions expressed in this publication do not necessarily reflect the views of UN Women, the United Nations or any of its affiliated organizations, or those of SEGIB and its member countries."

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FOREWORD

In today's societies, which are marked by a variety of significant transformations (demographic, economic, and technological), the economic empowerment of women is essential to ensuring their well-being and that of society as a whole. Women, in addition to accounting for half of the world's population, represent the support of millions of families and communities, thus their empowerment implicitly implies a greater degree of prosperity. Equality and non-discrimination are fundamental human rights, and gender equality is essential to achieve development and societies that are more sustainable.

The first step towards empowering women is to recognize and guarantee their rights, which have historically been denied or dependent on their civil status. Today, it is necessary to eliminate those visions that do not support the efforts that are being carried out for gender equality.

Over the past decades, civil society movements – particularly those of women's organizations – have helped to promote gender equality mechanisms (regional, national and local) and the active role of international human rights bodies, to create a solid regional agenda that recognizes women's rights and equality as essential elements of development. This is reflected in the 2030 Agenda for Sustainable Development, whose goals include guaranteeing equal opportunities and equality in results, eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and measures to that end.

The governments of Latin America and the Caribbean have ratified most of the national, regional and international commitments on gender equality and women's rights. In terms of economic empowerment, the inheritance, economic and labour rights of women have been transferred to the different national regulations, whether constitutions; civil, labour or family codes; or employment laws. Nonetheless, challenges remain in the legislative frameworks of the countries of the region that generate direct or indirect discrimination, affecting the autonomy and economic empowerment of women.

Thus, the weight of traditions, in the form of inequalities, means that there are still direct vestiges and discrimination that

Luiza Carvalho
Regional Director of UN Women for the Americas and the Caribbean

affect the full recognition of women's rights, as reflected for example in specific family laws or access to certain jobs and occupations. In addition, the evolution of gender relations demands a new generation of regulations that are in line with these changes: for example, the necessary implementation and expansion of paternity leaves that enable the exercise of responsible parenthood.

On the other hand, legal equality does not necessarily imply substantive equality or equality in results, as evidenced by the persistent gender gaps that are far from complying with the legislative evolution that has been achieved. Therefore, the changes must be accompanied by positive actions in order to redress situations of inequality to achieve the intended effects of the laws.

UN Women and the Ibero-American General Secretariat (SEGIB) have been working a long time to move decisively in this direction. This publication is the first in a series of documents that will address the analysis of discriminatory legislation by area, starting with this report on legislation on women's autonomy and economic empowerment. It is part of the effort to eliminate discriminatory laws and practices in collaboration with other institutions such as the Inter-Parliamentary Union (IPU), the World Bank, the Commonwealth, the International Organization of La Francophonie, the Equality Now non-governmental organization and the “Global Citizenship” movement

We recognize that joining our efforts will help to accelerate the pace and reach the goal much earlier - a necessary and achievable goal that is a prerequisite to the successful application of any other strategies for progress. It is the least that the women of our region claim and deserve; it is also the least that the Latin American and Caribbean States owe to those who represent the true backbone of the continent.

Paying off this debt of equality is, therefore, the most profitable investment we can make today for development. And the document that we present here intends to be, in this sense, seed capital of knowledge for action that helps to promote and accompany a thoughtful legal, political, socio-economic and cultural change that can no longer wait.

Rebeca Grynspan
General Secretary of the Ibero-American General Secretariat

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EXECUTIVE SUMMARY

This report is developed within the framework of the alliance between the **Regional Office of UN Women for the Americas and the Caribbean** and the **Ibero-American General Secretariat (SEGIB)**. Its objective is to **illustrate** the existing **discriminatory legislation** in the countries of Latin America and the Caribbean that affect the **economic**

empowerment of women and exemplify those regulations that are contributing to progress.

The analysis focuses on the following areas:

- Access to **assets and resources**,
- Access to **paid work**, and in connection:
- Rights linked to **unpaid work**.

The main source of information for the development of this report has been the 2017 study carried out by the **Latin American Team for Justice and Gender (ELA)**¹, as well as other sources from **international organizations** such as the International Labour Organization (ILO), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Organization for Economic Cooperation and Development (OECD), the World Bank (WB), the Inter-American Development Bank (IDB) and the UN Women Report on the Progress of Women in Latin America and the Caribbean.

The report draws from the premise that laws play a fundamental role in guaranteeing the autonomy and economic empowerment of women by establishing the conditions for the participation of women on an equal basis with men. In this respect, laws are important instruments to eliminate direct discrimination that threatens the full enjoyment of women's rights, and **they are the first step towards gender equality**.

The importance of the laws for the economic empowerment of women is recognized in the main international pacts and conventions, as well as in the commitments and summits of the governments of Latin America and the Caribbean. At present, there is a **broad international regulatory framework that supports the guarantee of women's rights in the economic and labour sphere**, whose main references are the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* and the various *Conventions of the International Labour Organization* that address this matter.

In the past 20 years, **the legislative frameworks of the countries of Latin America and the Caribbean have evolved considerably**, in line with the development of these international standards. However, to this day, there are still significant discriminatory aspects in some of the legislation that must be eliminated. This report identifies those regulatory areas in which progress needs to be achieved, as well as examples of positive action developed in the field, with legislation specifically aimed at balancing the differential situations that affect women and men due to their assigned gender roles.

¹ ELA. (2018). *Legal Strategies for Equality. Study on regulations for the empowerment of women, their implementation and the repeal of legal barriers to equality*. Document subject to unpublished revision.

The content of the analysis addresses three central axes for the autonomy and economic empowerment of women including access to **assets and resources**, access to **paid work**, and in connection, rights linked to **unpaid work**.

ADVANCE ON THE RATIFICATION, COMPLIANCE AND MONITORING OF INTERNATIONAL CONVENTIONS AND AGREEMENTS

Although all countries have ratified **CEDAW** in Latin America and the Caribbean, not all have signed the **Optional Protocol**, which expands the capacity of the CEDAW Committee to follow up on the implementation of the Convention by States and establishes complaint and inquiry mechanisms before the Committee.

On the other hand, the ratification of ILO **Conventions** that promote equal rights between women and men has been quite disparate:

CONVENTION	AMOUNT OF COUNTRIES
Convention No. 100 (1951) on equal remuneration	Ratified by 33 (all) countries
Convention No. 111 (1958) on discrimination in employment and occupation	Ratified by 33 all) countries
Convention No. 156 (1981) on workers with family responsibilities	Ratified by 11 countries
Convention No. 183 (2000) on maternity protection	Ratified by 4 countries
Convention No. 189 (2011) on female and male domestic workers	Ratified by 14 countries

In addition to the ratification of the various international and regional conventions, there are still some remaining gaps in the implementation and monitoring of these conventions.

THE FORMAL OVERCOMING OF INDIRECT DISCRIMINATION THAT AFFECTS THE ASSETS AND RESOURCES OF WOMEN

The law establishes the conditions in which assets are acquired and managed during the couple's relationship and how they are distributed following a separation or divorce. In this respect, regulations in some countries continue to recognize men as **head of household**. This type of regulation limits the autonomy and freedom of women to dispose of family resources, choose their life plans and make the necessary decisions in the course of their personal relationships.

On the other hand, **preferential arrangements after separation or divorce proceedings** in Latin America and the Caribbean are established by agreement of the parties, although it is true that in the absence of agreements, most of the legislation establishes a preference for maternal care. These regulations strengthen the role of women as caregivers, which, in turn, increases their risk of starring in scenarios of vulnerability as they assume a greater burden

of care for children. Joint custody, based on the co-responsibility of the parties, is considered to contribute more decisively to gender equality.

THE ELIMINATION OF LABOUR LAW REGULATIONS THAT EXCLUDE WOMEN FROM CERTAIN TYPES AND MODALITIES OF WORK

In the field of paid work, sources of labour law discrimination have been found in several countries in the region that **exclude women from certain types and modalities of work**, such as night work, heavy lifting jobs, employment in certain industrial undertakings and even overtime work. These regulations are based on protecting the health or physical integrity of women, fundamentally related to the biological function of motherhood; arguments that refer to stereotyped conceptions of gender and that, in many cases, group women with children.

It should be noted that the right to access the same jobs and occupations implicitly implies the right to access the same positions. Women, however, are still underrepresented in positions of responsibility and decision-making in companies, therefore a number of countries, conscious of the imbalance, are advancing “positive” action in the formulation of laws to mitigate the differences.

THE APPLICATION OF THE PRINCIPLE OF EQUAL REMUNERATION FOR WORK OF EQUAL VALUE ACCORDING TO THE TERMS OF ILO CONVENTION NO. 100

In relation to wages, the main sources of discrimination observed refer to the formulation of restrictive criteria regarding the application of ILO Convention No. 100 on equal remuneration. First, some countries do not consider certain payments in cash or in kind (for example, social benefits or entertainment expenses) within the **remuneration concept**, which prevents correct application of the agreement. Second, there are important limitations in the application of the principle of **work of equal value** given that most countries apply equal remuneration only to same or similar work and not to different work of equal value.

On the other hand, there is also a lack of objective job evaluation systems, poor collaboration with the organizations involved and an absence of inspection and audit mechanisms.

THE ELIMINATION OF DISCRIMINATION ON SOCIAL PROTECTION AND PENSIONS

Within social protection systems, particularly regarding pensions, the main gender discriminations are conditioned by a twin-track approach.

The first is determined by the design of **contributory pension systems that are linked to the performance of a remunerated economic activity**. This excludes the vast majority of women who do not participate in the labour market or who participate under much more precarious employment conditions, even though they are carrying out functions essential to society and the economy such as child care. The second form of discrimination is subject to the **establishment of systems that are based on a typically “male” working life pattern**, that is on many years of contribution and uninterrupted linear work trajectories, as compared to the trajectories of women, which are generally interrupted by pregnancy and/or child care.

On the other hand, the study identifies discriminatory regulations for women with regards to retirement pensions. One is the establishment of **retirement ages differentiated by gender** (lower for women), which in certain cases is discriminatory because it implies a shorter period of contribution and lower savings. Another is the existence of systems that calculate benefits based on **specific mortality scales by gender**, which penalizes women due to their greater average life expectancy.

THE EXPANSION OF THE RIGHTS OF FEMALE DOMESTIC WORKERS, TOWARDS REAL EQUALITY WITH WORKERS GENERALLY

To date, 14 countries of the region have ratified ILO Convention No. 189 on women and men domestic workers and have adapted their labour codes, social security systems and employment laws towards the recognition of the rights of domestic workers (including, specific laws that have been enacted to safeguard those rights). However, **these rights are not yet equal** in terms of access to social protection, the minimum wage, work hours and paid annual leave, or the benefits provided to these workers.

GREATER MATERNITY COVERAGE AND PROTECTION

To date, only **11 countries** of the 33 analyzed respect the **minimum maternity leave of 14 weeks** established in ILO Convention No. 183. Moreover, discriminatory aspects related to the **rights of pregnant women to obtain and keep a job** are identified, including the absence of prohibition of the practice of requesting pregnancy tests to obtain and keep a job in certain countries. Other aspects are linked to the lack of protection against dismissal on the grounds of pregnancy or maternity, regulations which require the employer to pay for leave (which can be a source of indirect discrimination in hiring), provision of compensation commensurate with salary, or the guarantee of the right of women to return to an equivalent post after the period of leave.

THE EXPANSION AND DEEPENING OF LEGISLATION ON CO-RESPONSIBILITY FOR CARE WORK

Although the centrality of care work on the public agenda has been gaining ground recently in the countries of Latin America and the Caribbean, the current progress of legislation towards achieving greater **co-responsibility of the State, companies and men in care work** continues to be very limited. Paternity leaves are still non-existent or insufficient in the countries of the region, as are laws that provide for the *right to care or be cared for* as a universal right of citizenship, guaranteed for both men and women, avoiding the reinforcement of gender stereotypes associated with care.

CONCLUSIONS

Although it is possible to affirm that a significant number of legal forms of economic and employment discrimination against women have been eliminated in the countries of Latin America and the Caribbean, significant challenges remain that must be overcome to meet the obligations of international conventions and commitments. The main areas for improvement identified by the study include: the formal overcoming of indirect discrimination that affects the **assets and resources** of women, the elimination of **labour law regulations that exclude women from certain types and modalities of work**, the application of restrictive criteria regarding the **principle of equal remuneration for work of equal value**, the **rights related to the protection of domestic workers**, the **protection of maternity** and the expansion and deepening of legislation aimed at achieving greater **co-responsibility of the State, companies and men in care work**.

In parallel to the consolidation of the body of legislation that eliminates direct discrimination, it is urgent to advance in the **field of positive action**, establishing legislation specifically aimed at balancing the differential situations that affect women and men due to their assigned gender roles.

The distance between legal equality and substantive equality is also subject to practices that may benefit one sex more than the other, depending on by whom and how they are applied. Therefore, it is indispensable that those **responsible for enacting, implementing and monitoring compliance with laws** have knowledge of gender issues in order to achieve substantive equality. This requires specific awareness and training actions in the matter among the different actors participating in the legislative and legal process.

Compliance with laws also implies access to **safe legal mechanisms and justice, available to women and adapted to their needs**. It is essential, in this respect, to intensify the work to **educate women on their rights through awareness, information and training actions**.

The strong social and cultural setting influencing gender relations requires the elimination, modification and enactment of regulations, as well as comprehensive gender policies, which combine a variety of strategies and where legislation represents the first step towards equality.

INTRODUCTION: SCOPE AND CONTENTS OF THE REPORT

This report is developed within the framework of the alliance between the **Regional Office of UN Women for the Americas and the Caribbean** and the **Ibero-American General Secretariat (SEGIB)** and aims to promote legal strategies for equality and the elimination of discriminatory legislation on the empowerment of women in the countries of Latin America and the Caribbean.

The goal of this report is to illustrate the current discriminatory legislation in the national regulations of the countries of Latin America and the Caribbean that affect the empowerment and economic autonomy of women, as well as to exemplify the regulations that are contributing to advances in this field.

The report is based on the contribution made by the Latin American Team for Justice and Gender (ELA), which has prepared a preliminary study that, in addition to identifying discriminatory legislation linked to the empowerment and economic autonomy of women, has set its sights on other areas that are essential to the progress of women, such as physical and political autonomy².

Using the ELA study as its primary source, this report summarizes the main elements that **reveal the direct statutory discriminations that continue to limit the full exercise of rights and equal opportunities for women in the economic and labour sphere**. The report aims to illustrate, through concrete examples, how the regulations contain provisions that continue to restrict or deny women access to the same rights.

While the document's analysis focuses on discrimination, there has been significant progress achieved in the region at the regulatory level for the promotion of equality. These developments, which serve as an example of regulations more aligned with the promotion of women's autonomy and economic empowerment, are a noteworthy example for situations in which discriminatory measures continue to exist.

² The ELA team has carried out a thorough and exhaustive analysis of the recommendations to the States of the Latin American and Caribbean region made by the various human rights bodies of the universal protection system; the reports made by the mechanisms of the regional system for the protection of human rights; the review of individual cases brought forward by the United Nations Human Rights Treaty Bodies; standards related to women and gender equality in the documents of the International Labour Organization (ILO); and the relevant national regulations for each of the main thematic axes defined as priority in their study (citizenship, families, economic empowerment, violence, political participation, and gender and reproductive rights).

The content of the analysis addresses three central axes for the autonomy and economic empowerment of women, including **access to assets and resources**, **access to paid work** and in connection, the rights linked to **unpaid work**.

The first axis of **assets and resources** has addressed regulations on patrimony and inheritance (generally included in the Civil and Family Codes and linked to marital relationships), as well as access to land ownership and access to credit.

As far as **paid work** is concerned, it has focused on the regulations governing employment and occupation, access to employment, equal remuneration, social security and pensions, and, because of concentration of women in this sector (especially in the region of Latin America and the Caribbean) on the protection of domestic workers.

Finally, regarding **unpaid work**, emphasis has been placed on the regulations related to maternity protection, those aimed at establishing greater co-responsibility of men, the State, and companies in care work, as well as the laws that have emerged that provide for *the right to care and be cared for*.

Aware that the economic empowerment of women offers multiple connections with other areas, this report considers those that have a greater direct impact on the autonomy and economic empowerment of women, as established by the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW).

As previously mentioned, the report is based on the contribution of the ELA team. Building on the findings of this study, a complementary review has been carried out of secondary sources, observations by the ILO Committee of Experts (CEACR) on the follow-up of the Conventions ratified by the countries, as a source of basic and fundamental rights in this area. In addition, the Recommendations of the Committee for the Elimination of Discrimination against Women (CEDAW) to the Latin American and Caribbean States have been examined, based on the report *“Between legal equality and de facto discrimination: Recommendations of the Committee for the Elimination of Discrimination against Women (CEDAW) for the States of Latin America and the Caribbean”* (Bareiro, 2018).

In the absence of a specific international agreement on the subject, secondary sources of information have been used to address the situation in the region, with particular attention to international organizations such as the Organization for Economic Cooperation and Development (OECD), the World Bank and the Inter-American Development Bank (IADB).

In some cases, contradictions have been found among the international sources consulted and attempts have been made to contrast them with national sources. In any case and taking into account that legislation is a science in perpetual modification, the scope of this study should be considered **illustrative rather than comprehensive**.

The objective, finally, is for this report to contribute to increasing the visibility with decision makers of the legislative work needed to modify discriminatory regulations that continue hinder the autonomy and economic empowerment of women in the region.

LEGAL EQUALITY AS A MECHANISM OF INCIDENCE IN THE ECONOMIC AUTONOMY AND EMPOWERMENT OF WOMEN

The empowerment of women refers to the increased participation of women in decision-making processes and access to power, from their collective dimension, and to the process of acquisition and awareness of control over their own lives, from an individual dimension. Empowerment, therefore, necessarily implies autonomy, that is, the ability to decide freely, and in turn, autonomy contributes to empowerment.

Women's autonomy is vital for guaranteeing the exercise of human rights in a context of full equality (Bareiro, 2018) considering three dimensions: **physical autonomy** (or control over their own body); **economic autonomy** (or capacity to earn their own income and control assets and resources); and **autonomy in decision-making** (full participation in decisions affecting their lives and their community).

