

The Legal Status of Rural Women in nineteen Latin American countries. The legal status of rural women in 19 Latin American countries¹

Introduction

Introduction

Concern over women's subordination in law is not new. Beginning in the nineteenth century and continuing throughout the twentieth, the world has been witness to innumerable women's movements seeking to pressure governments and societies to recognize not only women's civil rights but that women should enjoy equal working conditions and wages with men.

However, it was not until feminist movements gained recognition in the 'seventies and the United Nations' Women's Decade achieved significant advances, that it became possible to conduct a series of studies on rural Latin-American women. These studies show clearly and conclusively that women's contribution to the development process is much greater than previously assumed, and that women suffer from problems stemming from the traditional gender-based division of labour, which sees them exclusively taken up with their reproductive role as mother and homemaker.

It was shown that the gender division of labour, not only determines rural women's workload, but influences as well the way their productive work is perceived, with the result that, on grounds of gender alone, their form of participation in society is different from that of men.

This, in turn, has given rise to a number of customary and statutory rules that sanction the status quo and constitute a real obstacle to change.

In Latin America this problem dates back to colonial times, when new laws and regulations were imposed by Spanish and Portuguese colonizers. In fact, with few exceptions, customary law^{*^1} virtually disappeared from the continent, as people were divested of their indigenous culture in the wake of the conquest.

(^{^1} Some words appear followed by an asterisk. This indicates that their meaning is given in the Glossary of Legal Terms found in Annex II.)

Most of the new laws promulgated in the colonized territories were the expression of the Spanish and Portuguese visions of the world, and failed to provide for the real context of native peoples. However, while Spanish Law of the Indies consisted of a huge body of legislation intended to apply to the conquered people, the same cannot be said of Portuguese Law. Unfortunately, systematic non-observance made the Laws of the Indies largely inoperative.

The shortcomings of and non-compliance with more equitable statute law*, in some cases led to the emergence of de facto rules, but did not give rise to any new system of customary law. The rules were merely the expression of isolated preconceptions, which, in the specific case of rural women, resulted in the manifestation of male-biased attitudes which further degraded women's legal status vis-à-vis men of the same class and ethnic group. As a consequence of this, there are certain shortcomings in Latin-American legislation that are not covered by custom*, the statute being the sole overriding principle. One example of this is the legislation governing conjugal property and inheritance by the spouse or companion - a matter of great economic importance for the woman.

This is one area where Latin America differs fundamentally from the African countries whose customary law covers the shortcomings of statute law at the rural level through a system of rights, obligations and penalties, established by the traditional authorities who abide by a series of rules when it comes to passing judgement. This is also probably why Latin-Americans essentially look to statutory rules and why these are so important in the rural sector.

FAO's Regional Office for Latin America and the Caribbean was fully aware of this situation and, in a pioneer effort, between 1987 and 1990 sponsored a series of case studies on the legal status of rural women in Latin America and the Caribbean by the following consultants: Soledad Alvear (Chile, Guatemala, Peru, Dominican Republic and Colombia), Emma Castro de Pinzón (El Salvador), Támara Columbián (Cuba), Martha Torres Falcon (Mexico) and Gladys Yrureta (Venezuela). Also, as part of a Technical Cooperation Project in the English-speaking Caribbean in 1988, Norma M. Forde prepared a paper containing data on Barbados, Belize and Saint Lucia, which was included in FAO's Regional Office publication "The Caribbean Woman in Agriculture".

A Regional Round Table on "Legal Mechanisms to facilitate Rural Women's Participation in Rural Development", also took place in 1990. Its discussion paper, based on a review of the case studies, pinpointed de jure and de facto areas where the main discriminations against rural women lay.

The Round Table was attended by experts from 17 Latin-American and Caribbean countries: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

The discussions and conclusions on that occasion ² were indeed able to pinpoint where the discriminatory rules lay, and showed how the rural woman's legal status differed from country to country and why women were unable to play their part fully in what was an economically and socially inequitable society.

(² FAO. 1990. Report of the Round Table on "Legal Mechanisms to facilitate Women's Participation in Rural Development". Santiago, Chile. FAO/RLAC.54 p. (DERU-36).)

