

The Legal Framework for the Exercise of Fundamental Rights with a Gender Perspective in Costa Rica

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ABSTRACT

This paper intends to inform the reader the legal framework for the exercise of fundamental rights with a gender perspective in Costa Rica; analyzing at first the recognition of the right of equality at the constitutional level in the Costa Rican legal system. Then, a compilation and presentation of claims of rights to achieve that is now consolidated and legal recognition for women in our country. Finally, we conclude that the maximum constitutional rights with a gender perspective seeks only the operationalization of Article 33 of the Constitution as a reality in the Costa Rican social scenery in which develops the law.

INTRODUCTION

Today, the creation, development and consolidation of constitutional rights in the world is visible as a necessity and as a mean at the same time, having the purpose of fulfilling the goals that have been set forth in the First Generation of Human Rights, based primarily by the principles of the French Revolution, being the recognition of equality for all people the backbone of the rule of law in our days.

In Costa Rica, this recognition has been made through Article 33 of the Constitution, which states:

"ARTICLE 33. - Every person is equal before the law and may not practice any discrimination contrary to human dignity" (Constitution of Costa Rica).

In this sense, we see this principle of equality as a constitutionalized law like a maxim, meaning that the state should guarantee equal treatment for all persons without any discrimination. This recognition of equality applies in the exercise and enjoyment of the rights and liberties recognized by the Constitutional States, which have the purpose of consolidation and establishment of systems of personal liberty and social justice, giving respect and implementation of the Universal Declaration of Human Rights.

Consequently, the state apparatus is now making efforts to insert in public policies and legislation of general application legal forms which allows the gradual elimination of discrimination in its various aspects and justifications, been the gender or sex one of them.

A. Legal Block against violation of fundamental rights based on gender discrimination.

In accordance with the jurisprudence criteria of the Constitutional Supreme Court, this chamber can be seen as the one, who bent the defense and protection of fundamental constitutional rights, and applies the same legal criteria to any right who can be considered as a human right, which its significance and importance are recognized as equal and without any discrimination in its exercise in

accordance with Article 33 of the Constitution, rights who cannot be resign by the citizens because of the implications of Article 74 of the Constitution itself.

In this regard, Article 74 of the Constitution states:

"ARTICLE 74 .- The rights and benefits to which this section relates may not be waived. His list does not preclude others arising from the Christian principle of social justice and giving the law apply equally to all contributing factors to the production process, and regulated in a law and social work, to seek a permanent policy of national solidarity".

Thus we can see that the Constitutional Supreme Court has made a essential the enjoyment and exercise of fundamental constitutional and human rights without discrimination conditions, the numerals 33 and 74 of the Constitution, recognizing their union rights as a *"(...) set of principles and international human rights standards, which are not only superior to ordinary law conferred upon it by Article 7 of the Constitution, but also a direct constitutional protection that almost equals the expressly set forth by the Constitution, under article 48 of the same, (as amended by Act No. 7128 of August 18, 1989), among those rights "(C.S.C.C. 1147-90).*

Consequently, by law the Court has established a legal block in regard to cases where the alleged violation of the right to equality on grounds of sex discrimination, including rules of both national and international levels, visible as follows:

"The Constitution in Articles 33 and 48 states in this regard:" Article 33.-All persons are equal before the law and no discrimination contrary to human dignity. Article 48.-Every person has the right to appeal habeas corpus to secure his freedom and his personal integrity, and the appeal to maintain or restore the enjoyment of other rights enshrined in this Constitution and the fundamental character of the established international human rights instruments applicable in the Republic.

For his part, and what are of interest, the Universal Declaration of Human Rights states: Article 2.-1. Everyone has all the rights and freedoms set forth in this Declaration, without distinction of race, color, sex, language, religion. Article 7.-All are equal before the law and are, without distinction, the right 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.

Look the same on the American Declaration of the Rights of Man (1948) says: Article II.-Right to equality before the law. All persons are equal before the law and have the rights and duties enshrined in this Declaration without distinction of race, sex, language, creed or any other factor. In the same way the International Covenant on Civil and Political Rights (1966) states: Article 3.- The States Parties to the present Covenant undertake to ensure men and women the equal enjoyment of all civil and political rights set forth in the present Covenant. "Article 26.-All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against any discrimination based on race, color, sex, language, religion, political or otherwise, national or social origin, property, birth or other status.