The empowerment for the economic autonomy of women implies that women have the rights, capacities and opportunities to access assets and resources under equal conditions as men, as well as the same opportunities to access paid work and, in this sense, a more balanced distribution of reproductive and care work.

Laws play a fundamental role in guaranteeing the economic autonomy of women, insofar as they establish the conditions for their equal participation with men. The laws, in this respect, are important instruments to eliminate direct discrimination that threatens the full enjoyment of women's rights.

However, since the establishment of the first regulations to prohibit discrimination and promote equal rights between women and men, the limitation of these laws in achieving equality has become apparent over time. Legal equality does not guarantee, on its own, substantive equality.

Some regulations that are "neutral" or non-discriminatory in principle result in indirect discrimination because men and women do not begin on equal footing, thus positive actions are required in the form of laws or regulations (that is, specific laws that benefit women to correct manifest situations of de facto inequality compared to men).

In addition, the application of apparently non-discriminatory regulations may be subject to institutional, social and cultural practices that, as a result, produce a discriminatory treatment of women. Gender relations and their impacts therefore affect the effectiveness of laws.

Laws are the first step towards gender equality but must be accompanied by other types of policies, measures and strategies to guarantee real or substantive equality.

EVOLUTION OF INTERNATIONAL INSTRUMENTS FOR THE AUTONOMY AND ECONOMIC EMPOWERMENT OF WOMEN

Within the framework of international legal instruments, the achievement of women's empowerment has taken center stage, establishing itself as *one* of the United Nations 2030 Sustainable Development Goals *set out in Goal 5: Achieve gender equality and empower all women and girls.*

Since its creation, the United Nations System has deployed the main international instruments for the protection of human rights, among which is the right to equality, which has evolved to include the different forms of discrimination faced by women in the world, in all aspects of their social, political and economic life.

The first two pacts to be ratified by the international community (International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both from 1966), already addressed in detail the scope of the right to protection against discrimination and the right to equal protection before the law that implies, implicitly and as indicated, the need to adopt the appropriate legislative measures to ensure these conditions. This would obviously include the reform of discriminatory laws.

(1945) Letter from the United Nations	<ul style="list-style-type: none">• Specific mention of equal rights between men and women (preamble and Article 1.3).
(1948) Universal Declaration of Human Rights	<ul style="list-style-type: none">• "All human beings are born free and equal in dignity and rights" (Article 1)• "Everyone is entitled to the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, gender (...)" (Article 2).• "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination" (Article 7).
(1966) International Covenant on Civil and Political Rights	<ul style="list-style-type: none">• "Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to adopt (...) such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant". (Article 2.2)• All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, (...)" (Article 26).
(1966) International Covenant on Economic, Social and Cultural Rights	<ul style="list-style-type: none">• "No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent." (Article 5.2)

Despite the development of these principles, the generic prohibition of **gender-based discrimination** did not capture the specificity of the different forms of discrimination experienced by women. Thus, in 1967, the Member States of the United Nations adopted the **Declaration on the Elimination of Discrimination against Women**, urging the States to take measures to “*abolish existing laws, customs, regulations and practices which constitute discrimination against women, and to establish legal protection of the rights of women on an equal basis with men.*”

This Declaration, together with the resolutions of the **First World Conference on Women** (Mexico, 1975) led the international community to work on a legally binding treaty and resulted in the development of the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, adopted by the United Nations General Assembly in 1979.

CEDAW is the main reference framework for considering the specific obligations of States to eliminate the different forms of discrimination against women in political, social, economic and cultural life, including civil and political rights, the right to education, work, health and family life.

States that ratify the CEDAW Convention must **repeal all discriminatory provisions in their laws and enact new regulations to protect women against various forms of discrimination**. These States must also create courts and public institutions to guarantee women effective protection against discrimination and adopt measures to eliminate all forms of discrimination against women practiced by individuals, organizations or companies.

All of the countries of Latin America and the Caribbean have ratified CEDAW but not its Optional Protocol, which expands the powers of the CEDAW Committee to follow up on the implementation of the Convention by States and establishes individual complaint and inquiry mechanisms before the Committee.

TABLE 1. STATUS OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN AND THE OPTIONAL PROTOCOL IN LATIN AMERICA AND THE CARIBBEAN

Countries	Convention on the Abolition of All Forms of Discrimination against Women		Optional Protocol to the Convention	
	Signed	Ratification, Adhesion(a), Succession(d)	Signed	Ratification, Adhesion(a), Succession(d)
Antigua& Barbuda		1 Aug 1989 a		5 Jun 2006 a
Argentina	17 Jul 1980	15 Jul 1985	28 Feb 2000	20 Mar 2007
Bahamas		6 Oct 1993 a		
Barbados	24 Jul 1980	16 Oct 1980		
Belize	7 Mar 1990	16 May 1990		9 Dec 2002 a
Bolivia (Plur. State of)	30 May 1980	8 Jun 1990	10 Dec 1999	27 Sep 2000
Brazil	31 Mar 1981	1 Feb 1984	13 Mar 2001	28 Jun 2002

Convention on the Abolition of All Forms of Discrimination against Women Optional Protocol to the Convention				
Countries	Signed	Ratification, Adhesion(a), Succession(d)	Signed	Ratification, Adhesion(a), Succession(d)
Chile	17 Jul 1980	7 Dec 1989	10 Dec 1999	
Colombia	17 Jul 1980	19 Jan 1982	10 Dec 1999	23 Jan 2007
Costa Rica	17 Jul 1980	4 Apr 1986	10 Dec 1999	20 Sep 2001
Cuba	6 Mar 1980	17 Jul 1980	17 Mar 2000	
Dominica	15 Sep 1980	15 Sep 1980		
Dominican Republic	17 Jul 1980	2 Sep 1982	14 Mar 2000	10 Aug 2001
Ecuador	17 Jul 1980	9 Nov 1981	10 Dec 1999	5 Feb 2002
El Salvador	14 Nov 1980	19 Aug 1981	4 Apr 2001	
Grenada	17 Jul 1980	30 Aug 1990		
Guatemala	8 Jun 1981	12 Aug 1982	7 Sep 2000	9 May 2002
Guyana	17 Jul 1980	17 Jul 1980		
Haiti	17 Jul 1980	20 Jul 1981		
Honduras	11 Jun 1980	3 Mar 1983		
Jamaica	17 Jul 1980	19 Oct 1984		
Mexico	17 Jul 1980	23 Mar 1981	10 Dec 1999	15 Mar 2002
Nicaragua	17 Jul 1980	27 Oct 1981		
Panama	26 Jun 1980	29 Oct 1981	9 Jun 2000	9 May 2001
Paraguay		6 Apr 1987 a	28 Dec 1999	14 May 2001
Peru	23 Jul 1981	13 Sep 1982	22 Dec 2000	9 Apr 2001
Saint Kitts and Nevis		25 Apr 1985 a		20 Jan 2006 a
Saint Lucia		8 Oct 1982 a		
St. Vincent and Grenadines		4 Aug 1981 a		
Suriname		1 Mar 1993 a		
Trinidad and Tobago	27 Jun 1985	12 Jan 1990		
Uruguay	30 Mar 1981	9 Oct 1981	9 May 2000	26 Jul 2001
Venezuela (Bol. Rep. of)	17 Jul 1980	2 May 1983	17 Mar 2000	13 May 2002

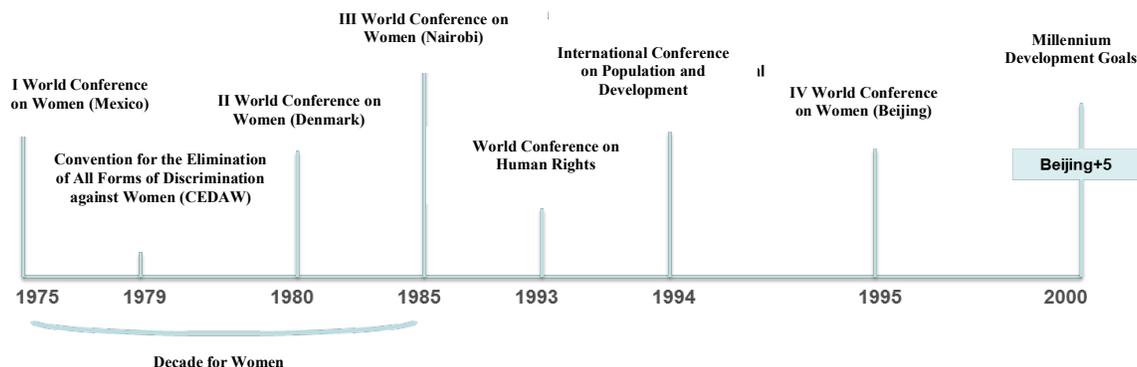
Source: (ELA, 2018)

The principle of non-discrimination is also one of the fundamental pillars of the **Organization of American States (OAS)**. To this effect, the equality of rights, equality before the law and the adoption of legislative measures that support this right, are reflected in the main instruments developed.

(1948) Letter from the Organization of American States	(1948) American Declaration of Rights and Duties of Man	(1969) American Convention on Human Rights	(1994) Convention of Belém Do Pará
<ul style="list-style-type: none"> • "The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex" (Chapter II, Article 3, l). 	<ul style="list-style-type: none"> • "All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor" (Chapter One, Article II). 	<ul style="list-style-type: none"> • "Where the exercise of any of the rights and freedoms recognized in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt (...) legislative or other measures as may be necessary to give effect to those rights or freedoms." (Article 2. Chapter 1. Part I). 	<ul style="list-style-type: none"> • "The States Parties agree to adopt (...) all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women" (Chapter III, Article 7e).

In parallel, since the **1970s**, a series of **International Conferences** have focused on **women's rights** and have generated critical political commitments to ensure equality and progressively shape the development agendas.

After the 1975 Mexico Conference³, there have been **three other World Conferences on Women**, held in Copenhagen (1980), **Nairobi** (1985) and **Beijing** (1995), followed by five-year review processes on the progress and challenges in the fulfillment of the commitments assumed. The Beijing Conference, together with **the International Conference on Population and Development** (Cairo, 1994) marked a turning point for the global gender equality agenda.



³ The Mexico Conference, in addition to providing space for the approval of CEDAW, gave rise to the World Plan of Action for the Advancement of Women, as well as the creation of UNIFEM and the Declaration of the United Nations Decade for Women and Development for the period 1975-1985.

The **International Conference on Population and Development** marked a milestone in women's rights in terms of considering population issues, not from a demographic perspective, but as a central theme of human rights, fundamentally recognizing women's rights to reproductive health and family planning. In addition, the Programme of Action adopted at the Cairo Conference urged governments and employers to eliminate gender-based discrimination with regards to work and employment, as well as to promote laws and measures to reconcile work and family life.

On the other hand, the Beijing Conference and its Platform for Action provided a real programme to ensure the empowerment of women, establishing a series of strategic objectives and measures for the advancement of women. Since the IV World Conference on Women held in Beijing in 1995, the countries of Latin America and the Caribbean have made essential progress in guaranteeing and protecting the rights of women and advancing gender equality in various areas.

Explicitly, the Beijing Platform for Action establishes as one of its strategic objectives *to ensure equality and non-discrimination under the law and in practice* (Strategic Objective I.2), promoting the incorporation of a series of measures to achieve it.

[Measure 232. C] Embody the principle of the equality of men and women in their legislation and ensure, through law and other appropriate means, the practical realization of this principle.

[Measure 232. D] Review national laws, including customary laws and legal practices in the areas of family, civil, penal, labour and commercial law in order to ensure the implementation of the principles and procedures of all relevant international human rights instruments by means of national legislation, revoke any remaining laws that discriminate on the basis of sex and remove gender bias in the administration of justice.

Also of note at the regional level, the **Regional Conferences on Women in Latin America and the Caribbean**⁴, a subsidiary body of the Economic Commission for Latin America and the Caribbean (ECLAC), has convened regularly since 1977 to identify the regional and sub regional needs of women, present recommendations, conduct periodic evaluations of activities carried out in fulfillment of the related regional and international agreements and plans, and provide a forum for discussion on these matters. These conferences also represent **an action plan for a regional gender agenda based on human rights**, which calls for the strengthening of political commitments.

The regional consensus and strategies approved as a result of these Conferences clearly establish the validity of an agenda that considers individual and collective rights, reaffirming the right to development as a human right. While focused on human rights, the agenda also stresses the importance of advancing an international order that is conducive to the real exercise of women's rights, eliminating the discriminatory regulations that support various forms of submission.

⁴ The First Regional Conference on Women took place in July of 1977 in Havana, Cuba.

These agreements call for the modification or harmonization of the national legal framework incorporating the principle of equality and the prohibition of gender-based discrimination.

Among the most recent agreements is the **Montevideo Strategy for the Implementation of the Regional Gender Agenda within the Sustainable Development Framework by 2030**, approved in 2016. It represents the result of the regional political commitment that aims to guide the full implementation of the agreements of the XIII Regional Conference on Women in Latin America and the Caribbean and ensure that the strategy serves as the road map to achieve the full implementation of the 2030 Agenda for Sustainable Development at the regional level, from the perspective of gender equality, autonomy and the human rights of women. The first of its intervention axes, precisely, is dedicated to guaranteeing an appropriate regulatory and legislative framework to enforce gender equality (ECLAC, 2017).

MONTEVIDEO STRATEGY

Axes for the implementation of the Regional Gender Agenda in the Framework of Sustainable Development

1. Normative framework: equality and the rule of law
2. Institutional architecture: multidimensional and comprehensive gender equality policies
3. Popular and citizen participation: the democratization of policy and society
4. State capacity-building and -strengthening: public administration based on equality and non-discrimination
5. Financing: mobilization of sufficient and sustainable resources for gender equality
6. Communication: access to information and cultural change
7. Technology: towards e-government and innovative and inclusive economies
8. Cooperation: towards democratic multilateral governance
9. Information systems: transform data into information, information into knowledge and knowledge into political decision
10. Monitoring, evaluation and accountability: guaranteeing rights and transparency

For their part, the successive Declarations before the sessions of the **Commission on the Status of Women (CSW)** have guided the political agenda of equality in the region. In one of the most recent, the **Declaration of Panama prior to the CSW61**, of February 2017, specifically dedicated to the economic empowerment of women, has established the commitment of governments to direct efforts towards the ratification of ILO Conventions, the fulfillment of international obligations, the promotion of women's access to information, the training of civil servants on gender and effective compliance with the Law. The Declaration also includes commitments concerning the various areas that affect the economic empowerment of women, such as decent jobs, entrepreneurship, equal pay and access to social protection.

The undeniable positive evolution of the international human rights framework established the norms that the States must observe in their internal regulations and policies, as an action plan that, at the same time, constitutes **an obligation due to citizens** in the exercise of their right to access to justice.

DISCRIMINATORY LEGISLATION ON THE AUTONOMY AND ECONOMIC EMPOWERMENT OF WOMEN

In compliance with the commitments acquired by the countries that have ratified the CEDAW Convention (all the countries of the Latin America and Caribbean region), they are obliged to guarantee equality and eliminate discrimination against women in all spheres of political, social, economic and cultural life.

The articles of CEDAW and General Recommendations of the CEDAW Committee linked to the **empowerment and economic autonomy of women** are (Bareiro, 2018):

Article 11	
General recommendation number 13	Equal remuneration for work of equal value (1989) Recommends that the States parties ratify Convention No. 100 of ILO, adopt job evaluation systems based on gender-neutral criteria and encourage collective agreements to ensure the application of the principle of equal remuneration for work of equal value.
General recommendation number 16	Unpaid women workers in rural and urban family enterprises (1991) Include in their reports to the Committee information on the legal and social situation of unpaid women working in family enterprises; collect statistical data related to women who work without payment; and take the necessary steps to guarantee payment, social security and social benefits for women who work without such benefits in enterprises owned by a family member.
Article 13	Right to family benefits, bank loans and recreation.
Article 14	Rural women, all of the rights of all women plus the right to land and to participation in development planning.
General recommendation number 34	On the rights of rural women (2016) Regulates the rights of rural women in relation to the right to participate in and benefit from rural development, health care services, economic and social life, education, employment, political and public life, land and natural resources and adequate living conditions.
Article 16	Property regime of marriage and its dissolution.
General recommendation number 29	Economic consequences of marriage and its dissolution (2013) Serves as a guide for States parties in achieving a <i>de jure and de facto</i> egalitarian regime under which the economic benefits and costs of family relations and the economic consequences of their dissolution are borne equally by men and women.

In the same way, in the economic and labour spheres, the **International ILO Conventions**, ratified by most of the countries of the region establish commitments and fundamental regulations related to gender equality. The most significant are:

Convention No. 100 (1951)	On equal remuneration
Convention No. 111 (1958)	On discrimination in employment and occupation
Convention No. 156 (1981)	On workers with family responsibilities
Convention No. 183 (2000)	On maternity protection
Convention No. 189 (2011)	On domestic workers

These instruments and the corresponding observations by the Committees or Commissions responsible for their follow-up constitute the essential references to identify discriminatory legislation that may still exist in the regulations of countries in the region.

To analyze the regulations and their possible discriminatory bias, the analysis has been grouped along the three axes considered essential for the economic empowerment of women and the exercise of their autonomy, namely:

DISCRIMINATORY LEGISLATION ON AUTONOMY AND ECONOMIC EMPOWERMENT OF WOMEN

Access to property and resources	Access to paid work	Unpaid work
<ul style="list-style-type: none"> • Property regulations • Inheritance laws • Land ownership • Access to credit 	<ul style="list-style-type: none"> • Employment and occupation • Access to employment • Equal pay • Social security and pensions • Protection of domestic workers 	<ul style="list-style-type: none"> • Protection of motherhood • Co-responsibility of men • Right to care programmes

INDEXES OF LEGAL EQUALITY IN COUNTRIES

International organizations such as the **OECD** and the **World Bank** have produced synthetic indexes that, to some extent, measure the degree to which countries have incorporated gender equality in their legislation and institutions.

