



REUTERS/ Nacho Doce

LEGAL ANALYSIS OF NEW GENDER TRENDS IN THE WORLD OF WORK

A STUDY OF THE RULES, LAWS, AND PRECEDENTS IN 11 COUNTRIES
OF THE REGION: ARGENTINA | BOLIVIA | BRAZIL | CHILE | COLOMBIA |
ECUADOR | MEXICO | PARAGUAY | PERU | URUGUAY | VENEZUELA

LEGAL ANALYSIS OF NEW GENDER TRENDS IN THE WORLD OF WORK



TrustLaw



Baker
McKenzie.

CERVIERI
MONSUAREZ

C.R. & F. ROJAS
ABOGADOS
Fundado en 1988

DENTONS

GROSSBROWN

Hogan
Lovells

MARVAL
10 años

MATTOS FILHO

Q&G
ESTUDIO JURIDICO BOUTIQUE

ROBALINO

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	7
DISCLAIMER	8
ABOUT ELA	11
ABOUT THOMSON REUTERS FOUNDATION	12
INTRODUCTION	14
ARGENTINA	17
BOLIVIA	21
BRAZIL	25
CHILE	29
COLOMBIA	33
ECUADOR	37
MEXICO	41
PARAGUAY	45
PERU	49
URUGUAY	53
VENEZUELA	57
CONCLUSION	60



ACKNOWLEDGEMENTS

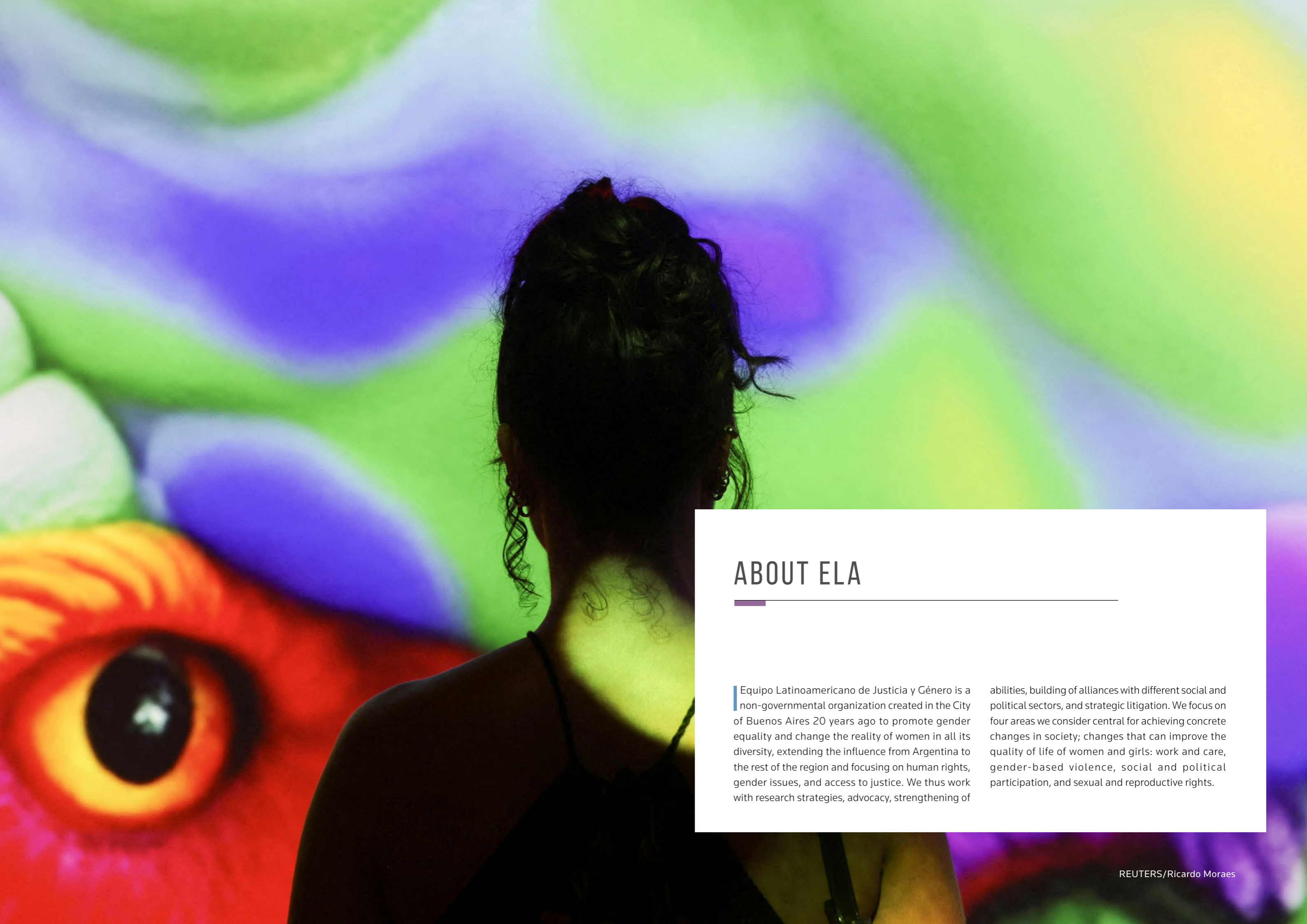
Thomson Reuters Foundation and Equipo Latinoamericano de Justicia y Género (ELA) thank all participants for contributing to this project with their