It was shown, for instance, that one cause of the legal discrimination of which rural women are the victims is the traditional division of labour between the sexes, the ideological conception of which

underpins the "values" that are expressed in both customary and statute law.

Under this division of labour the woman was responsible for the private or reproductive sphere, closely associated with domestic work and caring, for which she received no economic remuneration whatever. This influenced custom and law in the following ways: (1) The woman's main responsibilities were in the private, not the public, sphere. Thus, she could work outside the home only when there was no man available to do that work and provided she did not neglect her assigned tasks. This gave rise to the idea of women's work being of secondary importance and to their doubly long working day; (2) since the woman did not receive payment for her work in the reproductive sphere, she was not recognized as a producer - for either the community or herself; (3) in practice, what emerged was a hierarchical power structure in the home, the labour market and the area of production - traditionally the man's domain; and (4) the de jure and de facto basis ^{^3} for the subordination of woman is

to be found in the areas of civil, labour and agrarian legislation relating directly or indirectly to her reproductive role.

(^{^3} FAO. 1990. Report of the Round Table on "Legal Mechanisms to facilitate Women's Participation in Rural Development". Santiago, Chile. FAO/RLAC. 54 p (DERU-36).)

From a review of the nine case studies and the country contributions to the Regional Round Table "Legal Mechanisms to facilitate Women's Participation in Rural Development" on the four points above, it emerges that:

- Civil law in several Latin-American and Caribbean countries' legally institute Marital Authority (potestad marital)*, the principle underlying women's subordination, whereby the husband exercises authority over his wife's person and property* and is granted special privileges, which are specifically defined in law. De facto marital jurisdiction of this kind is traditionally widely observed in the countryside throughout the region - a practice that often hinders the enforcement of non-discriminatory legislation.

- In the area of labour legislation, the measures barring women from certain types of work do not carry conviction that they are really based on the wish to provide for their physical protection; they are probably a response to the needs of the labour market. The failure to amend these prohibitive measures corroborates one's conviction on this point.

- As regards the legislation on maternity-related matters, it is generally accepted in most of these countries that responsibility for the maternal function rests with the woman. This has led to legislation granting the working mother certain privileges. These privileges, however, are not looked upon as a duty of society, but as a gracious concession to the woman. In point of fact, this type of legislation opens the way to illegal expedients whereby employers may be exempt from what they consider as the "burden of maternity".

- Many countries, however, have had the political will to change this state of affairs. Unfortunately, measures to protect working mothers have not been extended to rural women, except in Cuba and, more recently, Colombia, where the Instituto de Bienestar Familiar (Family Welfare Institute) is setting up a system of rural nurseries using the "substitute home" formula.

- As regards salaries, the supposed inferiority of women's work finds expression, for instance, in the low wages paid temporary workers, most of whom are women. The fact that women are treated as adult minors* is another source of injustice; and the already widespread and growing practice of informal hiring for women leaves many of their number without legal protection and further aggravates their already disadvantaged situation.

- The problems arising from the gaps in agrarian legislation (a fairly new field, not equally well-developed in all the countries) and the way they are filled in, have seriously damaged the rural women's economic situation. In accordance with the rules of legal interpretation, the gaps in agrarian law are usually remedied by recourse to the Civil Code, which, as the most traditional expression of Law, is often discriminatory to rural women. For instance, the Civil Codes of several countries consider the man as the head of household, an additional obstacle to rural women's gaining equal access to land. A similar problem arises whenever the Civil Code is appealed to in cases of succession to land allocated under the agrarian laws.

- Extralegal practices in the area of agrarian, labour and civil legislation further aggravate rural women's situation. Failure to bring the law in these three sectors into line with the real situations of rural women has made the law itself unenforceable. Discriminatory customs tend to replace unbiased and sound laws if these are unaccompanied by appropriate enforcement regulations. Justice is thus at the mercy of the prejudices of those whose task is to apply the law - or of the women themselves, who are either unaware of their rights or else do not dare to claim them. In many countries the authorities responsible for allocating land under the agrarian laws refuse to recognize women as heads of household even when the law does.