The OECD has developed the **Social Institutions and Gender Index (SIGI)** that measures gender discrimination in social regulations, daily practices and formal and informal laws in 160 countries. SIGI classifies countries and includes detailed descriptions of gender discrimination in each. The index covers five categories that group different areas of the social, political and economic life of girls and women, including the **discriminatory family code** (which analyses the legal age of marriage, early marriage, parental authority and inheritance) and the **restricted access to assets and resources**

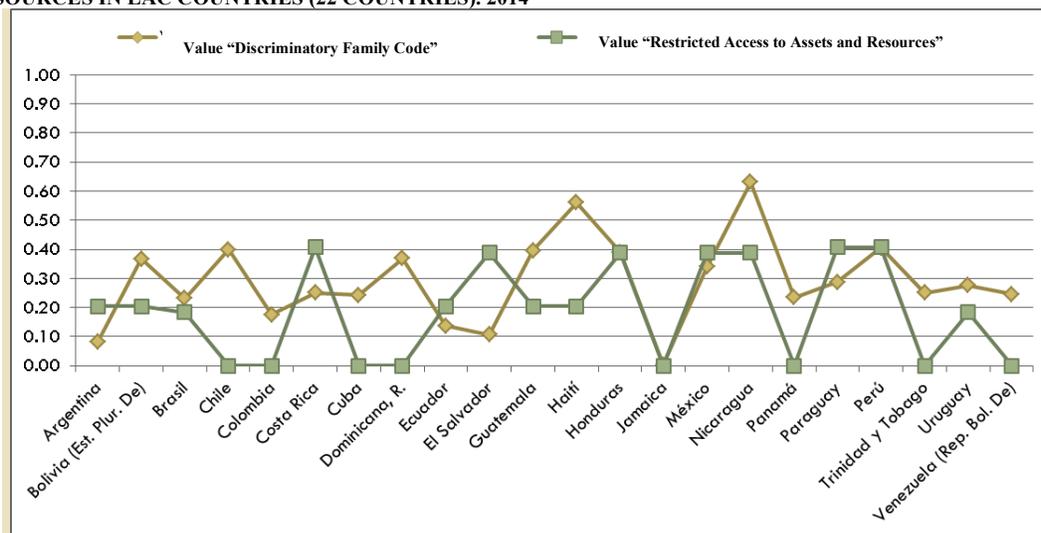
(encompassing secure access to land, secure access to non-land assets and access to financial services) (OECD, 2014).

Figure 1 shows the situation of the countries of the region that have been analyzed (22 in total). As can be seen, Nicaragua (0.63), Haiti (0.56) and Peru (0.41), in this order, show the highest rates of discrimination in the Family Code. Regarding the restriction of access to assets and resources, Costa Rica, Paraguay and Peru, all with an index of 0.41, are the most discriminatory, followed very closely by El Salvador, Honduras, Mexico, and Nicaragua, with a shared index of 0.39.

In its latest edition, published in 2014, the Report for Latin America and the Caribbean states that, in relation to the discriminatory Family Code, **early marriages** continue to be a challenge. Only five countries (Argentina, Chile, Ecuador, El Salvador, and Jamaica) guarantee women and men the same legal age for marriage at the age of 18. These legislative differences help explain the high early marriage prevalence rates in many countries, reaching up to 30% in Nicaragua (OECD, 2014).

In reference to the restriction on access to assets and resources, the Report shows that all countries have eliminated legal restrictions on women's right to own and control land, goods and financial services. However, women have greater difficulties in accessing these assets (OECD, 2014).

FIGURE 1. VALUE OF THE DISCRIMINATORY FAMILY CODE AND VALUE OF RESTRICTED ACCESS TO ASSETS AND RESOURCES IN LAC COUNTRIES (22 COUNTRIES). 2014



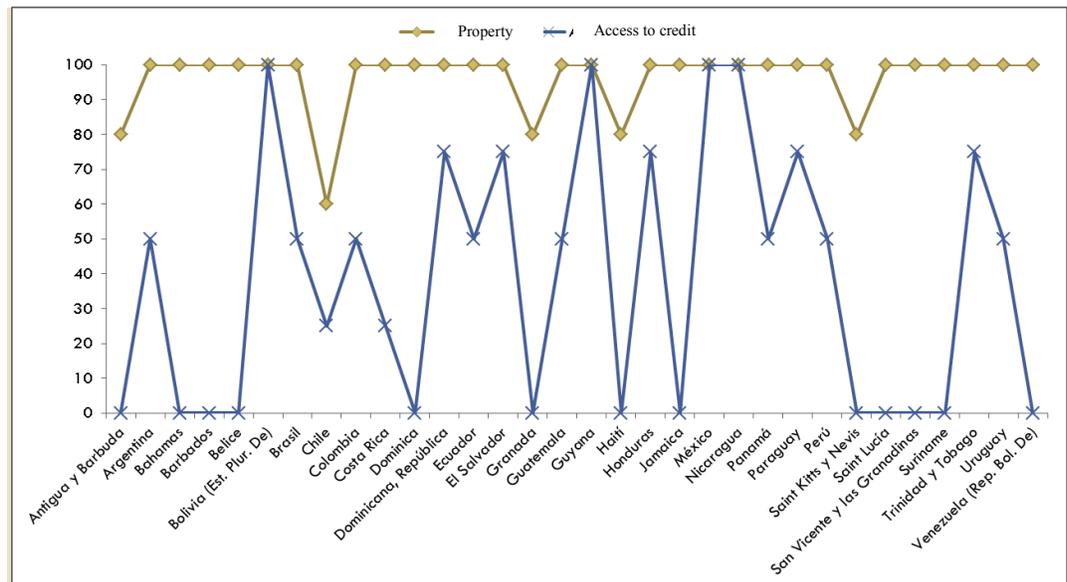
Source: Prepared by the authors based on (OECD, 2014)

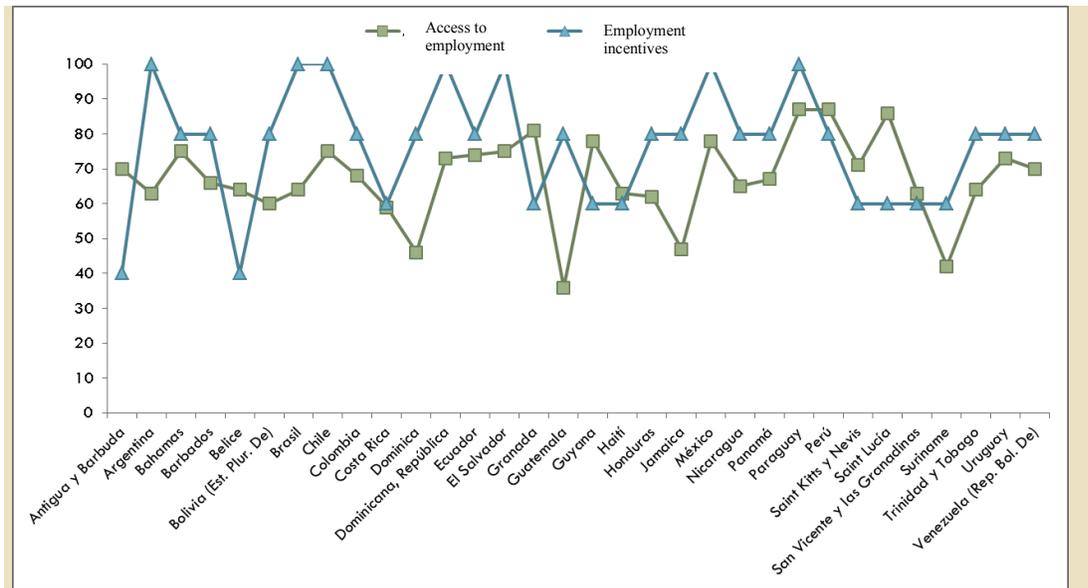
For its part, the **World Bank** has prepared the biannual **Women, Business and Law** report for the last five years, which analyses the legal reforms to improve the economic inclusion of women in a total of 189 countries. Among other aspects, it evaluates how the legislation of countries addresses issues such as **access to property, credit or employment for women** (World Bank, 2018).

In its 2018 report, the World Bank notes that the region's strengths lie in the area of property use (with an average score of 98 out of 100). Latin America and the Caribbean also shows a good performance in access to institutions, with an average rating of 97, given that most of the economies do not differentiate between men and women in a series of public activities, such as registering a business, opening a bank account or obtaining a national identity document. On the other hand, the report also emphasizes the areas in which satisfactory results are not observed and shows that the indicators for getting a job, building credit, and legislation on harassment and domestic violence could be improved (World Bank, 2018).

Figure 2 illustrates the above-mentioned trend. As can be seen, regarding access to property, most countries in the region have advanced legislation, except for Chile (60) and some Caribbean countries such as Saint Kitts and Nevis, Grenada, Haiti and Antigua and Barbuda (all with an index of 80). The regulation of access to credit is less developed, requiring urgent reforms in some cases such as Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Venezuela; economies that obtained a score of zero for this indicator. The valuations related to access and incentives to work seem generally more favorable, although, comparatively, Guatemala is notably last in terms of employment legislation, and Antigua and Barbuda and Belize have the lowest ratings in terms of employment incentives.

FIGURE 2: SCORING IN LEGISLATIVE MATTERS ACCORDING TO SCOPE IN LAC COUNTRIES (32 COUNTRIES) (2018)





Source: Prepared by the authors based on (World Bank, 2018)

DISCRIMINATORY LEGISLATION ON ASSETS AND RESOURCES

PROPERTY REGIME OF MARRIAGE, SEPARATION AND DIVORCE



Article 16 of CEDAW. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular, shall ensure, on a basis of equality of men and women: (...) **(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property, whether free of charge or for a valuable consideration.**

The journey of the analysis of discriminatory legislation begins, as previously indicated, with the regulations that restrict equal access of women and men to assets and resources. The administration and enjoyment of property by women is an indispensable condition to ensure economic autonomy.

In this context, the family legislation includes regulations that affect the personal and patrimonial relationships of those who make up the family group such as the regulations that grant or limit the autonomy and freedom of women to dispose of family resources, to choose their life plans and make the personal decisions necessary in the course of their relationships (ELA, 2018).

The **property regime** defined in the laws establishes the conditions in which assets are acquired and administered for the duration of the couple's relationship and how they are distributed following a separation or divorce. The treatment of these conditions can lay the foundations for the economic development of women or their limitation since *“economic dependence restricts the ability of women to renegotiate or leave marital relationships”* (UN WOMEN, 2017b, pg. 59).

Historically, the status of a married woman has conditioned access to and administration of these assets, since a married woman needed her husband's permission to do so. The Civil Codes and the Family Codes regulated marital relations in this sense.

In recent decades, the countries of Latin America and the Caribbean have made progress, **gradually eliminating the male privileges arising in the marriage**. Even so, in some countries, there are still regulations that prioritize men as heads of household. Thus, vestiges of colonial law may still be found in the legislation that regulates marriage, which as in the tradition of Roman Law, the husband acquires **marital authority** over the person and property of the woman.



Art. 151 of the Civil Code of **Nicaragua** and Art. 167 of the Civil Code of Honduras establish that spouses are obliged to remain faithful and to help each other. The husband is the representative of the family, and in his absence the wife.

Likewise, Article 168 of the Honduran Code establishes that *“the husband is obligated to live with his wife and she is to live with her husband and to follow him wherever he moves his residence”*; Art. 239 states that *“the mother participates in parental power and must be heard in everything that concerns the interests of the children; but the father is the one who, during the marriage, as head of the family, guides, represents and defends his children, in and outside of court.”*

Art. 135 of the **Chilean** Civil Code, on the other hand, states that, marriage establishes a property partnership between the spouses, and the husband takes over the management of the wife's property (...).

Art. 144 of the Civil Code of **Saint Lucia** states that a husband owes protection to his wife; a wife obedience to her husband.

The Chilean regulation is especially noteworthy since it maintains the subordination of the married woman to the husband in the administration of her properties, even though measures are taken to guarantee her intervention and authorization in the case of sale or constitution of a lien on the property. CEDAW has detected the discriminatory nature of this regulation (Bareiro, 2018) (ELA, 2018).



“The marital partnership is to be headed by the husband, who shall administer the spouses’ joint property as well as the property owned by his wife” and that as “administrator of the marital partnership, the husband will exercise the rights of the woman who, as a partner of a civil or commercial organization, will marry.” However, the *“husband cannot voluntarily dispose of or encumber or promise to dispose of or encumber the joint property or the inheritance rights of the woman, without her authorization.”*

Article 1749 of the Chilean Civil Code

Another issue is that in the absence of direct discriminatory legislation, certain property regimes of marriage tend to distribute assets equally between women and men or, on the contrary, make them less equitable.

In general, for example, the **community of property** - which transforms those goods into common property acquired during the marriage or de facto union - implies **more protection for women** as women usually devote a large proportion of their time to unpaid work, thus making their labour insertion more precarious and limiting their access to opportunities to generate their own income. This form of property regime also implies that the sale or use of property requires the agreement of both spouses, and the property will be divided equally upon the dissolution of the marriage.

Thus, the community of property is the formula applied by most countries in the region in the absence of an express decision within the couple and is compulsory in countries such as Bolivia, Colombia, and Cuba (ELA, 2018).

However, the fact is that many countries recognize these rights for marital unions and not de facto unions. For example, Argentina, Chile, El Salvador, Paraguay, Peru and Uruguay (ELA, 2018) (UN WOMEN, 2017b), establish a specific property regime for these non-marital unions. The establishment of differential conditions for these types of relationships constitutes indirect discrimination, considering the high incidence of non-formal relationships in many countries of the region.

TABLE 2: PROPERTY REGIME OF MARRIAGE IN LATIN AMERICA

Country	The possibility for the partners in a relationship to choose the property regime applicable		The regulation is applicable in case of absence of an express decision
	YES	NO	
Argentina			Community of property
Bolivia (Plur. State of)			Community of property
Brazil			Community of property
Chile			Community of property
Colombia			Community of property
Costa Rica			Community of property
Cuba			Community of property
Dominican Republic			Community of property
Ecuador			Community of property
El Salvador			Community of property
Guatemala			Community of property
Honduras			Community of property
Mexico			Community of property
Nicaragua			Separation of property
Panama			Community of property
Paraguay			Community of property
Peru			Community of property
Uruguay			Community of property
Venezuela (Bol. Rep. of)			Community of property

Source: (ELA, 2018) and (UN WOMEN, 2017b)

In addition to the property regime granted to marriage, there are other regulatory aspects that can provide greater protection to women, such as the **establishment of guarantees for the payment of maintenance** in the event of the dissolution of the formal or de facto union (UN WOMEN, 2017b). This aspect is strongly linked to the **custody of the children** born during the marriage or union following the dissolution of the relationship. Whenever the unequal distribution of unpaid care tasks impacts women's work trajectories and economic empowerment, it is imperative to establish legal mechanisms to ensure that compliance

with maintenance of the children is enforced in the event of separation or divorce. (ELA, 2018, pg. 76).

In this regard, it is important to clarify that civil divorce is currently possible in all Latin American and Caribbean countries. This has considerably strengthened the negotiating capacity of women in marriage, however women can still face cultural constraints that restrict the exercise of this right.

From this perspective, the regulation of preferential care after separation or divorce proceedings in Latin America and the Caribbean is established by agreement of the parties in 18 of the 22 countries analyzed, although in the absence of agreements, most of the legislation establishes preference for maternal care (in eight of the countries), as opposed to shared custody, which only occurs in Bolivia, Brazil and Chile. Argentina is the only country that establishes a preference for **shared care** (ELA, 2018).

TABLE 3: PREFERENCE FOR MATERNAL CARE OF CHILDREN AFTER SEPARATION OR DIVORCE PROCEEDINGS IN LATIN AMERICA AND THE CARIBBEAN (22 COUNTRIES)

Country	Establishes maternal preference	The agreement between the parties prevails	Contemplates shared care	Preference for shared responsibility
Argentina				☑
Bolivia (Plur. State of)		☑	☑	
Brazil		☑	☑	
Chile		☑	☑	
Colombia		☑		
Costa Rica	☑			
Cuba		☑		
Ecuador	☑			
El Salvador		☑		
Guatemala	☑	☑		
Guyana		☑		
Honduras	☑	☑		
Jamaica		☑		
Mexico	☑	☑		
Nicaragua		☑		
Panama	☑	☑		
Paraguay	☑	☑		
Peru	☑			
Dominican Republic	☑	☑		

Country	Establishes maternal preference	The agreement between the parties prevails	Contemplates shared care	Preference for shared responsibility
Trinidad and Tobago		☑		
Uruguay	☑	☑		
Venezuela (Bol. Rep. of)	☑	☑		

Source: (ELA, 2018)

In addition, there are regulations in specific cases that provide for care by the mother in various circumstances (ELA, 2018):

- First, **if the parents are not married** (in Costa Rica and Guatemala).
- Second, **if the children are women** (in Ecuador and Peru).
- Finally, in all cases, **if the children are under a certain age** (children under 7 in Mexico, children under 5 in Paraguay, children under 4 in the Dominican Republic and children under 5 in Uruguay).

As can be seen, the legislation continues to prioritize granting custody of the children to the mother, even though in most cases the agreement between the parties prevails. Thus, these regulations strengthen the role of women as caregivers. This, in turn, increases their risk of stalling in scenarios of vulnerability as they assume a greater burden of care for children and, consequently, have less time to engage in paid work.

On the other hand, it is also true that in many cases there are no scenarios for shared custody (lack of income of women, situations of violence, abandonment, non-responsible fatherhood, among others.), thus this type of custody can also generate problems for women. In this sense, joint custody contributes to equality insofar as it is based on the co-responsibility of the parties after the dissolution of the couple. Therefore, the most appropriate legislative solution should not impose a type of custody by default but analyze the conditions of each couple and family.

Finally, the extra “responsibility” for the women when they assume custody of the children is aggravated when the divorced or separated fathers do not pay maintenance or do not contribute enough to ensure the adequate living conditions of the family, even though family law in all countries recognizes the obligation of family assistance and the duty of both parents to provide food.



In its concluding observations on the last report (2012) for **Jamaica** to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), the Committee expressed concern that “*while both parents are legally responsible for the maintenance of their child/children, mothers (particularly single mothers) carry a disproportionate burden of care for children because of cultural factors, as well as legal and administrative inadequacies concerning child maintenance and a lack of participation of men.*” The Committee notes with concern the large numbers (40%) of female-headed households in Jamaica.