time and knowledge. The TrustLaw team especially thanks Marval O'Farrell Mairal for coordinating it, and the lawyers who worked in this research.

DISCLAIMER

This report is meant for informational purposes only. It does not constitute legal advice. We urge readers to seek advice from legal counsels regarding their specific circumstances. The contents of this report intend to be correct and up to date (September 2023). However, we do not guarantee their accuracy or completeness, especially considering circumstances may change after that date. ELA, Marval O'Farrell Mairal, C.R. & F. Rojas Abogados, Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados, Q&G Abogados, Backer & McKenzie LLP, Robalino Abogados Ecuador, Hogan Lovells, Estudio Jurídico Gross Brown, Dentons LLP, Cervieri Monsuarez, and Thomson Reuters Foundation are not liable for actions taken or not taken or for any loss arising from the trust put on this report, or for any inaccuracy in it. Marval O'Farrell Mairal, C.R. & F. Rojas Abogados, Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados, Q&G Abogados, Backer & McKenzie LLP, Robalino Abogados Ecuador, Hogan

Lovells, Estudio Jurídico Gross Brown, Dentons LLP, Cervieri Monsuarez generously offered ELA their time and efforts to carry out this research as pro bono work. However, its contents must not be seen as a reflection of the opinions of Marval O'Farrell Mairal, C.R. & F. Rojas Abogados, Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados, Q&G Abogados, Backer & McKenzie LLP, Robalino Abogados Ecuador, Hogan Lovells, Estudio Jurídico Gross Brown, Dentons LLP, Cervieri Monsuarez, or of the lawyers collaborating with it. Thomson Reuters Foundation is proud to publicly support its Trustlaw network member ELA in its work on this report, including its publication and the pro bono connection that made the law research possible. However, in accordance with Thomson Reuters Trust's Principles of Independence and Partial Freedom we do not assume a position regarding the contents or opinions in this report.



ABOUT ELA

Equipo Latinoamericano de Justicia y Género is a non-governmental organization created in the City of Buenos Aires 20 years ago to promote gender equality and change the reality of women in all its diversity, extending the influence from Argentina to the rest of the region and focusing on human rights, gender issues, and access to justice. We thus work with research strategies, advocacy, strengthening of

abilities, building of alliances with different social and political sectors, and strategic litigation. We focus on four areas we consider central for achieving concrete changes in society; changes that can improve the quality of life of women and girls: work and care, gender-based violence, social and political participation, and sexual and reproductive rights.