- One's supposition that discriminatory rules stemmed from women's reproductive role is confirmed. Indeed, in both enactments and custom, these rules concern the various branches of the law having to do with that role and with the power structure stemming from the gender-based division of labour.

- The above examples highlight the need for special legislation for rural women that takes account of their situation with respect to both their productive and their reproductive role. Neutral legislation is often a source of injustice given that the situations of rural men and rural women are different.

It must also be stressed that any legislation intended to improve women's status should take a global approach to the problem in all legal spheres, thus avoiding the inconsistencies and conflict of law rules that may be observed in various countries and are dealt with in this book.

Some Notes on Methodology

A number of difficulties were encountered in the preparation of the present study. The first was the shortage of gender-disaggregated data to give a clearer picture of rural women's status and show how it is affected by both formal and the de facto rules.

Although the nine case studies in the background and country papers submitted to the Regional Round Table "Legal Mechanisms to facilitate Rural Women's Participation in Rural Development" provided further insight into the legal status of the region's rural women, some very important questions remain unanswered. For instance, which legal rules in each country have contributed most effectively to improving rural women's status, how many rural women have benefited, and to which socioeconomic groups do they belong?

As to the effectiveness of the laws benefiting rural women, again it was not possible to obtain statistical data on the number of rural women having recourse to the courts to claim their rights or the number of rulings in their favour. Also to be noted are the breadth of the subject and the number of countries involved (nineteen), each with a different historical background and using a different legal language.

A study on rural women's legal status needs to be based on a review of the rural woman's situation in general if it is to be of real use in bringing about concrete economic and social changes. Thus it was necessary to consult an extensive bibliography in order to have both a general picture of the situation and a compartmentalized view of constitutional, civil, labour and agrarian legislation.

Significantly, since agrarian law is a fairly new area, the data from the basic documents and from the additional literature consulted were incomplete. Available statistics are sketchy, and often there is no cross-referencing, making it difficult to formulate any useful conclusions. There is clearly a far greater need for statute law and for the relevant enforcement regulations in the agrarian than in other branches of the law. It would therefore be useful to continue and expand this study so as to gather more information and more accurately define the options for legal mechanisms or policies needed in order to change the very precarious situation of poor rural women in Latin America.

2

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I. The subordination of rural women in law in Latin America: Introduction

1. Rural women's subordination in law: The historical background

Bearing in mind that society is a dynamic, ever-changing entity with new, sometimes conflict-spawned social structures and institutions, it is important to take history into account in any review of the legal subordination of rural women in Latin America. This approach will reveal not only the political changes inherent in the demands of this marginalized sector for participation, but also the ways in which these changes have affected women in general and rural women in particular.

The conquest, one of the most significant historical events in Latin America, abruptly arrested the social development of the continent's indigenous peoples and partially if not entirely destroyed their culture, including the rules of traditional law. As a result, customary law vanished from vast areas, surviving, in a somewhat reduced form, only in relatively isolated regions.

The arrival of the Spaniards signified a radical change for the women partners in indigenous marriages, which were polygamous or monogamous depending on the region and its level of prosperity. In times of plenty, but when there was a shortage of young men, polygamy (with one wife the favourite) was the norm, while in harder times, monogamy predominated. The Church and the Spanish laws abolished polygamy, leaving numerous women unprotected.⁴ The conquistadors, on the other hand, took native women as concubines, with or without their consent, in breach of the rules established by the Church and by the Spanish and Portuguese Crowns.

(⁴ RAMOS ESCANDON, M. 1988. *Mujer y sociedad novohispana*. In ISIS. *Nuestra memoria, nuestro futuro: mujeres e historia*. America Latina y el Caribe. Santiago de Chile, Andromeda pp.21-33. (Ediciones de las Mujeres N°10).)

The new forms of social organization gave rise to new family structures and new ethnic groups, each with its own special features and place in a highly stratified society. The women bore the brunt of the convergence of two these worlds, each with its own culture and political and economic systems.

The Spanish and Portuguese colonial venture was particularly hard on the indigenous woman in terms of labour⁵. Even though the provisions of the Spanish Indian Legislation sought to protect the Indian woman, she was subjected to a strict, cruel labour regime sadly like serfdom.