In these cases, there have been important advances in the legislation. “Various countries in the region have legal mechanisms - which must be activated by the judicial system - to enforce maintenance obligations, such as the obligation of the employers to withhold, by court order, a percentage of a worker’s salary who owes maintenance; registration in maintenance debtor records; the prohibition against leaving the country or renewing driver’s licenses; the application of interest; civil or criminal sanctions or execution on the person” (UN WOMEN, 2017b, pg. 76)



In 2006, the Ministry of Public Security of **Costa Rica** developed the Protocol of Police Action in Alimony and Child Support, to ensure improved compliance with maintenance payments by men.

Another legal practice that indirectly benefits women is the **recognition of the right to receive a compensatory pension** to restore the imbalance that divorce can produce in the economic situation of one of the spouses. In many cases, and taking into account the persistence of gender roles, women assume almost exclusive responsibility for household and family care, which directly affects their productive capacity and their opportunities to access paid work, constituting a significant economic disadvantage after the divorce.



Article 177 of the **Nicaraguan** Family Code establishes that “the judicial authority may also order a compensatory pension, as a substitute for maintenance, provided that there is no distribution of property between the spouses or cohabitants, in order to avoid the economic imbalance that the divorce may produce to one of the spouses, in relation to the position of the other spouse and a worsening of the situation that the disadvantaged spouse had during the marriage.”

Article 113 of the Family Code of **El Salvador** states “that if the marriage had been contracted under a separate property regime, or if there is a community regime, should the divorce produce an adverse imbalance that implies a significant deterioration in the economic situation of the disadvantaged spouse compared to the situation within the marriage, the person will be entitled to a money pension that will be stated in the divorce decree, in accordance with the evidence presented.

TABLE 4. GENDER EQUALITY IN FAMILY LEGISLATION IN LAC COUNTRIES (22 COUNTRIES)

COUNTRY	GENDER EQUALITY IN THE FAMILY CODE
Argentina	Both women and men can equally initiate divorce, according to the Civil Code. Current divorce laws provide for the equitable distribution of money between divorced couples, often to the detriment of women. The proposed reforms to the Civil Code seek to solve this problem by providing compensation if there is a financial imbalance between the spouses.
Bolivia (Plur. State of)	Both women and men can equally initiate a divorce.
Brazil	Under the Civil Code, women and men have the same rights after a divorce, including the right to custody of children (Articles 1583-1590) and property acquired during the marriage (Articles 1672-1686).
Chile	Under Article 1749 of the Civil Code, the husband is “head of the married couple” and oversees the administration of the property. Law 19947 authorized the divorce in 2004 (Civil Marriage Law). Article 56 states that both spouses can initiate the divorce.
Colombia	In Colombia, the legal provisions relating to divorce apply equally to women and men.
Costa Rica	Although Articles 2 and 34 establish equal rights and responsibilities between spouses concerning the care of children and domestic tasks, under Article 35, men must assume the main expenses of the family. The Family Code also provides for equality in divorce (Articles 41 and 62).
Cuba	Article 2 of the Family Code establishes principles on the equal rights and duties of both spouses, and Article 83 establishes the joint exercise of parental authority.
Dominican Republic	The Constitution recognizes that domestic work and the care of children are not the exclusive responsibility of women, but also of men. In marriage, “women and men have the same rights and obligations and owe each other understanding and mutual respect” and stipulates that, even after separation or divorce, “the father and the mother ... will have the shared and inescapable duty to feed, raise, educate, support, protect, and assist their children.”
Ecuador	Article 138 of the Civil Code of 1989 establishes gender equality in household management. After the divorce, men and women have the same parental rights under the Civil Code. Both women and men have equal rights to initiate a divorce as men, as established in the Civil Code.
El Salvador	The Family Code explicitly states that spouses have the same rights and duties concerning the care of their children and domestic tasks and that neither spouse can prevent the other from receiving education or pursuing other legal activities. The Civil Code establishes that either spouse can initiate the divorce. Parental rights of the woman are recognized after the divorce.
Guatemala	According to the Civil Code, the spouses must share the household responsibilities, and both parents are obliged to share parental authority. Divorce is legal in Guatemala, and both women and men have equal rights to initiate proceedings.
Haiti	Haitian law grants equal rights to both spouses in the marriage.
Honduras	The legal equality of spouses is recognized in Article 112 of the Constitution and, under Articles 2 and 7 of the Family Code, men and women share equal rights and responsibilities concerning parental authority.
Jamaica	Jamaican legislation establishes equal rights and responsibilities for married men and women, and mothers and fathers share parental authority.
Mexico	The Federal Law establishes that women and men have equal decision-making power over children during marriage and that both women and men can be heads of household under Articles 164 to 168 of the Federal Civil Code.
Nicaragua	The Constitution of Nicaragua establishes that family relationships must be based on respect, solidarity and absolute equality of rights and responsibilities between men and women. In Nicaragua there is no Family Law. The Law on Relations between Parents and Children gives mothers and fathers equal rights regarding parental authority, education and the care of their children. Both women and men have equal rights to initiate a divorce.
Panama	Article 1 of the Family Code establishes “equality of rights and duties” for the spouses. The equitable distribution of marital property in the event of divorce only refers to tangible property and does not include property such as pension and savings funds (CEDAW, 2005).
Paraguay	The law (Articles 1, 2 and 6 of the Civil Code) establishes that both spouses exercise joint legal representation of the marital unit with identical rights and duties. Both women and men have equal rights to initiate a divorce, according to the law.
Peru	In Peruvian families, the mother and father, who have the same rights and obligations under Articles 287, 288, 290, 300 and 474 of the Civil Code, share parental authority.
Trinidad and Tobago	Under the Family Law of Trinidad and Tobago (Guardianship of Minors, Domicile and Maintenance), mothers and fathers have the same rights regarding parental authority and custody of their children.
Uruguay	Women and men have the same legal rights and responsibilities concerning parental authority under the Civil Code. According to the Civil Equality Law, both spouses are obliged to contribute to the household expenses, in proportion to their economic means, and there are no known restrictions for single or married women to become heads of household. Both spouses have equal rights to initiate a

COUNTRY	GENDER EQUALITY IN THE FAMILY CODE
	divorce, according to the Civil Code
Venezuela (Bol. Rep. of)	Article 77 of the Constitution establishes equal rights and responsibilities for men and women within marriage, as well as registered de facto unions.

Source: (OECD, 2014)

The analysis allows us to conclude, on the one hand, how significant advances have been made with the expansion of women's rights in marriage (possibility of choosing the property regime, establishment of mechanisms that ensure compliance with maintenance, regulation of the compensatory pension, equality in the initiation of the act of separation or divorce, among others). Despite this, regulations continue to strengthen specific conceptions of assigned gender roles, such as the role of women as caregivers, with the consequences that this implies.

INHERITANCE RULES

As far as the right of succession is concerned, the existing legislation in the countries of Latin America and the Caribbean **does not differentiate between men and women**, equating the right of inheritance for both sexes. The equality of rights of inheritance extends, in addition, to the sons and daughters regardless of the civil status of the parents.

Exceptions appear in cases of unions that are not legally recognized.



Under the Civil Code, **Costa Rican** women and men have the same inheritance rights in case of death of the spouse, if the marriage is legal. This applies to customary marriage that the law recognizes after two people of the opposite sex have lived together for more than three years.

Similarly, married **Haitian** women do not face any legal discrimination in matters of inheritance, but women whose unions are not officially recognized are deprived of inheritance rights, even for property acquired jointly during so-called "consensual unions"⁵.

(OECD, 2014)

Although there is legal equality, some practices and customs show that the regulatory framework is not sufficient to guarantee the rights of women in practice, especially in rural areas. For example, *“in the case of the Plurinational State of Bolivia, widows cannot live with a new partner if they wish to remain on the land that belonged to the deceased. Otherwise, they are forced to abandon the property that they occupy or use for the support of their children. In other cases, women face discrimination within the family, limiting their right to land ownership through the transfer of titles to older children, rather than to the widows. This practice has been observed in rural areas of Brazil”* (ELA, 2018, pg. 96).

⁵ 85% of all relationships in Haiti fall under the category of “consensual unions”.

LAND OWNERSHIP



Women represent a third of agricultural landholders in the region, ranging from 8% in Guatemala to 30% in Chile and Panama. (OECD, 2014)

In the LAC region, **all countries have eliminated women's legal restrictions on access to property and land control.** However, in practice, the data demonstrates the difficulties in enforcing this right.

Until the 1990s, agrarian legislation in most LAC countries had given preference to the head of the household in matters related to the possession and ownership of land, that is, to men and to the exclusion of women. The agrarian reform mechanisms up until then were built on the idea that the beneficiary was the farmer and head of the household, which would benefit all the family members (thus denying the autonomy of the women) (Fuentes, Undated).

Since the 1990s, in the context of neoliberal agrarian reforms, which have been in force to date, provisions **have been incorporated that can be considered "progressive" with respect to women's rights vis-à-vis the land.** The three elements that have represented the most substantial reforms for the advancement of equality in the agrarian sphere have been: i) the recognition that men and women have the right to own land; ii) the preference for women as heads of household in the allocation of state lands, iii) and the establishment of joint title in the name of both members of the couple, in marriages or de facto unions (Fuentes, Undated).



In **Colombia**, the Congress of the Republic passed Law 731/2002, known as the Rural Women's Law. This regulation aims to improve the quality of life of rural women, prioritizing those with low resources and proposes specific measures aimed at accelerating equity between rural men and women. There, land titles were established in the name of the abandoned spouse or permanent partner (Art. 24), preferential access to the land to women heads of household and community businesses or associations of rural women. The law also established the right of participation to women in all adjudication and land use procedures. (Fuentes, Undated)



In 2009, the Political Constitution of the State (PCS) ensured the right of women to land in **Bolivia**, stating *"that the endowment will be made in accordance with the policies of sustainable rural development and the right of women to access, distribute and redistribute land, without discrimination based on marital status or marital union"* (Bolivia, PCS, Article 395) and noted the obligation of the State to *"promote policies aimed at eliminating all forms of discrimination against women in the access, tenure, and inheritance of the land"* (Bolivia, PCS, Article 401). The implementation of these

	<p>regulatory frameworks implied an increase in the participation of women as landholders, increasing from 9% during the first cycle of the agrarian reform to 46% in 2014.</p> <p>The Brazilian experience, for example, in altering the operational frameworks of access to land in the agrarian reform⁶, giving preference to female heads of household and enforcing joint titling, resulted in an increase of women landholders in the marriage or stable union from 23% to 72%, and from 13% to 24% for single female heads of household between 2003 and 2015.</p> <p style="text-align: right;">(FAO, 2017)</p>
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In this way, the legislation of many countries now commonly recognizes **joint property titles**. In Costa Rica, Colombia and Nicaragua, for example, legislation provides that joint titling is required for the allocation of lots by the State. In addition, in Panama, Agrarian Law reforms included joint titling as a requirement for the distribution of state land. In Brazil and Honduras, couples may resort to joint titling, but it is not required. Countries like Guatemala, the Dominican Republic, Peru and Honduras have subsequently moved or made efforts in this direction. (UN-Habitat, 2005).

However, parity in the laws has not prevented women from having much less land, of lower quality and with less legal security than men, less access to essential productive services such as credit or technical assistance, and much lower participation in decision-making (Guereña, 2017).

⁶ Since 2004, the government has embarked on an Agrarian Reform initiative, the Documentation Programme for Rural Workers, to provide rural women with the proper documentation they need to have access to land and to credit, since the lack of documentation is a barrier to the ownership of land by women.



In the development of land redistribution programs, for example, women have not been considered as legal subjects, which in practice, has meant that the officials responsible for implementing policies prefer to communicate with and adjudicate land to men, as was the case in El Salvador. This has represented an additional obstacle for single, widowed or separated women who request access to the programmes. For married or de facto married women, the fact that joint titling is optional and not mandatory may be an obstacle. In addition, requirements often presented as neutral in qualifying and selection systems for the beneficiary population, actually hide unreasonable barriers for women. An example of this is the demand for work experience in the rural sector, which is much more difficult to prove due to the historical lack of recognition of the direct participation of women in agricultural work and the invisibility of their reproductive and household work. Another difficulty arises when organized peasant groups make land requests. Although in almost all cases these organizations include members of both genders, in practice, the participation of women, is minimal, particularly in decision-making. In this way, the organized groups act as a filter, limiting the involvement of women in the state programmes of land distribution. (Deere, 2000)

In this respect, *the enormous gap between the equality mandate and its real conditions of access to property and control over land* (Fuentes, Undated, pg. 27) is evident. To rectify this situation, it would be necessary to first repeal the discriminatory or *neutral* regulations that prevent women from accessing land ownership and, second, to promote the implementation of legal initiatives aimed at eliminating inequality in this area.

ACCESS TO CREDIT



In Latin America and the Caribbean, only 49% of women have a bank account, 11% have savings and 10% have credit. In comparison, the percentages for men are 54%, 16% and 13%, respectively. (World Bank, 2018)

Regarding the autonomy and economic empowerment of women, another critical issue is access to financial services and, within these, credit in particular. The provision of financial resources allows women to modify their spending patterns to generate their own income and assets and ensure the exercise of their social and economic rights. It is also an essential instrument for women to establish themselves on their own, which is one of the ways to achieve economic and social empowerment of women.

Currently **there is no discriminatory legislation in the region that prevents women from accessing financial services** in general and financial credit in particular. Women can, regardless of their marital status, open bank accounts, request loans and sign contracts with financial institutions on an equal basis with men in all countries from which information has been obtained (21 countries) (World Bank, 2018) (OECD, 2014). Some countries have even established regulations that prohibit gender discrimination in access to credit.



In Nicaragua, the Consumer Protection Law prohibits financial service providers from discriminating based on gender or marital status. (World Bank, 2018)

TABLE 5: LAC COUNTRIES THAT PROHIBIT DISCRIMINATION IN ACCESS TO CREDIT

Country	Prohibits discrimination based on gender in access to credit	Prohibits discrimination based on marital status in access to credit
Bolivia (Plur. State of)	✔	✔
Dominican Republic	✔	
El Salvador	✔	
Guyana	✔	✔
Honduras	✔	
Mexico	✔	✔
Nicaragua	✔	✔
Paraguay	✔	
Peru	✔	
Trinidad and Tobago	✔	✔

Source: (World Bank, 2018)

Despite the absence of direct legal discrimination, women have less real access to these services than men.

Women are subject to **indirect discrimination** in the enjoyment of financial services, mainly due to the credit requirements imposed by financial institutions. In the vast majority of cases, the approval of a loan is conditioned by the existence of physical guarantees (such as land, buildings, equipment and cash) and the level of income, which in practice limits the opportunities for women. This provides a good example to illustrate how the limitation in the exercise of one right indirectly affects the exercise of others.

On the other hand, and in contradiction to the apparent lack of discrimination in the legislation, there are cases in which financial institutions apply discriminatory conditions for women in practice.



In Mexico, no evidence of limitations and restrictions on the right of women to access and benefit from financial services has been found in federal legislation.

However, despite the regulatory framework, the Global Entrepreneurship Monitor reported in 2012 that, in practice, financial institutions generally do not provide credit to women on their own; requiring a joint signature from a spouse or parent on loan applications.

(World Bank, 2018)

Therefore, the discrimination in the region in access to credit is subject, above all, to non-discriminatory practices established by law but results in adverse situations for women.

DISCRIMINATORY LEGISLATION ON PAID WORK EMPLOYMENT AND OCCUPATION



Article 11.1. of CEDAW. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on the basis of equality of men and women, in particular: **a) The right to work as the inalienable right of all human being;** **b) The right to the same employment opportunities (...)**



Currently, 56% of women in the region participate in the labour market, compared to 85% of men. (UN WOMEN, 2017b)

As in the case of the areas previously analyzed, there are no formal aspects in the sphere of paid work that **allow affirmation of the existence of discriminatory regulations in most of the countries of the region.** Quite the contrary, in many countries there is specific legislation to promote equal opportunities and gender equality, including the prohibition of discrimination. To this end, the Labour Codes include clauses that prohibit discrimination based on gender, marital status and maternity (ELA, 2018).

In fact, prior to the ratification of CEDAW, many countries had already ratified ILO Convention No. 111 on discrimination in employment and occupation (from 1958 and implemented in 1960). The agreement prohibits *“any distinction, exclusion or preference based on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”*

Honduras and Guatemala were the first two countries in the region to ratify Convention No. 111, the same year that it entered into force, and Suriname was the last to do so, in 2017. Most countries ratified the convention in the 1960s and the 70s.

ILLUSTRATION 1. STAGES IN THE RATIFICATION OF ILO CONVENTION NO. 111 BY COUNTRIES OF THE LAC REGION

Decade 60	Decade 70	Decade 80	Decade 90	Decade 2000	Decade 2010
Guatemala (1960)	Peru (1970)	Antigua and (1983)	El Salvador (1995)	Bahamas (2001)	Suriname (2017)
Honduras (1960)	Trinidad and Tobago (1970)	Dominica (1983)	Belize (1999)	Saint Kitts and Nevis (2000)	

Decade 60	Decade 70	Decade 80	Decade 90	Decade 2000	Decade 2010
Mexico (1961)	Chile (1971)	Saint Lucia (1983)		St. Vincent and the Grenadines (2001)	
Costa Rica (1962)	Venezuela (Bol. Rep. of) (1971)	Uruguay (1989)		Grenada (2003)	
Ecuador (1962)	Barbados (1974)				
Dominican Rep. (1964)	Guyana (1975)				
Brazil (1965)	Jamaica (1975)				
Cuba (1965)	Haiti (1976)				
Panama (1966)	Bolivia (Plur. State of) (1977)				
Nicaragua (1967)					
Paraguay (1967)					
Argentina (1968)					
Colombia (1969)					

Source: (ILO, 2018a)

Consistent with this, the LAC countries have modified their Constitutions and Labour Codes, eliminating discrimination in employment and occupation, based on gender, among other reasons.