ABOUT THE THOMSON REUTERS FOUNDATION



TrustLaw

The Thomson Reuters Foundation is the corporate foundation of Thomson Reuters, the global news and information services company. We work to promote media freedom, raise awareness on human rights issues, and foster more inclusive economies. Through news, media development, pro bono legal assistance, and convening initiatives, the Foundation combines its unique services to drive systemic change.

TrustLaw is the Thomson Reuters Foundation's global pro bono legal program, which connects the best law firms and corporate legal teams around the world with high-impact NGOs and social enterprises, working to motivate social and environmental change. We conduct groundbreaking legal research and offer innovative training courses around the world.

INTRODUCTION

Human relations in the world of work are in the midst of a transformation process. Until not so long ago, behaviors that today are considered unacceptable were not matter of discussion in the workplace. In recent years, changes in society have also begun to permeate the workplace, especially when it comes to gender relations. The active demands of women’s movements and feminism put on the public agenda the need to make forms of violence and harassment in different areas visible, even in the workplace.

Within the framework of these debates, the International Labour Organization (ILO) approved the Convention 190 on Violence and Harassment (C190) and its accompanying Recommendation 206 (R206). This new binding international instrument for ratifying States offers new guidelines and recommendations for addressing issues in labor relations that currently require renewed commitments from the different actors in the world of work. Further, C190 makes States, companies, and trade unions responsible of complying with current regulations.

C190 and R206 bring an innovative perspective to labor regulation by grouping equality and non-discrimination with occupational safety and health in a single instrument while placing human dignity at its core. C190 establishes that violence and harassment may be considered violations of workers’ human rights incompatible with decent work and with the sustainability of organizations. It also requires from States an inclusive, integrated, and gender-sensitive approach to prevent and eliminate such behaviors in the world of work. This approach is inclusive because C190 has a broad scope of protection, as it considers workers with their different needs and realities. It is integral because it proposes to address the phenomenon from occupational health and safety and equality and non-discrimination viewpoints. It requires

taking into account the gender perspective because it considers the root causes and social and cultural anchors of gender-based violence.

This document brings together the main findings of a research study meant to analyze the existing regulatory framework on violence and harassment against women in the workplace in 11 Latin-American countries: Argentina, Brazil, Bolivia, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela. The study is based on the definition and guidelines established by C190, applicable to all workers, in force since June 2021. C190 recognizes the right of every person to a work culture free of all types of violence. This document reflects the legislative differences and similarities in the analyzed countries and is based on a comparative law study organized by jurisdiction.

The entry into force of C190 requires local laws to be adapted, a process that is not progressing evenly in the countries and that links general labor protection standards with standards for the special protection of women. While C190 specifies that everyone can suffer violence and harassment, it recognizes that women are disproportionately affected by different forms of discrimination, abuse of power in gender relations, and that gender stereotypes favor violence and harassment.

For an approximation of the situation in the countries analyzed, we review the current regulatory framework, some precedents applying C190, and relevant jurisprudential precedents.

The study was conducted between August 2022 and September 2023 and shows information updated to that date. The document—organized alphabetically by country—includes a summary of the rules and laws related to workplace violence and violence against



REUTERS/ Adriano Machado

women at the national level, the background on the application of C190 in each country, and some examples illustrating how the principles this new Convention proposes are already part of the resolution of actual cases in the different jurisdictions.

C190 is an international convention integrating the framework of international Human Rights Law. We

believe that a study like this can shed light on the context in which the obligations for States, employers, and unions will come into force according to the different responsibilities of each of these sectors, offering a regional perspective on how Latin-America is advancing toward building regulatory frameworks respectful of gender relations in the world of work.



1. ARGENTINA

RULES AND LAWS

There is no internal regulation in Argentina defining the concept of “violence” or “harassment” in general terms, but there are specific regulations including particular definitions. Law 26485 on the Comprehensive Protection to Prevent, Punish, and Eradicate Violence Against Women defines “violence against women” as “any conduct, action, or omission that—directly or indirectly, based on an unequal power relationship—affects women’s lives, freedom, dignity, physical, psychological, sexual, economic or patrimonial integrity”. This Law also establishes that violence may be indirect: it can be any conduct, action or omission, provision, criterion, or discriminatory practice placing women at a disadvantage regarding men. Decree 1011/2010, which regulates this Law, establishes the guiding principles for public policies and orders to pay attention to the particularities or differential features that aggravate the state of vulnerability of women victims. The Labor Contract Law 20744 (LCT), although it does not include a definition of violence or harassment, includes certain rules regulating the issue.