(⁵ PEREZ SAN VINCENTE, G. 1984. A mulher e sua atuação durante os primeiros cinquenta anos de vida novohispânica. In CEHILA. A mulher pobre na história da igreja latinoamericana. São Paulo, Ed. Paulinas. pp.138-151.)

All this shows that the personal and work relations of Indian women to the conquistadors and male settlers was one of subservience - a situation that was to have a significant impact on relations between men and women and between women and society.

At the time of the conquest, collective land ownership (working the land for the benefit of the community) was the system used by the Indians.⁶ For them, the most important relationship was with the land, followed by consanguinity. Then came the settlers with their own forms of economic organization. Colonial policy toward the rural community was largely geared to the expansion of the capitalist economy. The control of physical space was particularly important, and could only be achieved if the indigenous communities were culturally and physically dismembered.

(⁶ SANCHEZ, L.A. 1972. História geral de América. Santiago de Chile, Ed. Ercilla. 3 v.)

The Spanish king authorized the conquistadors to divide land on the strength of Crown decrees, mercedes (grace and favour dispositions), etc., as a reward for their exploits. This later gave rise to the encomienda system⁷ which, despite its paternalistic objective, in practice became an efficient tool for appropriating land and even destroying the crops that grew there.

(⁷ The encomienda was a institution in Spanish law whereby groups of Indians were assigned to conquistadors, who were supposed to protect and educate them.)

The legal situation of the Indians living in the Portuguese colonies was even worse. The document establishing hereditary rights⁸ granted the settlers a number of privileges, the most important of which was the right to take Indians into bondage to serve in their homes or on their ships, and to send up to 39 of them per year tax-free to Lisbon as slaves.

(⁸ DE VARNHAGEN, F.A. 1952. História geral do Brasil. São Paulo, Melhoramentos. 7a. ed. 2 v.)

In practice, sugar cane cultivation involved expelling the Indians and taking over their land, enslaving many of their number to plant the cane and work the sugar mills, and ghettoizing them for this purpose.⁹ The men did the agricultural work, while the women were servants in the homes of the Portuguese settlers. Both the men and the women were legally slaves, but the women also had

to submit to the sexual whims of their masters.

(^9 BEOZZO, J.O. 1952. A mulher indigene e a igreja na situa  o escravista do Brasil colonial. In: CEHILA, Op. cit., pp.70-93.)

The laws of the Indies enacted by the Spanish Crown were not enforced, given the fact that their principal opponents were also in charge of enforcing them. In addition to the characteristic colonial disobedience of the law, usage had sanctioned the habit of paying lip service to provisions of the law considered unenforceable or counter-productive. The laws were acknowledged, but not given any practical application.^10

(^10 SANCHEZ, L.A. Op. cit. pp.361-380.)

There thus came into being a parallel system of rules that institutionalized a new social phenomenon in Latin America: a behavioural model based on total contempt for the native woman. There came a point where the encomienda holders and Portuguese settlers could exploit the women sexually with the tacit approval of society. With time, this practice took on the status of custom and later came to be considered one of the conquistadors' rights over the conquered peoples. This macho behaviour toward women represented a significant shift away from the paternalism embodied in the Spanish Laws of the Indies.^11 This treatment of the native women continued during the Republican period under the ranchers and local leaders, who maintained this custom-hallowed "parallel law".

(^11SARA-LAFOSSE, V. 1988. Crisis familiar y social en el Peru. Lima, Ministry of Justice. 11 p. (Mimeo).)

The humiliating treatment of the Indians by the Spanish and Portuguese led to numerous indigenous uprisings throughout Latin America. Women's part in these has been little documented, but recent historical research suggests that they had an active role, either actually taking part in the action or supporting or accompanying their menfolk.^12 It has proved impossible to learn just how many took part, but some particularly heroic deeds by indigenous women have been brought to light.

(^12 DE SILKS, M.E. 1981. Bartolina Sisa, Gregoria Apaza. Dos hero  nas ind  genas. La Paz, Biblioteca Popular Ultima Hora. pp.4085.)

The late 18th and the 19th Centuries saw the Wars of Independence and the strengthening of republican legal systems in Latin America. The now independent States based their constitutions on those of the United States and France which, in theory, recognized equality for all.