Even so, and as evidence that formal equality does not always translate into real equality, both the CEDAW Committee and ILO Committee of Experts (CEACR), in compliance with the stipulations of the Conventions, identify legislative aspects of "*potentially*" discriminatory character for women that affect a minority of countries.

First, it has singled out the application of a **restrictive criterion for the application of the principle of non-discrimination** based on the groups referred to in Convention No. 111 (in some cases reference is made only to specific grounds for discrimination, but not to all of those stipulated by the Convention) or with respect to the area of employment or occupation affected (for example, regulations are issued for dismissal but not for hiring), as in the case of Belize or Cuba (Bareiro, 2018) (ILO, 2018b).

Other comments refer to the **absence of specific legislation** aimed at eliminating discrimination, citing the formal recognition of the principle of non-discrimination or the “alleged” absence of non-discrimination. These types of comments have been made to countries such as Barbados, Jamaica and Haiti (ILO, 2018b).



In **Belize**, paragraph 4 of Article 16 of the Constitution provides for exceptions to the principle of non-discrimination, for situations or groups subject to discrimination. Article 42 of the Labour Law (Amendment) of 2011 provides for protection against unfair dismissal or discipline but does not cover the other areas that include employment and occupation.

In **Cuba**, on the other hand, the Labour Code only provides for protection against discrimination in access to employment and does not cover other aspects of employment and occupation.

In **Barbados**, the CEACR has requested the Government to expressly prohibit direct and indirect discrimination in all aspects of employment and occupation, for all workers, and on all the grounds set out in the Convention.

Jamaica considers the need for specific legislation prohibiting direct and indirect discrimination in employment and occupation for all the reasons listed in the Convention.

In **Haiti**, the Committee has emphasized the fact that the existence of general provisions on equality is insufficient to address specific situations of discrimination. In most cases, comprehensive anti-discrimination legislation is needed to apply the Convention effectively. **(ILO, 2018b)**

On the other hand, the recommendations of human rights organizations commonly observe the need to guarantee equality in the workplace, which reveals **the gap between regulation and practice**, implying that the difficulties are especially related to compliance with regulations (ELA, 2018).



According to the Observations of ILO, in **Guatemala**, cases of discrimination based on gender, ethnic origin and sex are not sanctioned **(ILO, 2018b)**.

The Committee of CEDAW urged **Costa Rica** (2011) to adopt measures to better enforce its labour laws.

As for **Cuba** (2013), the Committee also indicated that, although it there is a provision for workplace discrimination to be reported, this has never happened **(Bareiro, 2018)**.

ACCESS TO EMPLOYMENT



Article 11.1. of CEDAW. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: **(c) The right to free choice of profession and employment, (...)**



The proportion of women employed in low productivity sectors in the region is 46%, six points higher than the proportion of men (UN WOMEN, 2017b).

Women occupy only 21% of the top positions in companies in the region (ILO, 2017).

As previously stated, women in the countries of the region are **formally guaranteed the right to access the same jobs and occupations as men**. However, many countries maintain labour law regulations that exclude women from certain types and modalities of work, such as night work, heavy lifting jobs, employment in certain industrial undertakings and even overtime work.

These regulations are based on the protection of their health or physical wellbeing, specifically related to the biological function of motherhood, arguments that are based on stereotyped conceptions of gender in relation to employment (ELA, 2018) and that, in many cases, group women with children, which entails a perception of women as subjects without the capacity for autonomy.

These types of regulations have been identified in countries such as Argentina, Barbados, Belize, Brazil, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Jamaica, Nicaragua, Panama, Paraguay and Uruguay. ILO, in its comments on the follow-up to Convention No. 111, also includes Saint Lucia in relation to its Factory Regulations of 1948 (ILO, 2018b).



The World Bank states, in its Report 2018 on *Women, Business and Law*, the exemplary case of **Colombia**, where the Constitutional Court has repealed the restrictions that prohibited women from working at night in industrial undertakings, as well as women's work in mining and in jobs deemed hazardous and arduous. **Colombia**, nevertheless, maintains a prohibition against employing children under 18 and women in industrial painting jobs. (World Bank, 2018).

The CEDAW Committee has also made observations to countries such as Costa Rica (2011), the Dominican Republic (2013), Panama (2010) and El Salvador (2008) to encourage the participation of women in non-traditional sectors and overcome occupational segregation, although it does not propose specific legislative changes (Bareiro, 2018).

It should be noted that the right to access the same jobs and occupations implicitly implies the right to access the same positions. The reality, however, indicates that women are **still underrepresented in areas of responsibility and decision-making of companies**. The observations of the international organizations in the legislative sphere hardly address this issue, based on the understanding that there is no direct discrimination to be corrected. However, some countries, aware of the imbalance, are advancing "positive" action in the formulation of laws to mitigate the differences.

	In Panama , Law No. 56 of July 11, 2017 has been approved. This Law states that Central Government institutions, regional governmental institutions, public enterprises, financial intermediaries and mixed capital companies that have a Board of Directors, a Management Board or similar bodies in their organizational structure, will set a minimum quota of women at 30% for the total number of positions.
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TABLE 6. EXAMPLES OF DISCRIMINATORY REGULATIONS TOWARDS WOMEN IN LABOUR CODES OR REGULATION

Country	Regulation	Definition and Scope
Argentina	Labour Contract Regime, Law No. 20,744, Title VII, Chapter I	It is forbidden to hire women and children under 18 years of age in jobs that are arduous, dangerous or unhealthy, as stated in the regulations (Article 176)
Barbados	Factories Act, Part VI	The employment of women and young persons in jobs that involve the handling of certain substances (Article 66) is prohibited.
Belize	Labour Law, Chapter 297, revised edition 2000, Part XV	The employment of women or persons under the age of 18 years in night work in public or private industrial undertaking is prohibited (Art. 161). This prohibition excludes women holding responsible positions of a managerial or technical character, in areas of health care, or in an industrial undertaking in which only members of the same family are employed (Article 162). A register of personal data of all women who have worked in a public or private industrial undertaking must be maintained (Article 163).
Brazil	Consolidation of Labour Laws	Art. 390. The employer is forbidden to employ women for jobs that require lifting over 20 kilos for continuous work, or 25 kilos for sporadic work.
Bolivia (Plur. State of)	General Labour Law	Art. 3. Foreign nationals cannot represent more than 15% of any company or establishment's workforce and must be employed in technical positions. Female employees may not exceed 45% of the total in companies or establishments that, due to their nature, do not require a higher proportion of female work. Art. 46. The effective working day will not exceed 8 hours per day and 48 hours per week. Night work, which constitutes work done between the hours of 8 at night and 6 in the morning, shall not exceed 7 hours. Women's work will not exceed 40 hours per week. Art. 59. Women and children are prohibited from working in dangerous, hazardous or arduous jobs, and in occupations that harm their morals and good customs. Art. 60. Women and persons under the age of 18 will only be able to work during the day, except in nursing, domestic service and other tasks that will be established.

Country	Regulation	Definition and Scope
		Art. 53. Women and persons under the age of 18 may not be employed in night work in an industrial undertaking. In jobs other undertakings that are not industrial, children under the age of 18 may be hired for the shifts between midnight and 5 in the morning, and in all cases, have a break of no less than 11 consecutive hours. Exceptions are made in unexpected cases that require immediate attention. The Ministry of Labour may grant special authorizations in some instances.
Chile	Labour Code	Art. 211-J. Children under the age of 18 and women will not be able to carry, transport, load, drag or push, and without mechanical help, weights over 20 kilograms.
Colombia	Substantive Labour Code	Art. 242 -2. It is forbidden to employ children the age of 18 and women in industrial painting jobs ...
Costa Rica	Labour Code	Art. 87. It is absolutely forbidden to employ women and children under the age of 18 to carry out work that is physically or morally dangerous, hazardous or arduous work, as determined by the regulations. ... Employers should also check with the worker and employee organizations concerned and representative associations of women to verify the form and conditions for the performance of women's work in those activities that could be harmful, whether due to dangerous, unhealthy or hazardous conditions. Art. 88. The night work of women is also prohibited, with the exception of home-based or family workers, nurses, social worker, domestic employees, among others, who may work as long as the work is compatible with their physical, mental and moral health; and those dedicated to purely bureaucratic work or sales in commercial establishments, provided that they do not work past midnight, and that their working conditions, work hours, overtime, etc., are duly stipulated in individual work contracts, previously approved by the General Inspection of the industry.
Ecuador	Labour Code	Art. 139.- Maximum load limits for women and 15-year-old adolescents- In the manual transport of loads where women and children are employed, the following maximum limits shall be observed: MAXIMUM LOAD LIMITS, IN POUNDS: Males under the age of 16 – 35; Females under the age of 18 – 20; Males between the ages of 15 and 18 – 25; Females between the ages of 15 and 18 – 20; Females over the age of 20 – 25.
Guatemala	Labour Code	Art. 147. The work of women and children must be appropriate especially to their age, conditions or physical state, and intellectual and moral development.
Honduras	Labour Code and its reforms	Title III. Work subject to Special Regimes. Chapter I. Work of women and children. Art. 127: The work of women and children must be appropriate to their age, conditions or physical state, and intellectual and moral development. Art. 130: Women and children will have an intermediate break of two hours in an ordinary working day.
Jamaica	The Women's Law (Employment) of March 2, 1942, amended on 1964.	Art. 3. 1. No woman shall be employed in night work except where the night work is: (a) for the purpose of completing work commenced by day and interrupted by some unforeseeable cause which could not be prevented by reasonable care; (b) necessary to preserve raw materials, subject to rapid deterioration, from certain loss; (c) that of a responsible position of management held by a woman who is not ordinarily engaged in manual work; (d) carried on in connection with the preparation, treatment, packing, transportation or shipment of fresh fruit; (e) that of nursing and of caring for the sick; (f) carried on in a cinematograph or other theatre while such theatre is open to the public; (g) carried on in connection with a hotel or guest-house, or with a bar, restaurant or club (h) carried on by a Pharmacist registered under the Pharmacy Act.

Country	Regulation	Definition and Scope
Nicaragua	Labour Code	Art. 56. There will be no overtime for women or children under the age of 16. Art. 126. Women may not be employed in underground mining work or tasks classified as beyond their strengths or that may be dangerous to the physical or moral conditions of their gender.
Panama	Labour Code	The work of women is prohibited in: 2. Unhealthy activities as determined by the Ministry of Labour and Social Welfare.
Paraguay	Law No. 213/93 Labour Code	Art. 47. The following conditions will be considered null and unbinding between contracting parties, although stated in the contract: b) Those that establish dangerous or unhealthy work for women and children under the age of 18.
Uruguay	Constitution of the Republic Law No. 5032, preventive measures to avoid work accidents	Art. 54. ... The work of women and children under the age of 18 will be specially regulated and limited. Art. 4. Women and children may not be employed in the cleaning or repair of running engines, machines or other dangerous transmission agents.

Source: Prepared by the authors based on (ELA, 2018)

EQUAL REMUNERATION



Article 11.1. of CEDAW. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: **d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (...)**



In Latin America, women earn 15% less than men on average. (ILO, 2017).

In addition to the CEDAW Convention, all the countries of the region have ratified, albeit at a different rate, **ILO Convention No. 100 on Equal Remuneration of 1951.**

ILLUSTRATION 2. STAGES IN THE RATIFICATION OF ILO CONVENTION NO. 100 BY COUNTRY OF THE REGION

Decade 50	Decade 60	Decade 70	Decade 80	Decade 90	Decade 2000	2017
Jamaica (1952)	Costa Rica (1960)	Chile (1971)	Venezuela (Bol. Rep. of) (1982)	Granada (1994)	Ecuador (2000)	Suriname
Peru (1953)	Paraguay (1960)	Bolivia (Plur. State of) (1973)	Dominica (1983)	Trinidad and Tobago (1997)	Saint Kitts and Nevis (2000)	
Cuba (1954)	El Salvador (1961)	Barbados (1974)	Saint Lucia (1983)	Belize (1999)	Bahamas (2001)	
Argentina (1956)	Colombia (1963)	Guatemala (1975)	Uruguay (1989)		St. Vincent and the Grenadines (2001)	
Haiti (1956)	Panama (1964)	Honduras (1975)			Antigua and Barbuda (2003)	
Brazil (1957)	Mexico (1967)					
Dominican Rep. (1957)						
Guyana (1958)						
Nicaragua (1958)						

Source: (ILO, 2018a)

The Convention establishes in its Article 2 that the countries must, “*by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value*”. In its Article 1, the Convention also defines the concept of “remuneration” as: “*the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment.*”

In compliance with the provisions of the Convention, almost all countries in the region have included **provisions to ensure equal remuneration for women and men** in their legislation (either in the Constitutions, Labour Codes, Employment Laws, ...), although this does not guarantee, as previously stated, real access to this right.

According to the comments of ILO on the follow up of the application of the Convention, only Barbados, Saint Kitts and Nevis, Suriname, and Trinidad and Tobago⁷ lack the legislative framework to address this issue (ILO, 2018b).

TABLE 7: REGULATIONS ON EQUAL REMUNERATION IN LAC COUNTRIES. 2018

REGULATORY SCOPE	COUNTRIES
Countries that give constitutional status to equal remuneration	Argentina, Brazil, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, México, Panama, Paraguay, Dominican Republic, Uruguay and Venezuela.
Countries that include equal remuneration in labour regulations	Antigua y Barbuda, Bahamas, Argentina, Bolivia, Brazil, Costa Rica, Cuba, Dominica, Ecuador, El Salvador, Granada, Guatemala, Haiti, Honduras, Jamaica, México, Panama, Paraguay, Dominican Republic, Santa Lucia and Venezuela.
Countries that include equal remuneration gender equality regulations	Colombia, El Salvador, Guyana, Honduras, México, Nicaragua, Panama, Peru and Uruguay.
Countries that have specific regulations for equal remuneration	Belize, Chile, Colombia, Peru y St. Vincent, and the Grenadines.
Countries that commit to the principle of equal pay for equal work	Argentina, Bolivia, Colombia, Ecuador, Paraguay and Peru.

Source: Prepared by the authors based on (Salazar-Xirinachs, 2018)

Nevertheless, with respect to the establishment of provisions to ensure equal remuneration, a source of discrimination observed at the legislative level is a **restrictive interpretation** of the concept of remuneration and the principle of work of equal value, two key aspects to effective equality in this area.

Specifically, according to the Comments of the ILO CEACR, Cuba, El Salvador and Venezuela would not include certain cash or in-kind payments that should be considered within the **remuneration concept**, for example, certain social benefits in Venezuela

⁷ Saint Kitts and Nevis has a law on equal remuneration (Law No. 23 of 2012), however, it is still pending approval by the National Assembly. In the case of Suriname, it is understood that the process of adaptation to international regulations will begin shortly, due to the recent ratification of the agreement (in 2017). Trinidad and Tobago, despite having Law 69 of 2000 on Equal Opportunities, whose purpose is to prohibit certain types of discrimination, does not include specific provisions on equal remuneration for men and women for work of equal value.

(medical expenses, payment for training courses, payment of funeral expenses, ...); the cost of representation, transportation, work items in El Salvador; or stipends, travel expenses, social security benefits, equipment rentals and tools, among others, in Cuba. Likewise, in Antigua and Barbuda, the terms “salaries”, “gross wages” and “remuneration” are used interchangeably in practice, which does not allow a correct application of the Convention (ILO, 2018b).

But it is with respect to the principle of equal remuneration for **work of equal value** where most countries implement a restrictive application or fail to comply with a restrictive application of the Convention, a situation observed in 20 of the 33 countries analyzed. The applications range from legislation that only establishes equal remuneration for the same job (Belize, Chile, El Salvador, Honduras, Jamaica, Saint Kitts and Nevis, and Saint Vincent and the Grenadines) to those that establish equal remuneration for employment for the same occupation, function, work day, seniority, efficiency, qualification, level of responsibility or by the same employer or company (Antigua and Barbuda, Brazil, Colombia, Cuba, Costa Rica, Guatemala, the Dominican Republic and Panama).

However, according to the CEACR, *“the concept of ‘work of equal value’, under the Convention, which should not only provide equal remuneration for men and women working the same occupations, carried out under the same terms and conditions, but also for equal remuneration for work carried out by men and women that is different in nature but nevertheless of equal value. In addition, the application of the principle of equal remuneration for work of equal value should not be limited to comparing female and male workers in the same establishment and who are employed by the same employer. It is essential to ensure that the scope of comparison is broad enough for the application of the principle of equal remuneration.”*



In **El Salvador**, Article 38.1 of the Constitution, Article 123 of the Labour Code and Article 19 of the internal labour regulations for the private sector establish the principle of equal remuneration for men and women when performing the same job in the same company under identical conditions. The Law on Equality, Equity, and Eradication of Discrimination against Women of 2011, in its Article 25, provides for the elimination of any wage differentiation between men and women due to the performance of a same position and job function. These provisions are more restrictive than the principle of equal remuneration for men and women for work of equal value. (ILO, 2018b).

In addition to the limitations indicated in the interpretation of the principle of equal remuneration for work of equal value, the observations of ILO establish sources of direct discrimination as found in **Saint Lucia** (ILO, 2018b).



Article 11.1 of the Contracts of Service Act of **Saint Lucia** states that: **“Subject to the provisions of this Act, an employee is not entitled to a severance payment if immediately before the relevant date the employee: a) if a man has attained the age of 65; or (b) if a woman has attained the age 60”.** (ILO, 2018b)

Beyond the strictly legislative considerations, the CEACR has made the following comments to the countries concerning (ILO, 2018b):

- The obligation to establish **objective job evaluation systems** to ensure equal remuneration for men and women for work of equal value; observations made to Argentina, Bolivia, Brazil, Chile, Dominica, Granada, Guatemala, Guyana, Honduras, Jamaica, Mexico and Paraguay.
- The application of **equal remuneration in the public sector** (case of El Salvador).
- The establishment of **cooperation with employers' and workers' organizations** mainly oriented towards the implementation of equal remuneration through collective agreements (request made to Dominica, Ecuador, Grenada, Guyana, Haiti, Honduras, and Trinidad and Tobago).
- Alternatively, the reinforcement of the **mechanisms for the application** of the principle of equal remuneration through grievance reporting systems in Bolivia or labour inspections, an observation made to Brazil, Ecuador, Guatemala and Honduras.