Ultimately the American Convention on Human Rights, "Pact of San José" (1979) provides: Rule 1.-Obligation to Respect Rights 1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure their free and full exercise to all persons subject to their jurisdiction without discrimination of race, color, sex, language, religion, political or any other opinion, national or social origin, property, birth or other status. 2. For the purposes of this Convention, every human person. Article 24- Equality before the law. All persons are equal before the law. Consequently, they are entitled without discrimination to equal protection of the law "(C.S.C.C. 3435-92).

Finally, the trend can be traced in constitutional jurisprudence in the combination of Articles 33 and 74 as a block of constitutional law, enabling citizens to invoke the provisions of Human Rights to protect the exercise and enjoyment of their fundamental constitutional rights, allowing thanks to *"the membership of our legal system, with the Christian principle of social justice (Article 74 of the Constitution) makes the political and social system in Costa Rica, can be defined as a rule of law"* (C.S.C.C. 1102-95), recognition who made our Constitutional Supreme Court and constitutes a basis for the elimination of racial discrimination still exist in some of the social scenarios for the exercise of fundamental constitutional rights today.

B. Public policies aimed to eradicate discrimination based on sex.

B.1. Creation of the National Women's Institute (INAMU)

Since the 70's Costa Rica had an office that was specializes in women's affairs and family, called the *Office of Programs for Women and Families*, which was part of the Ministry of Culture, Youth and Sports; this office was established in 1974 with the intention of built an instance that was subsequently able to promote and execute the actions and commitments taken by the country at the World Conference on Women held in Mexico in 1975.

Under the years passed, the office became more active having more functions and powers in relation to gender issues, until in 1986 became the *National Center for Development of Women and the Family*, still forming part of the Ministry in start the initiative, focusing its activities on the development and promotion of national policies in favor of women.

A decade later, in 1998 exactly, the Legislative Parliament enacted the Act No. 7801: *National Women's Institute Law*, which approved the conversion of the current *National Center for Women*, making it an autonomous and decentralized of the central government, taking power from its own organization, creating the post of Executive Presidency even for the person who carries out as head of the institution.

In this Act shall come to set specific goals and responsibilities to the Institute, which develops the current institution and run independently, such as the following:

"Article 3. - Purposes

The Institute has the following purposes:

- a) Develop and promote the national policy for gender in equality and equity, in coordination with public institutions that develop programs for women and social organizations.*
- b) Protect the rights of women enshrined in declarations, conventions and treaties such as the Costa Rican legal system, promote gender equality and promote actions to improve the situation of women.*
- c) Coordinate and supervise public institutions to establish and implement national policies, social and human development, as well as sectorial and institutional aspects of national policy for gender equality and equity.*
- d) Promote social, political, cultural and economic status of women and the full enjoyment of their human rights under conditions of equality and equity with men.*

ARTICLE 4. - Competences

To achieve its mission, the Institute will have the following powers:

- a) Develop, promote and coordinate the implementation and monitoring of public policies aimed*

- to promote equal rights and opportunities between men and women.*
- b) Coordinate the overall national development policies that promote the government, to contain the promotion of equal opportunities between women and men.*
- c) Develop and implement plans, programs and projects of the Institute itself, as it deems necessary to fulfill its purpose.*
- d) Coordinate the activities and organizations established within the Administration, to promote the status of women and gender equity.*
- e) Promote the establishment of ministerial, sectorial and local offices for women, while ensuring and coordinating its operation.*
- f) Develop, coordinate and implement actions that foster the development of the family as a socialization of human rights and the equal opportunities between women and men.*
- g) Provide advice and legal guidance to all state institutions to carry out their activities without discrimination between women and men.*
- h) Ensuring that administrative arrangements are not discriminatory and verifies that respect the rights of women.*
- i) Issue criteria about the bills pending legislation related to gender and status of women and families.*
- j) Promote and facilitate the creation and operation of a fund to promote productive activities and organization of women.*
- k) Assist, when deemed appropriate, in proceedings affecting the rights of women.*
- l) Promote and undertake research to ascertain the status of women, gender equality and the situation of families, and to make proposals for improvement.*
- m) Maintain relations of exchange and cooperation with international agencies engaged in promotion of women, without prejudice to the powers of the executive branch in foreign affairs.*
- n) Promote the activity of associations of women, providing assistance to their organizations to be better for their formation and development”.*

The fulfillment of these purposes and functions due to the mission and vision that the Institute has to pursue its functions, in which can be visible that the Institute's mission is to *"promote and protect human rights of women to contribute building a just and egalitarian society to ensure gender equity "(INAMU: 2009), reflecting the company as "an institution recognized for its commitment and technical excellence in human rights of women, active supporter of equality, equity and diversity, promoting the empowerment of women, their empowerment and their full enjoyment of human rights and citizens who enjoy credibility, trust and legitimacy with an organizational culture consistent with organizational values"(Id.).*

Finally, the Institute aimed to succeed in keeping in constant and permanent commitment to a fair and caring society, respect for equality, gender equity and diversity, the exercise of a democratic, participatory and horizontal, commitment and transparency in the exercise of public service and accountability, technical excellence, teamwork, efficiency and effectiveness, respect for women's autonomy, commitment to women, respect for the rights of and women and men workers, interpersonal relationships based on mutual respect, assertive communication, and commitment to fulfilling the mandate and institutional values in the institution.