To recognize the impact of domestic violence in the world of work and create measures that mitigate it in the private sphere, the Law for the Integral Protection of Women establishes that public policies must respect the labor rights of victims of domestic violence. However, there are no general laws for the private sector establishing a leave of absence for this reason. In the public sector, the general collective bargaining agreement for the public administration¹ establishes a 15-day leave of absence for gender-based violence with full pay. Further, a

framework protocol has been created to address gender-based violence in the federal public sector.

Regarding the alignment, Argentinian laws are mostly aligned with C190, although there are still aspects to be clarified and regulated. The regulations examined are from the criminal, civil, and labor law fields. In addition, labor precedents have applied laws for protecting women and fighting discrimination, even though they were not specific to the labor law field.

The gender neutrality and reference to gender discrimination and the aspects to be considered for distinction of legal and regulatory provisions have changed to be more inclusive and protect vulnerable groups on a gender-basis. The Law for Comprehensive Protection of Women and the Law on Gender Identity are two examples focusing on special protection standards. Since the Ministry of Women, Gender and Diversity was created in 2019, more sensitive wording has been incorporated into inclusive and neutral language in some labor regulations.

As for the legal mechanisms available to accompany women and require companies to support workers who have suffered violence and harassment in the workplace, the collective bargaining agreement of the public sector establishes that any act of violence in the workplace is a serious misconduct that may be grounds for dismissal. Mandatory training on gender and violence against women is also required for all persons working in the public sector at all levels and hierarchies of the

¹ Decree 214/2006 (Ratifying the Collective Labor Agreement for Public Employment).

Executive, Legislative, and Judicial branches. The Office of Advice on Labor Violence exists to receive complaints and inquiries on labor violence and to advise the person filing the complaint on their rights and the areas where to exercise them. In the private sector, the LCT establishes a general duty of safety for employers, including taking all necessary measures to protect the integrity and dignity of employees. In case of non-compliance, workers may leave because of constructive dismissal and terminate the employment contract due to the employer's fault, and claim compensation for dismissal without just cause, fines, and damages.

There are differences in the laws and regulations between the public and private sectors since, in general, the rules in the public sector are more beneficial for workers. The LCT regulates employment in the private sector, except for domestic workers and agricultural workers. In 2013, a new law was passed to protect workers in private homes and regularize the situation of informal workers. Persons in informal labor situations have less protection, as labor laws only apply to registered employees. If they are not registered, they must go before a judge to obtain protection.

In Argentina, there are collective labor agreements that include harassment and workplace violence, such as the CCT-1464-2015-E and the CCT-756-2019-A. Some of these agreements establish prevention and awareness measures, protocols for action in case of violence, and offer paid leave to victims. Decree 1011/2010 requires that gender protective principles be considered in collective labor negotiations, while the Collective Labor Agreement for Public Employment creates a committee to eradicate labor violence.

Argentina has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention of Belem Do Para, C190, the ILO Convention 111 on discrimination, the ILO Convention 29 on forced labor, and other international treaties on the protection of natural persons. According to the Argentine Constitution, Human Rights treaties have constitutional hierarchy. The order of priority of rules and laws in Argentina places the National Constitution and the

International Human Rights treaties with constitutional hierarchy at the highest level.

The Ministry of Labor, Employment, and Social Security (MTEySS) is the body in charge of enforcing labor regulations. As the administrative authority in charge of labor inspection, it supervises the correct application of labor regulations. There is also a specialized body within the MTEySS: the Undersecretariat of Inclusion Policies in the Labor World. The Ministry of Women, Gender, and Diversity (MMGyD) is responsible for promoting policies aimed at preventing, eradicating, and redressing gender-based violence. Argentina also has local enforcement and control bodies. The Argentine Supreme Court of Justice created the Women's Office to promote gender perspective in internal processes and provide statistical data on gender-based violence and femicides.