On the other hand, the observations made by the CEDAW Committee in this area concern Costa Rica, which it invites to deal with pay differences (2017); Panama, recommending adopting measures to guarantee equal remuneration for work of equal value (2010); and El Salvador, urging the elimination of unequal pay (2008) (Bareiro, 2018).

With regards to progress achieved, as previously stated, **most of the countries have incorporated equal remuneration clauses** in their employment and gender equality laws or labour codes. Countries such as Chile, Colombia, Peru, Belize and Saint Vincent and the Grenadines have gone a step further by enacting **specific laws**, albeit with restrictive criteria regarding the principle and quite limited in terms of application.



Chile enacted Law 20,348 in 2009, which regulates the right to equal remuneration and states that the employer must comply with the principle of equitable remuneration for men and women for work of equal value.

Colombia, on the other hand, approved Law 1496 of December 29, 2011, guaranteeing equality of wages and labour remuneration for women and men; mechanisms are established to eradicate any form of discrimination, and other provisions are enacted. The Law establishes that all men and women workers are equal before the Law; it details wage valuation factors that employers must consider, and it stipulates the obligation of enterprises to **keep records of the profile and allocation of positions by sex, functions and remuneration.**

In **Peru**, Law 30709 was approved in 2017, which prohibits pay discrimination between men and women, by determining categories, functions and wages that allow the application of the principle of equal remuneration for equal work.

Belize, on the other hand, approved the *Equal Pay Act* in 2003.

Saint Vincent and the Grenadines followed suit, approving the *Equal Pay Act in 2004*.

In addition to the legislation, there are many other factors that impact wage inequality such as public policies (for example, employment, economic, educational), union and business organizations (their human resources and wage policies, collective bargaining and agreements, among others), the social and economic valuation of the jobs carried out mostly by men and by women, or their individual and collective bargaining power.

It is also important to note that many of the inequalities are concentrated in the non-objective and "invisible" wage components (extraordinary payments, bonuses, among others), which requires a review of the application of the regulations to ensure their inclusion, as ILO points out. All this combined with the significant weight of informal employment in the region and the participation of micro and small enterprises in the productive fabric - sectors with the greatest concentration of women and remuneration gaps, makes it necessary to consider implementing specific policies on equal remuneration along with legislative measures to increase effectiveness. In particular, it is critical to consider the high percentage of women who work in the informal sector, which prevents or severely restricts their access to benefits such as social protection.



In January 2018, **Panama** formally joined the Equal Pay International Coalition (EPIC), a multi-stakeholder coalition led by ILO, UN Women, and OECD, to promote equal pay for men and women for work of equal value.

Within the framework of this commitment, the National Work Plan has been designed to promote wage equality that includes knowledge, awareness and measurement tools on the gender wage gap in the country. Its current Vice President and Chancellor, who also leads the Coalition at the regional level, also has a Regional Action Plan that defines measures and proposals to be promoted in all of the countries of Latin America and the Caribbean.

TABLE 8: OBSERVATIONS MADE BY ILO CEACR ON THE APPLICATION OF CONVENTION NO. 100 ON EQUAL REMUNERATION FOR LATIN AMERICAN COUNTRIES

Countries	Restricted application of “remuneration”	Incorrect application or non-application of the concept of “equal value”	CEACR Observation Year
Antigua y Barbuda	X	X	2016
Argentina	Legislative observations are not collected		2017
Bahamas		X	2017
Barbados	There is no legislative framework that supports the right to equal remuneration for men and women for work of equal value.		2017
Belize		X	2012
Bolivia (Plur. State of)		X	2016
Brazil		X	2017
Chile		X	2016
Colombia		X	2016
Costa Rica		X	2016
Cuba	X	X	2016
Dominica		X	2017
Dominican Republic		X	2016
Ecuador		X	2015
El Salvador	X	X	2016
Granada	Legislative observations are not collected		2017
Guatemala		X	2016
Guyana	Legislative observations are not collected		2017
Haiti		X	2017
Honduras		X	2017
Jamaica		X	2017
Mexico		X	2016
Nicaragua			2016
Panama		X	2015
Paraguay	Legislative observations are not collected		2015
Peru	Legislative observations are not collected		2014
Saint Kitts and Nevis	There is no legislative framework that supports the right to equal remuneration for men and women for work of equal value.		2016
Saint Lucia	X		2015
St. Vincent and the Grenadines		X	2016
Suriname	There is no legislative framework that supports the right to equal remuneration for men and women for work of equal value.		
Trinidad and Tobago	There is no legislative framework that supports the right to equal remuneration for men and women for work of equal value.		2016
Uruguay	X	X	2014

Countries	Restricted application of "remuneration"	of	Incorrect application or non-application of the concept of "equal value"	CEACR Observation Year
Venezuela (Bol. Rep. of)	X		X	2017

Source: (ILO, 2018b)

SOCIAL SECURITY AND PENSIONS



Article 11.1. of CEDAW. 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure the equal on a basis of equality of men and women, the same rights, in particular: **e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity, and old age and other incapacity to work, as well as the right to paid leave; (...)**



In 2015, the proportion of men and women 65 years or over who received a pension, whether of contributory or non-contributory, represented 61% and 45% respectively (ILO, 2018c).

Another fundamental aspect linked to the economic empowerment of women is related to social protection systems, which include access to health services, economic benefits in case of illness, unemployment, work accidents, occupational diseases, maternity, disability and pensions.

The biggest problem linked to accessing the right to social protection in Latin America and the Caribbean results from the high **rates of informal employment** registered in the region⁸, which excludes a broad section of society, particularly women. Therefore, it is assumed that social security system coverage is very low for both men and women, although notably lower for women, a gap that increases with the addition of other variables such as age or ethnic origin. Likewise, the more precarious employment situation of women, in terms of working hours, contracts, wages, etc., leads to inferior or less beneficial social protection coverage.

Against this backdrop, within the social protection systems, the main **gender discriminations** are conditioned by a **twin-track approach**.

⁸ On average, almost five out of every 10 employed persons work in informal jobs and do not contribute to social security (ILO, 2018c).

The first is subject to the design of **contributory pension systems** linked to the performance of a remunerated economic activity, restricting access to this benefit for a vast majority of women who do not participate in the labour market or who only have beneficiary status as wives of a contributor, even though they are carrying out functions essential to society and the economy such as child care. This contributory system also excludes informal workers, who are not entitled to the benefits of social protection systems.

In most LAC countries, social security systems are contributory, associated with the performance of an economic-labour activity. As such, unpaid work is not considered in access to social protection rights. Women who dedicate themselves exclusively to this work, a significant proportion in the region, access these benefits as **subjects of rights "derived" from the husband or spouse** (Pautassi, 2005).

NON-CONTRIBUTIVE SOCIAL PROTECTION

As mechanisms to mitigate poverty, non-contributory social protection instruments have become more widespread in recent years, such as conditional cash transfer **programmes**. These include provisions for women, who are usually the effective recipients of such benefits. The most common argument that supports this fact is that transfers allocated to women are more likely to ensure the promotion of the capacities of household members, particularly children (Rodríguez, 2011).

Despite this fact, there is a **lack of gender considerations** in the design of most of these programmes, to the extent that although they have a positive impact on women's income and their autonomy over spending decisions, they perpetuate the socially constructed notion that women are primarily responsible for caring for household members, and therefore do not promote their labour insertion and access to income through other means (Rodríguez, 2011). The focus of the programmes, moreover, is not on achieving greater economic empowerment of women but rather on the protection of children.

In the field of non-contributory benefits, **social and non-contributory pensions** are also becoming more widespread, already present in 10 countries of the region, focused on alleviating poverty among the elderly, especially among women. These types of benefits are subject to income eligibility criteria in most countries but are universal in some countries (IDB, 2015)

The second form of gender discrimination is conditioned by the establishment of **systems that are based on a typically "male" working life pattern**, that is, based on many years of contribution and uninterrupted linear work trajectories, as compared to the trajectories of women, which are generally interrupted by pregnancy and/or child care, in addition to the fact that their more precarious conditions of employment (work hours, wages, type of contract) result in lower benefits.

Access to pensions, for example, is generally subject to a minimum number of years of social security contribution, regardless of the gender of the contributor, even when it is

known that, by assuming the reproductive and caregiving role, women tend to present many more gaps in their employment and fewer years of contribution than men.

Interestingly, differentiations are made in the **retirement age** for women and men in many countries such as Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Honduras, Jamaica, Panama, and Venezuela (IDB, 2015). This differentiation is considered as a positive measure to recognize the burden of care assumed by women. However, depending on the pension system, this measure can be discriminatory if the conditions established to reach the maximum retirement (in terms of the number of years of contribution needed) remain the same for men and women.

In addition, although the early retirement age can be interpreted as a subsidy in a individual capitalization scheme, it may imply lower savings for women and, therefore, a lower yield and amount of benefits (ELA, 2018).

Although the lack of a gender approach in the design of social protection systems cannot be considered a direct legislative discrimination, despite the indirect negative impact on women, it is worth mentioning some regulations with clearly discriminatory content.

Of note are the regulations adopted under individual capitalization schemes, calculated based on the specific **mortality scales** by gender, which penalizes women in terms of the amounts of benefits received based on their greater average life expectancy (ILO, 2018c).



In **Chile**, the current private pension system is based on a discriminatory capitalization regime for women due to the use of differentiated mortality scales for men and women. This implies that a male worker and a female worker with equal accumulated funding who take retirement at the same age would receive annuities of differing amounts based solely on their gender (**ILO, 2018b**).

To compensate for the imbalances, some countries have introduced modifications to their pension regulations, mitigating the impact of discontinuities in the work trajectories of women related to child care and the impact of inequality on care responsibilities (ELA, 2018)



In **Uruguay**, through the reforms introduced by Law 18395 of 2008, the conditions of access to pensions were relaxed, recognizing a year of contributions per biological or adoptive son or daughter for women in the calculation work years. Thus, all mothers receive one year of contribution per child, up to a maximum of 5 years.

In **Chile**, Law 20255 of 2008, although it maintains the individual capitalization scheme, incorporated several modifications that have resulted in an improvement in the equity of the system. One of them has been the incorporation of a solidary pension system, which eliminates the minimum contribution requirements, benefiting those who do not participate in the labour market and are dedicated to care and household work. Likewise, they receive a contribution equivalent to 18 minimum wage levies for each live birth or adoption. As it is a collective contribution, it is independent of the income level of the woman and her status as a salaried worker.

Another remarkable aspect of the reform in Chile is **the division of the cumulative individual account balance in the event of divorce** or annulment of the marriage. When this happens, the judge is authorized to divide the individual capitalization account if one of the parties sees that its situation diminished as a result of having assumed a greater burden of care for the children and household tasks (ELA, 2018).

TABLE 9: QUALIFYING CONDITIONS TO ACCESS THE PENSION SYSTEM IN LATIN AMERICA AND THE CARIBBEAN (26 COUNTRIES)

Country	Qualifying conditions to access the pension system
Argentina	Retirement age for an old-age pension (basic pension) is 65 for men and 60 for women with at least 30 years of service.
Bahamas	Retirement age is 65 years with at least 500 weeks of contributions.
Barbados	The retirement age was 66 years for both men and women with at least 500 weeks of contributions, including at least 150 weeks of paid contributions.
Belize	The legal retirement age is 65 years for both men and women with at least 500 weeks of credited contributions, including at least 150 paid contributions.
Bolivia (Plur. State of)	The minimum retirement age is 58 for both men and women. Gender policies allow women to retire up to three years earlier (at 55), if they have pension contributions for at least 10 years. There is no maximum retirement age.
Brazil	Private-sector employees are entitled to retire with a full pension at age 65 for men and 60 for women if they have a contribution record of at last 15 years. Alternatively, it is possible to retire after having contributed to social security for 35 years for men and 30 years for women, irrespective of the retiree's age.
Chile	The normal retirement age is 65 for men and 60 for women. Pension benefits can be drawn at any point from that age. Individuals are not required to stop working to claim pension.
Colombia	Insured people can retire when they reach a sufficient balance in their individual accounts to finance an annuity equivalent to 110% of the minimum pension. The minimum age to draw a pension under this scheme is 62 years for men and 57 for women, with 1,150 weeks of contributions.
Costa Rica	The average retirement age is 65 for men and women with at least 300 months of contributions. Women are entitled to an old-age pension at 59 years and 11 months with 450 contributions; and men at 61 years and 11 months with 462 contributions.
Dominican Republic	Workers with at least 30 years of contributions can retire at the age of 60 and are eligible for the minimum pension. Insured persons over age 65 who have contributed for a minimum of 25 years are eligible for a guaranteed minimum pension.
Ecuador	Pension benefits can be withdrawn by men and women at any age provided they have contributed at least 480 months; at age 60 with at least 360 months of contributions; at 65 with at least 180 months or at 70 with at least 120 months.
El Salvador	The pensionable age is 60 for men and 55 for women with 25 years of contributions. Retirement is also permitted if an individual can claim an annuity equal to 60% of the base earnings for contribution purposes or 160% of the minimum pension.
Guatemala	In 2010, the retirement age was 60 years with at least 180 months (15 years) of contributions. In 2011 and 2012, the number of minimum contributions was increased to 192 months (16 years). In 2013, the contribution requirement was increased to 204 months and to 216 months in 2014.
Guyana	It is necessary to reach age 60 with least 750 weeks of paid or credited contributions, including at least 150 weeks of paid contributions.
Haiti	Employees in commercial, industrial or agricultural sectors are insured by the ONA insurance. The old-age pension age is equal to 55 with at least 25 years of contributions. An old-age grant is paid if the insured does not satisfy the qualifying conditions for an old-age pension benefit.

Country	Qualifying conditions to access the pension system
Honduras	The mandatory retirement age is 65 for men and 60 for women. Individuals who do not satisfy the contribution requirements at the time of retirement and do not qualify for a pension will have their contributions refunded as a lump sum.
Jamaica	The retirement age is 65 for men and 60 for women with at least 1 716 weeks of paid contributions, including an annual average of 39 weeks of paid or credited contributions.
Mexico	Normal retirement age for private sector workers is 65 for men and women, subject to 1 250 weeks (around 24 years) of contributions.
Nicaragua	The retirement age is 60 for men and women with at least 750 weeks of contributions.
Panama	The retirement age is 62 for men and 57 for women, if they have a contribution record of at least 216 months (240 months as of 2013).
Paraguay	The retirement age for both men and women is 60, with a record of at least 25 years of contributions.
Peru	The qualifying age for a pension for both men and women is 65. With a record of 20 years of contributions.
Suriname	The General Old Age Pension Plan (AOV) provides all residents of Surinamese nationality with flat old-age pension at the age of 60.
Trinidad and Tobago	The retirement age is 60 years for men and women with a minimum of 750 weeks of contributions contributed or credited.
Uruguay	The retirement age is 60 years for men and women with 30 years of contributions.
Venezuela (Bol. Rep. of)	The retirement age is 60 for men and 55 for women with a contribution record of at least 750 weeks.

Source: Developed by the authors based on (IDB, 2015)

SOCIAL PROTECTION FOR DOMESTIC WORKERS



Approximately 18 million people in Latin America are employed in domestic work, representing 7% of the employment in the region. 93% are women, and 17% are migrants, of which, in turn, 73% are women (ILO, 2018c).

Another important area linked to the economic empowerment of women is that which concerns domestic workers, a sector that concentrates a significant proportion of female employment and in which the vast majority of employees are women. Another noteworthy feature of this labour segment is the high proportion of migrants and informal employment, which reaches 78% of the sector (UN WOMEN, 2017b).

Due to the nature of the activity and the space in which it is developed, there has been no regulation of the sector in national legislation until relatively recently, and, therefore, it is an area that is conditioned by profound discrimination.

In 2011, ILO adopted Convention No. 189 on domestic workers, which entered into force two years later, placing the protection of the rights of these workers at the international level.

Convention No. 189 equates the rights of domestic workers with workers generally. It regulates their fundamental rights and other aspects such as the minimum age to work in this category (Article 4), the obligation to inform about the conditions of employment (Article 7); hours of work, overtime compensation, periods of rest and paid annual leave (Article 10); the establishment of a minimum wage (Article 11); the limited proportion of the remuneration in the form of payments in kind (Article 12); the guarantee of a safe and healthy working environment (Article 13); access to social protection mechanisms (Article 14); or guarantees of access to justice (Article 16), among others.

Despite its recent approval, there are **many countries in the region that have already ratified** the Convention; specifically, a total of **14 countries** to date.

TABLE 10: LAC COUNTRIES THAT HAVE RATIFIED ILO CONVENTION NO. 189 ON DOMESTIC WORKERS PER RATIFICATION YEAR

Year 2012	Year 2013	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018
Uruguay	Bolivia (Plur. State of) Ecuador Guyana Paraguay	Argentina Colombia Costa Rica Nicaragua	Dominican Republic Chile Panama	Jamaica		Brazil

Source: (ILO, 2018a)

Based on the application of the Convention and the analysis of the national regulations on domestic workers, the primary sources of legislative discrimination observed are (ILO, 2018a):

- **The exclusion of certain categories of domestic workers** in the corresponding legislation (for example, in countries such as Argentina, Costa Rica, Nicaragua, Paraguay and Uruguay). This exclusion usually affects those employed in sporadic work, which excluded many domestic workers from accessing labour rights domésticas (ILO, 2018b). ILO Convention No. 189 establishes, in this regard, that *"a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker."*

Other causes of exclusion are found in legislation such as that of Uruguay.



In **Uruguay**, Law No. 18065, of November 26, 2006, on Domestic Work, does not exclude any category of workers from its scope of coverage. However, in subparagraph b) of Article 2 of Decree No. 224/007, which regulates the law, domestic work is not considered domestic work if carried out in the rural areas. **(ILO, 2018b)**

- **The lack of equality of hours of work, periods of rest and paid annual leave** with the rights of workers generally. Countries such as El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the Dominican Republic have not established regulations for the work hours of domestic workers and have only set rest periods every 9 or 12 hours (ILO, 2018c). All the countries that recognize the right of domestic workers to paid annual leave as established by the general labour regime in force, except for Peru that reduces the days and the Dominican Republic that excludes allowances for leaves of absence (Documentation and Research Centre (DRC) and UN Women, 2016). In addition, some countries differentiate between categories of domestic workers.