C. Regulations issued in order to eradicate discrimination based on sex.

C.1. Ratified International instruments.

Initially, we can trace that from the 1970`s Costa Rica ratified *The American Convention on Human Rights "Pact of San Jose"*, which reiterate the principles set forth in the *Universal Declaration of Human Rights* of December 10th of 1948.

Thus, the Convention in its Article 1 establishes the obligation of States Parties to respect the rights of persons under the following conditions:

“Article 1. Obligation to Respect Rights.

- 1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.*
- 2. For the purposes of this Convention, "person" means every human being”.*

This means that the instrument of ratification in commentary provides an obligation for the state to ensure both, the free and full exercise of fundamental rights of the nation to all people as equals, including the world situation discriminating gender as an obstacle that must be eradicated for the free exercise of fundamental human rights of all women, involving the access to social and symbolic spaces to exercise rights under the same terms as men.

Then, our country has ratified a number of conventions and treaties for the claiming of the rights of women, including the following:

- The *INTER-AMERICAN CONVENTION ON GRANTING OF CIVIL RIGHTS TO WOMEN* and the *AMERICAN CONVENTION ON GRANTING OF POLITICAL RIGHTS TO WOMEN*. Both endorsed on April 17th of 1951, which reflect the intention of States Parties to recognize women around the American continent the equal enjoyment of civil and political rights. Therefore, there is recognition in terms of equality with respect to the exercise of the First Generation of Human Rights to all American women.
- The *CONVENTION ON THE POLITICAL RIGHTS OF WOMEN*. Ratified on July 25th of 1967, implies a reiteration of the two criteria above, with emphasis on recognition of the equal participation of individuals regardless of their status as man or woman in the political processes of their countries, taking right to participate in the governance of the country directly or through representation of the people to be freely chosen. Furthermore, it recognizes the equality of opportunities for both sexes with respect to entry into the public service of their countries.
- The *CONVENTION ON THE NATIONALITY OF WOMEN*. Ratified on July 17th of 1953, stipulates in its Article 1, that in terms of nationality the States Parties can't make any distinction based on sex in the fields of law and practice.
- The *CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN*. With its ratification on April 04th of 1986, this convention is the most complete international legal instrument in the recognition of the rights of women and the exercise of those on equal terms with men, including the definition of what acts constitute the discrimination against women, making it the duty of States Parties the following clauses:

*“To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;*

To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
To repeal all national penal provisions which constitute discrimination against women”
(Article 2).

- The INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN "CONVENTION OF BELEM DO PARA." Ratified on July 12th of 1995, is a legal instrument which shows the concern of States Parties to violence against women, considering it an affront to the dignity of women that try to reproduce the patterns of inequality between women and men as the historically unequal power relations. Moreover, recalling that this kind of violence transcends class, race, ethnicity, culture, educational level, age and religion which affect any woman regardless of the attributes having a status or social standing, cases in which the government has to enforce the full individual and social development of women, on equal conditions for the recognition, enjoyment, exercise and protection of all human rights and liberties enshrined in regional and international instruments on human rights for women.
- The *OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN*. Ratified on September 20th of 2001, is the instrument that allows the operationalization of the *Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem do Para"*, by recognizing the competence of the *Committee on the Elimination of Discrimination Against Women* to receive and process complaints on the matter.

C.2. Existing national regulations.

Finally, at the national level there has been a legislative initiative that proves the commitment and engagement of the Costa Rican State to treaties and international agreements ratified in the field to claim the rights of women. The most important legal instruments at national level in this area are:

- The Act of Promoting the Social Equality of Women, entered into force on 08th March of 1990, is the national instrument that provides equal rights in general between men and women, becoming a State's obligation promote and ensure gender equality in political, economic, social and cultural spheres.
- The Act on the Punishment of Violence against Women, entered into force in 2007, which aims to "*protect the rights of victims of violence and punishing forms of physical, psychological, sexual and property against adult women, such as discrimination based on gender, specifically in relation to a marriage, marriages declared or not in compliance with the obligations assumed by the State to the Convention on the Elimination of All Forms of Discrimination against Women, Law No. 6968 of 2th October of 1984, as well as the Convention on the Prevention, Punishment and Eradication of Violence against Women, Law No. 7499 of 2th May of 1995 "(ARTICLE 1).*

Available in its scope as follows:

"Article 2.- Scope

This Act applies where the conduct punishable as a criminal offense, directed against an adult woman, in the context of a relationship of marriage, declared or not. In addition, it

applies when the victims are women over fifteen years and under eighteen, if they are not a result of the exercise of parental authority ".