IMPLEMENTING THE ILO CONVENTION NO. 190

C190 became effective in Argentina on February 23, 2022, after being ratified through Law 27580. Although a rule regulating the Convention has not yet been enacted, in its opinions, the Supreme Court has determined the State's obligation to make its provisions effective, even before adopting local measures.

Within the framework of creating related public policies, the Executive Branch created the "IGUALAR" Program to reduce inequality in the world of work (Resolution MTEySS 220/2020) and the Qualitas 190 Program, to prevent and address violence and harassment at work (Resolution MTEySS 577/2021).

RELEVANT PRECEDENTS

Three particularly relevant precedents were analyzed to understand the position of Argentinian jurisprudence regarding the application of C190. Two Supreme Court rulings² accept reversing the burden of proof in civil proceedings relating to Law 23592 on Discriminatory Acts. These are prior to the ratification of C190. The third



REUTERS/ Phil Noble

precedent³ is a decision issued by the Labor Court of Appeals. This one refers to the Convention and argues that there is a situation of detrimental conduct women suffer simply because they are women, typical of a "basic

structural discrimination". In this ruling, the Court quotes the LCT, Law 26485 on Integral Protection of Women, the CEDAW, the ILO Convention 111, and C190, which it considered a "milestone that cannot be overlooked."

² CSJN, Fallos 337:315, "Pinturas y Revestimientos Aplicados S.A. s/ Quiebra", 26 de marzo de 2014; and CSJN, Fallos 334:1387, "Pellicori Liliana Silvia c/ Colegio Público de Abogados de la Capital Federal s/ Amparo", November 15, 2011.

³ Cámara Nacional de Apelaciones del Trabajo, Sala I, "Mierez, Karina Noemi c/ Mijal Salud S.A. s/ Despido", August 24, 2021.



2. BOLIVIA

RULES AND LAWS

There are different laws and decrees enacted in Bolivia that seek to protect women's rights and fight gender-based violence, including the definition of violence and/or harassment, the definition of gender-based violence and/or harassment, the intersectional approach with reference to disability, migration, and sexual orientation. The Political Constitution of the Plurinational State of Bolivia establishes gender equality as a fundamental value. Law 243 of 2012 Against Harassment and Political Violence Against Women provides mechanisms to prevent and punish acts of political violence against women. The Comprehensive Law 348 to Guarantee Women a Life Free of Violence (2013) seeks to protect women in situations of violence and prosecute aggressors. Different decrees have also been enacted to regulate and improve the enforcement of these laws, such as Supreme Decree 3774—which creates the Plurinational Service for Women and De-Patriarchalization—and the Special Cabinet to Fight Violence Against Women and Children.

The Comprehensive Law 348 to Guarantee Women a Life Free of Violence defines violence against women and Law 243 of May 28, 2012, defines political harassment and political violence. The Regulatory Decree to Law 243 of 2016 defines different acts of political harassment, including pressure, persecution, and harassment, and describes acts of political violence, such as threats, physical, psychological, and sexual aggression.

Domestic violence can have a significant impact on the world of work, as it can affect the productivity, quality of work, and the workplace safety of women experiencing it. Further, it can contribute to women's lack of participation in the labor force and limit their ability to develop their professional potential.

There are regulations in Bolivia that recognize the impact of domestic violence in the world of work and create measures to mitigate it. Law 348 mentions the need to address gender-based violence in all areas of women's lives, including the workplace, and establishes a Comprehensive System for the Prevention, Attention, Punishment and Eradication of Gender-Based Violence (SIPPASE). The law also promotes sector policies and specific programs to prevent, care for, and protect women who suffer domestic violence. Addressing domestic violence in the workplace and providing prevention, care, and protective measures can improve women's life quality, promote gender equality, and increase the productivity of companies by creating a healthy and productive work environment.