In **Bolivia**, Article 11 of Law No. 2450 of 2003 on regulation of salaried household work provides for a working day of eight hours for domestic workers who do not reside where they work, while providing for a working day of ten hours for domestic workers who reside in the household where they work. **(ILO, 2018b)**

- **Non-assimilation of the minimum wage in the other sectors:** Paraguay states, by law, that the domestic worker salary is equivalent to 60% of the legal minimum wage. In Panama, domestic workers are assigned a legal minimum wage by professional category that is equivalent to 40% of the average wage set for other sectors of the economy. In Mexico, domestic workers have the right to a minimum wage by professional category, but this has yet to be officially established by the National Commission for Minimum Wages. Peru, El Salvador, Honduras, Guatemala and the Dominican Republic exclude domestic workers from the legal minimum wage and leave the determination of compensation to the parties (Documentation and Research Centre (DRC) and UN Women, 2016).
- **Limited access to social protection:** Most of the countries of the region establish obligatory contribution to social security systems through the general national systems (such as Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guyana, Jamaica, Nicaragua, Panama, Paraguay, Peru, the Dominican Republic, Trinidad and Tobago, Uruguay and Venezuela). In El Salvador, Guatemala, Honduras and Mexico, special insurance regimes are established. Affiliation to these different regimes is voluntary and tends to recognize lower benefits for domestic workers. The experience in Central American countries that have implemented these regimes, such as El Salvador and Honduras, shows low levels of insurance (ILO, 2016). In some countries, there are legal and administrative challenges for the recognition of this right for women workers employed by more than one employer (multi-employer affiliation).

On the other hand, although most countries provide legal coverage for certain benefits, in Mexico and the Dominican Republic, domestic workers are not covered by the maternity law, and Bolivia, Nicaragua, Guatemala do not recognize their right to retirement (Documentation and Research Centre (DRC) and UN Women, 2016).

Again, the high proportion of informal employment in the region, especially in the area of domestic work, results in a very low coverage of social protection for domestic workers, which is subject to *"the contributive capacity of employers and workers of the sector, the legal and institutional framework related to the ability to exercise contributory and evasion control, the capacity of inspection services, as well as to the degree of administrative simplicity of the process for the registration and payment of contributions"* (ILO, 2018c, pg.120).

Other possible sources of discrimination noted by ILO CEACR on compliance with the provisions of Convention No. 189, are: the **minimum age** to perform paid domestic work (situation in Ecuador, for example, which allows self-employment starting at age 10); the lack of **privacy guarantees for domestic workers** (situation in Colombia and Costa Rica); or the insufficient legal mechanisms to enforce **Labour Inspections** in the homes (observation made to Argentina and Colombia) (ILO, 2018b).

The CEDAW Committee, on the other hand, in relation to domestic workers, has called upon the Dominican Republic to improve oversight of the conditions of domestic workers (2013) and advised Guatemala to adopt measures to provide access to social security (2009) (Bareiro, 2018).

Despite the persistence of the aforementioned discriminations, there has been considerable progress in the region in recent years with the enactment of specific regulations on the subject. Bolivia approved the Law on Domestic Work (Law No. 2450) in 2013; Peru approved the Law on Domestic Workers (Law No. 27986), that same year; Uruguay approved the Law on Domestic Work (Law No. 18065) in 2006; Argentina approved the Law on the Special Regime for the Employment of Domestic Workers (Law No. 26844) in 2013; and Act No. 5407 on domestic work entered into force in Paraguay in 2015 (ILO, 2016).

Regarding reforms to the Labour Codes, of note are those in Costa Rica of 2009, with the approval of Law 8726 on *Paid Domestic Work* and in Chile, with Law 20786 of 2014, that amends the working hours, *rest periods and remuneration to which domestic works are entitled, and prohibits the requirement to wear uniforms in public places*. Ecuador has also instituted reforms to labour regulations that have had positive impacts (ILO, 2016). Uruguay, Costa Rica and Ecuador have also implemented regulatory practices that have advanced the protection of domestic workers.



In 2006, **Uruguay** established a regulation for domestic workers, extended social security to the sections covered by Convention 102 (Minimum Regulation), set a minimum wage for female workers, established control measures, simplified the payment of benefits, developed different information campaigns and acquired experience in collective bargaining.

On the other hand, the incentives that allow for the deduction of salary and individual social security contributions from income tax are complementary policies that must be formalized in the sector.

This has led to significant positive developments - for example, Uruguay is the country with the greatest effective social security for domestic workers.

In **Costa Rica**, because part-time domestic workers opt for voluntary insurance and in some cases work for more than one employer, it is difficult to insure them. In this context, the Government has developed *the comprehensive proposal for the extension of contributory coverage to paid domestic workers*, which would allow benefit to be extended to this population category. **The proposal includes the design of a new mechanism to adjust the economic cost of insurance and establish new mechanisms to facilitate coverage such as online registration, direct contacts with domestic workers and measures to ensure that there is an employment contract behind each insurance policy.**

In **Ecuador**, in 2011, the Ministry conducted 14,000 home inspections in the middle- and upper-class urban areas, including direct interviews with domestic employees concerning their employers' compliance with labour obligations. **In cases where the labour regulations were respected, inspectors affixed a "decent work" label at the entrance to the residence concerned and in cases where non-compliance was observed, the corresponding financial penalties were imposed, together with the requirement to regularize the workers' situation.**

(ILO, 2018b) (ILO, 2018c)

In general terms, it can be affirmed that there have been more advances in the Andean Region and Southern Cone to ensure the labour rights of domestic workers. On the

contrary, in Central America, Mexico and the Dominican Republic (except for Costa Rica), significant discriminatory regulations persist in the employment of paid domestic work. Similarly, there is a need to support ongoing initiatives to advance the updating of legislation, as well as the ratification of ILO Convention No. 189 in the English-speaking Caribbean region (ELA, 2018).

It is concluded, therefore, that although *"the good practices adopted in the region by different countries are encouraging and promising, they are certainly not sufficient. On the one hand, it is necessary to advance legislative reforms that eliminate the discriminatory regimes of domestic work compared with other jobs. On the other hand, there is still a need to continue to pursue public policies that address, from a multidimensional perspective, the formalization and broader access to social security"* (ILO, 2018c, page 133), as well as the control and audit of mechanisms in the application of regulations (ELA, 2018).

DISCRIMINATORY LEGISLATION ON UNPAID WORK

MATERNITY PROTECTION



Article 11.2. of CEDAW. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or maternity leave and discrimination in dismissals on the basis of marital status; b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; (...); d) To provide special protection to women during pregnancy in the types of work proved to be harmful to them.



Women, in general, face greater discrimination during pregnancy and motherhood. Pregnancy-related dismissals, avoiding hiring women of childbearing age, the performance of pregnancy tests or the widest wage gap are some of the most frequent manifestations of this discrimination. (ILO, 2018c).

Maternity protection is a fundamental right for paid workers but also a right of children, acknowledged in the *Convention on the Rights of the Child*, an instrument that promotes equality in obligations and responsibilities in the upbringing of children by mothers and fathers.

In addition to the provisions of the CEDAW Convention, ILO has regulated this right through the enactment of **Convention No. 183 on maternity protection** of 2000, which entered into force two years later.

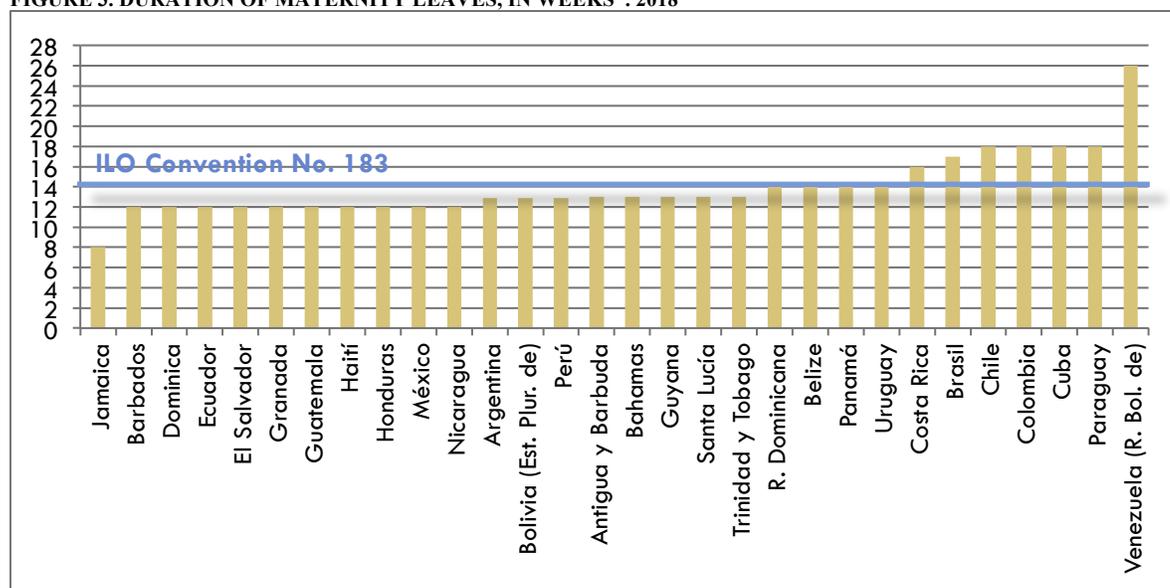
The main rights included in this Convention refer to the right of pregnant or breastfeeding women to not have to perform work that is prejudicial to the health of the mother or child (Article 3); to a period of maternity of not less than 14 weeks (Article 4); to a leave period, before or after the period of maternity leave, in the case of illness or complications related to childbirth (Article 5); to the collection of benefits during leaves (Articles 6 and 7); to the protection of employment and non-discrimination women during pregnancy or during a period following her return to work (Articles 8 and 9); and to the reduction or interruption of paid work time for breastfeeding (Articles 10 and 11).

Currently, **only four countries in the region have ratified ILO Convention No. 183:** Belize (whose regulations establishes a 14-week leave), Cuba (18 weeks), the Dominican

Republic (14 weeks) and Peru (49 days before and after delivery), although 11 of the 30 countries, for which data is available, provide or exceed this recommended minimum, as is the case in Brazil, Costa Rica, Chile, Cuba, Colombia, Paraguay and Venezuela, which have leave periods exceeding 16 weeks.

Regardless of the status of ratification of Convention No. 183, labour standards in **all countries of the region regulate maternity protection.**

FIGURE 3. DURATION OF MATERNITY LEAVES, IN WEEKS*. 2018



Source: (ELA, 2018), (World Economic Forum, 2017)

* The instances where leaves are established in days or months has been converted into weeks to facilitate comparison.

The review of the labour regulations shows that the **main legislative discrimination that continues to occur**, considering the rights included in Convention No. 183 as fundamental rights, include (ELA, 2018):

- The establishment of maternity leave under the 14-week minimum, a condition observed in 19 of the 30 countries analyzed.
- Lack of protection against dismissal during pregnancy (in Belize), during maternity leave (in Grenada and Trinidad and Tobago) or both (in Guyana and Saint Lucia).



The regulations in force in **Grenada** are incredibly restrictive: a woman is entitled to three months of leave if she has worked 18 months with the same employer prior to the pregnancy. Otherwise, she is entitled to **take maternity leave without pay.**

In addition, a significant restriction is established on the right to the enjoyment of maternity leave: the women **entitled to leave only once in each period of two years and on no more than three occasions including the first occasion (ELA, 2018).**

The Committee of Experts (CEACR) of ILO also points out, related to the protection of pregnancy, the need to expressly prohibit legislation that requires **pregnancy testing** as a condition for obtaining or remaining in a job in several countries of Central America (Guatemala, the Dominican Republic and El Salvador) where this practice seems to occur recurrently among employers (ILO, 2018b). The CEDAW Committee has also made this observation for the Dominican Republic and has encouraged Panama to guarantee maternity rights (Bareiro, 2018).

Other sources of discrimination noted besides those outside the guarantees established in Convention No. 183, refer to the fact that most of the rights are focused on the **pregnancy, delivery and breastfeeding period**, while there are barely any regulations that address other periods of care throughout the family life cycle. They also refer to the fact, that in the great majority of cases, **men are excluded as rights holders** in care responsibility, an issue that is addressed in greater detail below. And, of course, the lack of **universality of maternity rights**, which only benefit paid workers in formal employment, excludes a vast proportion of women workers in the region (ELA, 2018). The lack of recognition of maternity protection rights also affects certain categories of paid workers, such as employers, people who are self-employed, agricultural workers and domestic workers.

On another note, because the payment of maternity leave is **assumed totally or partially by the employer** (as in Venezuela, Nicaragua, Honduras, Costa Rica and the Dominican Republic) (ELA, 2018), this could produce indirect discrimination in hiring or result in women's reduced bargaining power, especially in precarious work situations.

It should be added, however, that in accordance with the mandates of Convention No. 183, the income recognized during the period of leave is equal to 100% of the worker's salary in all countries except Bolivia, Paraguay and most of the of the Caribbean countries.

Finally, it must be stated that countries such as Antigua and Barbuda, Belize, Costa Rica, Ecuador, Grenada, Guyana, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname and Uruguay have not guaranteed the right of women to return to an **equivalent position** at the end of their maternity leave, as is the case in Mexico, where reincorporation is guaranteed to the same position held prior to leave.



Mexico recognizes the right to return to the same job after the period of maternity leave. This guarantee is included in the Constitution of Mexico. Article 123.A.V.: *"During pregnancy, women will not perform any work that requires excessive physical effort and that could potential be dangerous to the pregnancy; they will have the **right to enjoy a leave due to childbirth, which shall cover six weeks before the birth and six weeks thereafter**, and will receive their full wages and maintain their employment and the rights acquired under their labour contract.* (ILO, 2018b).

Faced with the persistence of the abovementioned discriminatory legislation, some countries have shown legislative progress in protecting the rights of pregnant women and those with dependent children.

Thus, for example, some countries have modified regulations to **extend coverage to non-salaried workers** who contribute to social security, such as employers, independent or self-employed workers, or salaried workers who occupy categories for which coverage is considered difficult, such as domestic or agricultural work. However, in practice, effective access to leave for these workers also requires that affiliation for these types of employment be mandatory, given that voluntary mechanisms achieve very low adhesion (ILO, 2018c).

There are also countries that have expressly prohibited the requirement of pregnancy tests to obtain or keep a job, a practice that, as stated, is still common in some countries of the region.



Uruguay has adopted Law No. 18868 of December 23, 2011, which prohibits the requirement of pregnancy tests to obtain or keep a job, or for promotion in any public and private sector position or job and establishes the most severe sanctions in case of non-compliance.

In **Mexico**, Article 113 of the recently amended Federal Labour Law, prohibits employers from requiring certificates that women are not pregnant to obtain or keep a job, or for promotion and dismissing or directly or indirectly coercing women to resign because of pregnancy, a change in civil status or care for children.

(ILO, 2018b).

TABLE 11: MATERNITY PROTECTION IN LABOUR REGULATIONS IN LATIN AMERICA AND THE CARIBBEAN (30 COUNTRIES)

Country	Salary Coverage	Protection against Dismissal
Antigua and Barbuda	60% by social security 40% by the employer for six weeks.	
Argentina	100% by social security	During pregnancy and seven and a half months after delivery
Bahamas	100%: 2/3 by social security and 1/3 by the employer	During pregnancy and leave
Barbados	100% by the social security	During pregnancy and leave
Belize	100% by social security or by the employer if the worker was not registered	During leave
Bolivia (Plur. State of)	100% by social security, with a limit of 75% of the salary if it exceeds the minimum	During pregnancy and one year after birth
Brazil	100% by social security	During pregnancy and five months after birth
Chile	100% by social security	During pregnancy and one year after the end of maternity leave
Colombia	100% by social security	During pregnancy and leave
Costa Rica	100% if the person has contributed for nine or more months / 75% if the person has contributed between six and nine months / 50% if the person has contributed between three and six months 50% by social security/50% by the employer	During pregnancy and leave
Cuba	100% by social security	The duration of the protection is not specified
Dominica	60% by social security and employer	During pregnancy and six months after birth
Dominican Republic	100% combined, 50% by social security, 50% by the employer	During pregnancy and six months after birth
Ecuador	100% of salary, 75% by social security and 25% by the employer	During pregnancy and leave
El Salvador	75% paid by the employer	During pregnancy and leave
Granada	In the case of monthly employees, a minimum amount of 40% of two monthly wages For employees who are paid weekly or biweekly, a minimum amount of 40% of four biweekly wages In the case of employees who are paid daily wages, a minimum amount of 40% of 1/5 of the wages earned in the 12 months prior to the start of the leave period 60% by social security and 40% by the employer (40%)	During pregnancy
Guatemala	100%, 2/3 by social security and 1/3 by the employer	During pregnancy and lactation period
Guyana	70% of the average salary, by social security	
Haiti	100% by social security	During pregnancy
Honduras	100% combined, 67% by social security and 33% by the employer	During pregnancy and three months after birth
Jamaica	100% paid by the employer	During pregnancy and lactation period
México	100% by social security	The right has the same job is recognized
Nicaragua	100% of the last salary 60% by social security 40% paid by the employer	During pregnancy and leave
Panama	100% combined	During pregnancy and leave
Paraguay	100% of the salary by social security	During pregnancy and leave
Peru	100% by the social security	During pregnancy and three months after birth
Saint Lucia	65% of the salary, by social security	
Trinidad and Tobago	100% of salary the first month 50% of the wages the following two months 50% by social security and 50% by the employer	During pregnancy

Country	Salary Coverage	Protection against Dismissal
Uruguay	100% by social security	During pregnancy and six months after birth ⁹ (2)
Republic of Venezuela (Rep. Bol. De)	100% combined, 67% by social security and 33% by the employer	During pregnancy and one year after birth

Source: Developed by the authors based on (ELA, 2018)

⁹ The period of protection is not established by law, but jurisprudence has interpreted it as stated.