Women, nevertheless, continued to be discriminated against in various areas of law: any declaration of equality was reversed by the paternalistic civil and labour legislation, based on the Code Napoleon, which considered women inferior, weak and in need of protection, and placed wives and mothers under their husbands' authority. The Republican Constitutions denied women the right to

vote, while the Civil Codes prevented married women from disposing of their property, entering into work contracts without their husband's permission, or jointly exercising patria potestas over the children born of the marriage.

Whilst it is true that rural women did not suffer any further formal legal discrimination than that already described, they continued to be victimized by the parallel rules which were backed by custom and gave real effect to prejudices stemming from mistaken preconceptions rather than from judgements founded on women's actual ability.

It is important to specify that while rural women have certainly been the major victims of this juridical situation in Latin America, their social class, ethnic group and concept of authority have heavily influenced the extent to which they have been victimized. This is directly linked both to the existence of parallel norms, which lie outside the written law, and to the problem of the effectiveness of the law.

The now independent Latin-American republics inherited, to varying degrees, the subjugation of the judiciary to the political will of the governing classes.¹³ This is why the courts regularly decided in favour of the latter, breeding distrust among the rural populations in general. The women were not unaffected by this distorted application of the law or the general mistrust of the judiciary, since they were also the victims of abusive practices and the denial of justice by men of their same class and ethnic group.

(¹³ REVILLA VERGARA, A.M. 1985. La problemática del fuero privativo agrario y su integración al fuero común. Lima, Universidad Católica. pp.130-169 (Degree thesis).)

Latin-American women's struggle for equal political and labour rights intensified in the late 19th century and has continued during the 20th. During the first half of the present century the countries gradually came to recognize political rights for women so that, today, one cannot imagine democratic movements without women participants, even though their practical gains bear little relation to the formal content of the written laws. The figures show that there is still much to be done before real political equality between men and women is achieved. Even now, Latin-American women are far from having half the seats in their parliaments or half their countries' decision-making responsibilities.

The fight for equal working conditions has not been as successful as the civil rights movements. While it is true that most Constitutions have abolished sexual discrimination in their eligibility requirements for the office of head of state or judge, the fact remains that "protectionist" measures limiting women's right to work persist. Again, women continue to be paid less than men for the same work. Latin-American labour laws include a long chapter on the treatment of women in their capacity as mothers yet, in practice, there is general acceptance of unfair customs which not only disregard the written law, but have established illegal formalities designed to allow employers to avoid contributing to the economic costs associated with the women's reproductive role. Because of this,

women have come to look upon maternity with a feeling of guilt, because they associate it with job loss or social disapproval.

The active participation of rural women in civil rights and labour movements has not led to any real recognition of their capacity or any improvement in their status. The European settlers established predominantly masculine political relationships and leadership systems, still in operation today, which explain society's failure to acknowledge female leadership.

The 20th Century has also witnessed important peasant movements to gain access to land. The land tenure system (the big estates and the sharecropping arrangements - a colonial legacy that the advent of the republic has failed to do anything about), aggravated by the consolidation of the latifundio-minifundio structure and the existence of this type of land tenure side by side with a precarious feudal-type, farm labourer-based form of land holding (as had developed in the Peruvian sierra, or among the "huasipungos" in Ecuador), and an expanding landless peasant population, were the factors that unleashed nation-wide movements pressing for land. ^{^14}

(^{^14} GARCIA,A. 1982. Modelos operacionales de Reforma Agraria y Desarrollo Rural en America Latina. San Jose de Costa Rica, IICA. p.196)

The intensity of these peasant struggles for land, dignity, work, culture and independence varied from country to country and with the historical context, but they all led to the enactment of agrarian legislation and, in many countries, to actual agrarian reform. In this way agrarian legislation assumed a new dimension, coupling land ownership with social usefulness through a system of limitations and obligations or through rights, and even penalizing inappropriate land use.

Although there is little documentation on the role of women in these peasant movements^{^15}, there are indications that women were energetic participants, sometimes playing a leading role (as in Chile and Peru) and sometimes an invisible, silent one.