- The Act of Creating the National System for the Care and Prevention of Violence against Women and Domestic Violence, bringing into force on 04th of December of 2008, claiming the creation of this system as a meeting point between INAMU, Ministries, decentralized institutions and state organizations related to the subject to discuss, coordinate and evaluate the actions undertaken by these institutions together.

Specifically, the law provides an exhaustive list of the members of the system, which provides:

"Article 4 .- Members of the System

Are members of the National System for the Care and Prevention of Violence against Women and Domestic Violence, the following bodies, institutions and entities:

- a) The National Council for the Care and Prevention of Violence against Women and Domestic Violence.*
- b) The Ministry of Education.*
- c) The Ministry of Justice.*
- d) The Ministry of Public Health.*
- e) The Ministry of Culture, Youth and Sports.*
- f) The Ministry of Public Security.*
- g) The Ministry of Labor and Social Security.*
- h) The Ministry of Housing and Human Settlements.*
- i) The Ministry of Planning and Economic Policy.*
- j) The National Social Security System (CCSS).*
- k) The Social Assistance Institute.*
- l) The National Training Institute.*
- m) The National Infancy System (PANI).*
- n) The National Women's Institute.*
- ñ) The National Council of Older Persons.*
- o) The National Council on Rehabilitation and Special Education.*
- p) The Council of the Young Person.*
- q) The University of Costa Rica.*
- r) The National University of Costa Rica.*
- s) The Technological Institute of Costa Rica.*
- t) The National Judicial System.*
- u) The National Network of Local Networks of Care and Prevention of Domestic Violence.*
- v) The private non-governmental organizations.*
- w) The State Distance University.*
- x) The National Family's Ombudsman".*

CONCLUSION

Through the legislative initiative and political will of the country to sign and ratify instruments that allow the exercise and enjoyment of fundamental rights and human rights are guaranteed at the formal operationalization of Article 33 of the Constitution which embodies the principle of equality.

Showed that the state must not only guarantee access to these formal rights, but also access material through specific public policies to eradicate all forms of discrimination and violence against women in the country.

In this regard, as mentioned above, the problem of discrimination and violence based on sex so can only be successful when there is a formal and material access to basic and human rights on an equal footing.

Involved, the access procedure, the existence of existing regulatory bodies to explain the problem described above is within the legal system, which then gives a ban on any practice which constitutes a violent exercise and the enjoyment of fundamental rights and Human Rights of women.

Consequently, access equipment, based in the existence of public policies aimed at creating and strengthening programs and services platforms to carry out preventive, punitive and interventionist when appropriate, in pursuit of goals and targets aimed at claims of rights with a gender perspective.

BIBLIOGRAPHY

Legislation:

- ✓ POLITICAL CONSTITUTION OF COSTA RICA
- ✓ ACT OF NATIONAL INSTITUTE OF WOMEN
- ✓ AMERICAN CONVENTION ON HUMAN RIGHTS "PACT OF SAN JOSE"
- ✓ INTER-AMERICAN CONVENTION ON CIVIL RIGHTS TO WOMEN
- ✓ INTER-AMERICAN CONVENTION ON THE GRANTING OF POLITICAL RIGHTS OF WOMEN
- ✓ CONVENTION ON THE POLITICAL RIGHTS OF WOMEN
- ✓ CONVENTION ON THE NATIONALITY OF WOMEN
- ✓ CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
- ✓ CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN "CONVENTION OF BELEM DO PARA"
- ✓ OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
- ✓ PROMOTION OF EQUALITY OF WOMEN LAW
- ✓ PENALIZATION OF VIOLENCE AGAINST WOMEN LAW
- ✓ CREATION OF THE NATIONAL SYSTEM FOR THE CARE AND PREVENTION OF VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE LAW

Jurisprudence Criteria:

- ✓ Constitutional Supreme Court Criteria No. 1147-90.
- ✓ Constitutional Supreme Court Criteria No. 3435-92
- ✓ Constitutional Supreme Court Criteria No. 1102-95

Websites:

- ✓ National Women's Institute (INAMU): <http://www.inamu.go.cr/>