CO-RESPONSIBILITY OF MEN



In Guatemala, women express that they dedicate seven times more time to unpaid care and domestic work than men do; in Brazil and Ecuador four times more. In the rest of the countries where data is available, women dedicate two to three times more time to this work than men (UN Women, 2017).

Together with maternity protection, one of the key measures to overcome discrimination in the economic sphere is to implement regulations that ensure the involvement of men in family responsibilities. Legislation on maternity protection must be accompanied by regulations that establish leave periods for men, guaranteeing the principle of *co-parenting in the legislation related to care* and preventing the burden of care from being borne unilaterally by women. These regulations can take the form of paternity leave or recognition of care responsibilities for both women and men workers.

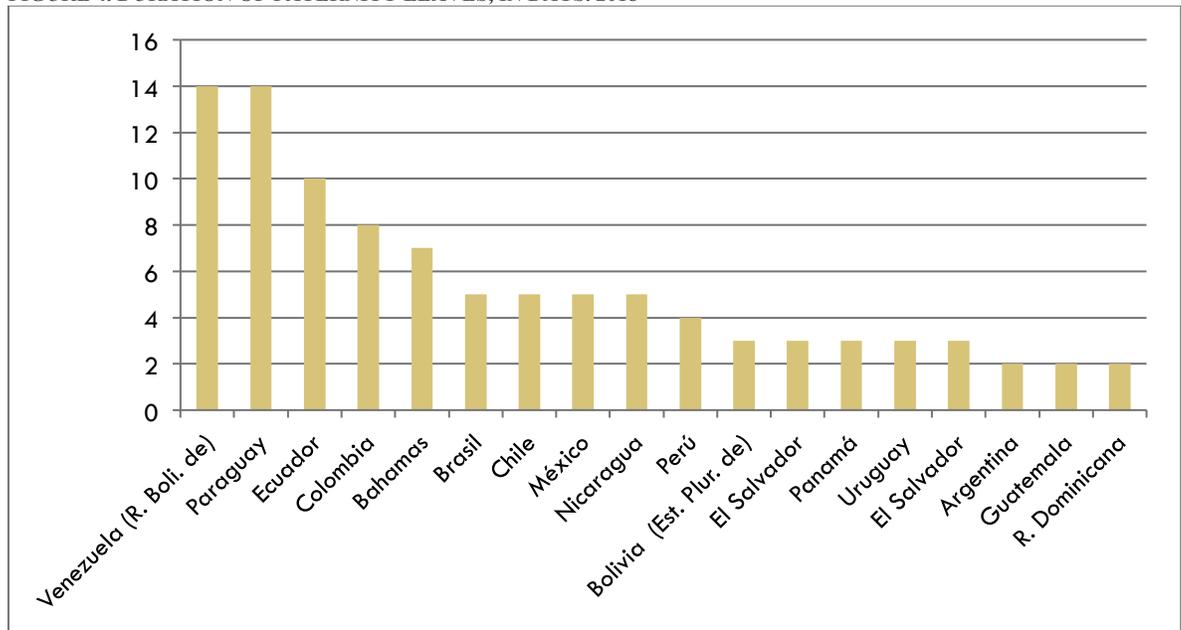
In practice, regulations in the region on leaves linked to the birth of children are mainly directed to mothers. **Paternity leaves for men are non-existent or of short duration.** Countries such as Antigua and Barbuda, Barbados, Belize, Costa Rica, Cuba, Dominica, Grenada, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago, **do not have an established paternity leave.** In the countries that include this right, the leave periods are less than 10 days (except in Paraguay and Venezuela, which are 14 days) and are generally designed to enable the father to be present for the childbirth and the days immediately following.

In some of these countries, parental leaves may be **shared between the father and the mother** (in the case of Chile, Cuba or Uruguay) (ILO, 2018c), which in practice means maternity leave, suggesting the need to establish non-transferable paternity leaves. In addition, because leave is not adequately subsidized¹⁰, few men actually use it, indicating that it may be more appropriate to consider a system in which costs are covered by social security or at least by a combined system (MenCare, 2017b).

In this regard, the CEDAW Committee has recommended that Cuba (2013) encourage men to take paternity leave and that the Dominican Republic (2013) promote greater male participation in care and domestic tasks (Bareiro, 2018).

¹⁰ A large portion of the cost of the leave is paid by the employer.

FIGURE 4. DURATION OF PATERNITY LEAVES, IN DAYS. 2018



Source: (ELA, 2018), (World Economic Forum, 2017)

The progress made in recent years shows that, fortunately, more and more countries are implementing this right or, where appropriate, expanding it in a context in which the promotion of co-responsibility among men does not only rely on these types of measures but also on an active involvement in the care and upbringing. Even so, progress remains slow and insufficient.



In **Brazil**, Law No. 13.257/2016 amended the Corporate Citizen Programme (*Programa Empresa Cidadã*) instituted by Law No. 11.770/2008, extending the five-day paternity leave established by Law to 20 days for employees of companies participating in this programme and provides for parenting coaching sessions.

Employees receive full pay for the extended period. The companies that participate in the programme receive Government tax credits in return. In 2018, there were more than 21,200 companies in the programme.

TABLE 12: COUNTRIES AND PATERNITY LEAVE IN THE LABOUR REGULATIONS OF LATIN AMERICA AND THE CARIBBEAN

Country	Paternity Leave
Antigua and Barbuda	Does not have
Argentina	In private employment, two days of leave per birth Between five to 20 days in the regulations applicable to the public sector
Bahamas	One week unpaid family leave per birth
Barbados	Does not have
Belize	Does not have
Bolivia (Plur. State of)	Three days of paid leave
Brazil	Five days of leave paid by the employer, which can be taken within one month of the birth. In the case of workers from public and private companies affiliated to the Corporate Citizen Programme, the leave is extended to 20 days with full compensation for parents who follow a parent coaching programme.
Chile	Five days per birth or adoption, which can be used from the date of birth in continuous days (excluding the week) or distributed within the first month from the date of birth The mother may choose to transfer postnatal parental leave, starting at the seventh week and for the period indicated, to the father. This leave is covered by social security. In case children affected by severe illness or accident, either parent (at the choice of the mother) can be absent for a number of hours equivalent to 10 regular working days a year, taken in full or partial days, a combination of both
Colombia	Eight days of leave per birth, by the social security In case of adoption of a girl or boy under the age of seven, the person will be entitled to six weeks of leave in the absence of a spouse or partner
Costa Rica	Does not have
Cuba	Does not have
Dominica	Does not have
Dominican Republic	Two days of leave for the birth of the child, 100% paid by social security when the person has a minimum of eight months of contributions in the 12 months before birth. Otherwise, by the employer.
Ecuador	Ten days of paternity leave, with an additional five days in case of cesarean or multiple births. In the event that a child is born prematurely in special care conditions, the paid paternity leave is extended by eight days. In cases of a child born with a degenerative, terminal or irreversible disease with a severe degree of disability, the father is entitled to a paid leave of 25 days. In case of death of the mother during childbirth or during maternity leave, the father is entitled to the entire leave or the part of the remaining leave that would have corresponded to the mother. 15-day leave in case of adoption Payment of 100% of the salary: 75% by social security, 25% by the employer
El Salvador	Three days, 100% paid by the employer
Granada	Does not have
Guyana	Does not have
Guatemala	Two days: 75% by social security, 25% by the employer
Haiti	Does not have
Honduras	Does not have
Jamaica	Does not have
Mexico	Five days, paid by the employer
Nicaragua	Does not have
Panama	Three days, paid by the employer
Paraguay	Fourteen days, paid by the employer
Peru	Four days, 100% by social security
Saint Kitts y Nevis	Does not have
Saint Lucia	Does not have
St. Vincent and the Grenadines	Does not have
Trinidad and Tobago	Does not have
Uruguay	Ten days in the public sector Three days in the private sector, paid by the employer
Venezuela (Bol. Rep. of)	Fourteen consecutive days after the birth of the child or the adoption of a child under the age of three. 100% by social security. 21 days for multiple births.

Source: Developed by authors based on (ELA, 2018)

RIGHT TO CARE SERVICES



Article 11.2. of CEDAW. 2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures **c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; (...)**



The average coverage of care services for children under the age of three continues to be deficient in the region. For example, net enrollment rates for girls and boys from 0 to 3 years in 2009 were around 5% in Guatemala, Honduras, the Dominican Republic and Paraguay and only reached 20% in countries such as Cuba and Mexico (D'Aquino, 2018).

Without available data for LAC, it is estimated that, worldwide, only 5.6% of the population over the age of 65 lives in countries that provide universal mandatory coverage for care services (ILO, 2016).

Discrimination against women in the field of economic autonomy is subject to the historical sexual division of labour that places them predominantly in the reproductive sphere and makes them first, and almost exclusive, responsible for unpaid and domestic care work. From this point of view, the legislation also addresses regulations and laws that tend to balance this type of work between the State, the community and families, applying an approach to *the right to care and be cared for* in co-responsibility (of the three actors mentioned), universality (guaranteeing access and coverage to all citizens) and gender equality (fostering systems of care that make it possible to equalize the opportunities and responsibilities of women and men).

From this perspective, the **Workers with Family Responsibilities Convention**, No. 156, of 1981, establishes the right of workers with family responsibilities to work without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities. It stipulates that, to this end, the signatory States must adopt measures to allow workers with family responsibilities to exercise their right to free choice of employment (Article 4); to take account of the needs of workers in terms of and conditions of employment and in social security (Article 5); to take account of the needs of workers with family responsibilities in local or regional community planning; and

to develop or promote community services, public or private, such as child-care and family services and facilities (Article 5).

To date, **only 11 countries in the LAC region have ratified** ILO Convention No. 156, namely: Argentina (1988), Belize (1999), Bolivia (1998), Chile (1994), Ecuador (2013), El Salvador (2000), Guatemala (1994), Paraguay (2007), Peru (1986), Uruguay (1989) and Venezuela (1984).

Regarding this convention, the ILO CEACR has not made many recent observations to the countries of the region. Those found are primarily related to the lack of development of a national policy that ensures the rights set forth in the Convention (for example, the case of Guatemala or El Salvador) or the focus of these rights exclusively on women (for example in Guatemala) (ILO, 2018b).

On the other hand, the CEDAW Committee, in its latest observations, urged Costa Rica (2011) to take measures in order to provide affordable and accessible childcare services to enable women to balance their work and family responsibilities, and the Dominican Republic (2013) to make progress with measures to reconcile employment and family responsibilities (Bareiro, 2018), issues on which both countries are already working.

Apart from the observations made, the evidence shows that the development of legislation and practice on the right *to care and be cared for* is in its early stages, especially since the provision of this type of work in the region continues to be heavily focused on the family, that is, it is resolved through informal arrangements within households and mostly by women, with little legislation aimed at the provision of care services by the State.

In the same way, laws or policies aimed at introducing flexibility in labour organizations to enable employees to truly exercise this right are relatively few and barely extended. The countries that require employers to provide childcare services in the workplace or through an external provider are also the exception. Even in those workplaces that have care services, they are offered exclusively to mothers, which can be counterproductive for the hiring of women. In Bolivia, Ecuador and Paraguay, exceptionally, care services are also provided for working fathers, (ILO, 2018c).



In **Guatemala**, Article 155 of the Labour Code obligates every employer with more than 30 workers to provide childcare services. The CEACR has asked the Government to take the necessary measures to guarantee that this right benefit both men and women, without discrimination on the basis of sex (**ILO, 2018b**).

On a positive note, several countries of the region have introduced the right to care as a fundamental right in their constitutions or legislation. This right is appearing in the implementation of **National Care Systems**, based on a co-responsible model of care shared by families, the State, the community and the market, conceiving care as a universal right and gender equality as a transversal principle.

The most exemplary case is that of **Uruguay**, which has implemented this System since 2015, and is being developed in countries such as **Paraguay, Colombia, Costa Rica, El Salvador, Mexico and the Dominican Republic**. **Some local governments are also creating legislation on the subject.**



In **Uruguay**, Law 19353 (of November 2015) establishes that all children, persons with disabilities and elderly persons in situations of dependency, have the right to care. The law also recognizes the social value of caregiving tasks and stipulates the need to change the prevalent gendered division of labour. It establishes the beneficiaries of the policy, their rights and obligations, as well as the institutional arrangements.

In **Costa Rica**, through the adoption of Law No. 9220 (2014), the National Child Care and Development Network was established in response to the comments made by CEDAW in 2011.

The Political Constitution of **Mexico City**, on the other hand, has established the right to care services, stating that all persons have the right to care that sustains their lives and provides the material and symbolic conditions to live in society throughout their entire lives.

CONCLUSIONS AND RECOMMENDATIONS

The evolution of the regulations observed makes it possible to conclude that, **despite the legislative progress on gender equality in the Latin American and Caribbean region in the past 20 years, regulations that discriminate against women remain in force, which hinders their autonomy and economic empowerment.**

Although it may be asserted that a significant number of legal discriminations affecting women in the economic and employment sphere have been eliminated, significant challenges remain on which progress must be made, in accordance with the provisions of the international conventions and commitments. The main areas for improvement identified were:

- The formal overcoming of indirect discrimination that affects women in their relationship with **assets and resources** (land, access to credit, among others).
- The elimination of **labour law regulations that exclude women from certain types and modalities of work** (night work, employment in certain industrial undertakings or overtime, to name the most common), present in many countries of the region.
- The application of restrictive criteria regarding **the principle of equal remuneration for work of equal value**, in line with the recurrent observations made by ILO, as well as the application of objective job evaluation systems, collaboration with employers' and workers' organizations, and inspection and audit mechanisms.
- The **rights related to the protection of domestic workers**, towards their true equality with the categories of workers generally. Although many countries have modified their labour codes, social security systems and employment laws, among others, towards the recognition of the rights of domestic workers and, despite the enactment of specific laws to safeguard those rights, they are not yet equal in terms of minimum wage, working hours and paid annual leave, or the benefits provided to these workers.
- **Maternity protection**, only 11 countries of the region currently respect the minimum maternity leave of 14 weeks established in ILO Convention No. 183. Moreover, discriminatory aspects related to the rights of pregnant women to obtain and keep a job are identified, including the continued practice of requesting pregnancy tests condition for obtaining or remaining in a job in certain countries. It is also significant that only four countries in the region have ratified the convention.
- The effort to expand and deepen legislation aimed at achieving greater **co-responsibility of the State, companies and men in care work** is still limited in both scope and coverage, to the extent that the redistribution of unpaid work provides greater access for women to economic opportunities. In practice, this means implementing legislation for the establishment and expansion of paternity leave and parental leave that is equitable and non-transferal to women. It also requires the enactment of legislation that provides for the *right to care or be cared for* as a universal right of citizenship, guaranteed for both men and women, avoiding the reinforcement of gender stereotypes associated with care.

With regards to this legislative progress, it is a priority to **advance the ratification, compliance and monitoring of the international conventions and agreements** that have been cited throughout the document, whose texts include each of the aforementioned advances.

In any event, the evidence shows that **there is some distance between legal equality and substantive equality** (Bareiro, 2018). As previously stated, although considerable progress has been made in the elimination and reform of clearly discriminatory legislation, the application of these laws produces inequality in results, which can be viewed as indirect discrimination. As such, the “neutrality” of a regulation can produce differential impacts depending on the points of departure of men and women.

In parallel to the consolidation of the body of legislation that eliminates direct discrimination, it is urgent to advance in the **field of positive action**, establishing legislation specifically aimed at balancing the differential situations that affect women and men due to their assigned gender roles. Throughout the document, concrete examples have been cited such as the preferential access of women to land titling, the recognition of years of contribution for mothers, the requirement of balanced representation of women and men on management boards, among others, that should serve as a paradigm for the dissemination of economic empowerment to the entire region and the rest of the spheres.

It is also important to consider who is the "subject" of rights, in this case labour rights, given that the **high rates of informality** in employment in the region **exclude the vast majority of the workers from legal protection**, particularly women, who are overrepresented in this area.

The distance between legal equality and substantive equality is also subject to practices that may benefit one sex more than the other, depending on by whom and how they are applied. The report has cited several examples such as practices in land distribution and of financial entities in providing loans to women., which calls for specific awareness and training actions on different aspects of legislative and legal process. Therefore, it is indispensable that those **responsible for enacting, implementing and monitoring compliance with laws** have knowledge of gender issues in order to achieve substantive equality, which calls for specific awareness raising and training in the matter among the different actors participating in the legislative and legal process.

Compliance with laws also implies the **access to safe legal mechanisms and justice, available to women and adapted to their needs**, an issue that in many countries is undermined by the lack of knowledge about rights or the lack of resources among women, especially those belonging to the most vulnerable groups, including low-income women with lower levels of education and indigenous afro-descendant, rural, disabled or migrant women, as stipulated in General Recommendation 33 of CEDAW on the Access of Women to Justice. In this respect, it is essential to intensify efforts to **educate women on their rights** through awareness, information and training actions.

Likewise, it is essential to **deepen the knowledge** of existing gaps in equality legislation, and, even more so, on the results of its application, where the jurisprudence opens up a vast

field of study. The articulation of permanent and periodic knowledge systems through Observatories would make it possible to measure progress, and where appropriate, the gaps in equality legislation, as well as disseminate information for decision-making.

All this must be considered in perspective. The strong social and cultural significance of gender issues limits, as seen above, the implementation of substantive equality, which may only be achieved through regulations. To this extent, comprehensive gender policies that combine a variety of strategies are needed, in which legislation represents the first step towards equality.

Only then can legal equality become real and overcome the current situation, in which women do not have access to real and substantive equality in Latin America and the Caribbean.

In short, regarding legislation on the autonomy and economic empowerment of women in the region, the recommendations are aimed at:

- **Progress in the ratification of international conventions that affect the different spheres of empowerment and promote their effective implementation.**
 - **Elimination of all direct discriminatory provisions that affect the autonomy and economic empowerment of women.**
 - **Legislative progress in the field of positive action.**
 - **Incidence in the gender awareness and training for policy makers.**
 - **Promotion of greater empowerment among rights holders, especially among those the most vulnerable groups.**
 - **Ensuring access to justice that is safe, affordable and adapted to the needs of women.**

 - **Deepening the knowledge about the progress and ongoing challenges in relation to the implementation of laws for gender equality.**
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