(^{^15} LEON DE LEAL, M. et al. 1987. Acceso de la mujer a la sierra en America Latina. Panorama general y estudios de cases en Honduras y Colombia. In: FAO. Mujeres Campesinas en America Latina: desarrollo rural. acceso a la sierra. migraciones. legislaciones. Santiago de Chile, FAO/RLAC. pp. 1-81.)

All the same, poor rural women have not gained equal access to land. This is mainly due to cultural impediments, which have bred discriminatory laws designating males as heads of household; the one-sided interpretation of the law to the detriment of rural women; and the women's own preconceptions (which have prevented them from claiming their rights and obtaining other productive resources).

The peasant movements and the new agrarian legislation did, however, gradually make rural women aware of their rights, and of the need to be organized in order to claim them. According to

Leal de Leon and her collaborators¹², Latin America has in recent years seen a significant rise in the number of organized rural women seeking access to land. These authors cite organizations in Colombia, Cuba, Chile, Bolivia, Brazil, Honduras and Nicaragua as particularly active in the fight for the establishment and enforcement of unbiased agricultural legislation.

In recent years the advent of democratic governments has brought significant political changes in countries where military dictatorships had predominated since the 'seventies. This has led to greater freedom of expression and greater awareness of women's issues, and has inspired governments with the political will to make changes in women's favour. The democratic government of Chile is one of these, even though income differences between urban and rural workers and between men and women of the same class and ethnic group still persist. Bettering the living standards of rural women (who occupy the lowest rung of the rural poverty ladder) has been a slow and difficult process, as traditional social, legal and economic structures are still in place.

Latin-American development studies and policies have avoided coming to grips with the question of rural women's legal status. Governments have, with few exceptions, shown little willingness to improve rural women's official or actual legal status in any concrete way which would effectively enhance their economic and social condition and thus contribute to their countries' development as well.

2. The legal subordination of rural woman in Latin America

2.1 Gender-based division of labor¹⁶

(¹⁶ The term "sex" refers to the congenital and universal biological differences between men and women; "gender" relates to the socio-cultural and historical characteristics that determine how men and women interact and apportion their roles. These characteristics may change with time and do vary widely from culture to culture. However, gender is a social category which may be used to analyse the different roles, responsibilities, restrictions and opportunities that apply to men and to women in a given community, nation or culture.)

Rural women's legal subordination is part and parcel of women's overall position of subordination, stemming from the historical separation of human activity into two completely different, but closely interrelated, spheres. One sphere is about reproduction, the other about production. Included in the reproductive sphere are biological reproduction and related social activities - activities closely associated with domestic work, and belonging to the private domain, and are not quantified economically and have traditionally been assigned to women. Production comprises social and trade relations, falls within the public sphere, is quantified economically and is invariably a male responsibility. ¹⁷

(¹⁷ BAENA DE ESPARZA, R. 1982. Considerations sur la division sexuelle du travail. In: CENTRE HAITIEN D' INVESTIGATION EN SCIENCES SOCIALES (CHISS) ET UNIVERSITE D'ETAT

D'HAITI (UEH). La femme rurale en Haïti et dans la Caribe. Traditions et innovations. Port-au-Prince. pp.205-225.)

This division of labour is strict to the point where, in every society, some activities and tasks are considered typically feminine (rearing the children and looking after the home, for instance) and others typically masculine (heading the household and providing for the family). Even so, the division is not equally strict for both spheres of activity. For instance, although the current economic crisis in the region has led to a greater female presence in the productive sector, it has not altered the woman's workload in the reproductive sphere (i.e. activities that are not quantified economically and are therefore unpaid and unprotected by the State).¹⁸

(¹⁸ LEON DE LEAL, M. 1982. Las trabajadoras del agro. Bogotá, ILET. 2 v. is a constant feature of the rural woman's situation throughout Latin America.)

This skewed rapport between men's and women's activities not only affects the woman's workload, increasing her working day two- or even three-fold, but also her remuneration, so that sex - a biological factor - becomes a social one with its own specific connotations in terms of values and standards, and its own ideological and economic consequences.

FIGURE

====Keywords=====

woman,
rural,
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law,
legal,
latin,
de,
country,
labour,
legislation