When it comes to aligning laws and regulations to the definitions, scope, and principles of C190, there is a need in Bolivia to expand the laws protecting against labor violence to include informal, self-employed, and digital platform workers. Ministerial Resolution 196/21 MTESS regulates the procedure for reporting labor and sexual harassment, and the Vice Ministry of Labor and Social Security is responsible for ensuring compliance with social security rules and policies. The Political Constitution of the State and Comprehensive Law 348 also protect against labor harassment and violence in the workplace.

As for the legal mechanisms available to support and require companies to support workers who have suffered violence and harassment in the workplace, Bolivia has adopted policies to prevent, address and punish violence against women, considering this to be one of the most extreme forms of gender discrimination. These rules and laws establish comprehensive measures aimed at

modifying individual and social attitudes, practices, and behaviors promoting violence against women through awareness and education in the family, at school, at work, and in other social spheres. Integral Law 348 establishes that the Executive, Legislative, Judiciary, and Electoral bodies, as well as the Governors' and Mayors' Offices, must take the necessary measures to modify violent behaviors and those that tolerate, naturalize, and reproduce violence. These measures include structural, individual, and collective prevention of violence.

The Ministry of Education has policies to create psychological care centers in schools; to guarantee the immediate transfer of children of women in situations of violence to their corresponding schools, and to pass regulations for handling complaints of all forms of school violence and sexual harassment. They also prohibit textbooks and educational materials containing sexist content, violent and discriminatory messages towards women, and promote the development and distribution of educational material with an approach including gender equity and equal rights between women and men. The Ministry of Health has policies to guarantee emergency medical and psychological care and immediate treatment for women at risk of violence. Mechanisms should also be developed to detect and report cases of violence and refer women in situations of violence to specialized medical, psychological, and protective services. The decisions women make exercising their sexual and reproductive rights should be respected, and medical personnel should issue medical certificates to women who require care for physical or sexual harm resulting from acts of violence.

Regarding differences in laws and regulations between the public and private sectors, the Political Constitution establishes the rights of all persons, especially women, to be free from physical, sexual, or psychological violence, and requires the State to take measures to prevent, eliminate, and punish gender and generational violence. Law 348 also requires the Ministry of Labor, Employment, and Social Welfare to guarantee women's access to decent work, free of violence, and with equal pay. Government policies also prioritize protecting people's lives, health, privacy, identity, security, and education. Funds and working groups are allocated at the governmental, departmental, and municipal levels

to carry out these policies. Law 348 establishes specific measures to guarantee access to decent work for women, free from any form of violence. Both the public and private sectors are subject to this law.

Overall, Bolivian labor legislation prohibits any form of discrimination in the workplace, including discrimination based on gender. Further, Law 163—known as the General Labor Law—establishes the right of workers to a safe and healthy work environment, free of violence, harassment, and bullying.

However, in spite of these laws and regulations, gender-based workplace violence continues to be a problem in Bolivia. Reports show that women often face discrimination in the workplace, including sexual violence and harassment.⁴ Therefore, continued efforts are needed to ensure that both the public and private sectors comply with existing laws and regulations, and to enforce effective policies to prevent and address gender-based workplace violence.

There are collective bargaining agreements covering harassment and workplace violence. The First Collective Labor Agreement for the Bolivian National Public Administration, in force since 1999, defines “workplace violence” as “sexual harassment of women,” leaving out other forms of workplace violence. Labor harassment is an every-day reality in Bolivia, although rules and laws have long ignored it due to a lack of awareness of its anomalous nature and its consequences. Even so, Law 348 criminalizes sexual harassment in Bolivia, and the Political Constitution of the State recognizes collective bargaining as a labor right and a preventive means of resolving labor conflicts.

Entities responsible for applying these rules and laws and their enforcement include the Plurinational Service for Women and De-Patriarchalization (SEPMUD), which is a decentralized public institution to monitor, follow up, and evaluate the fulfillment of public policies towards de-patriarchalization to achieve women's effective exercise of their rights, promote the eradication of all types of violence and forms of discrimination against women, coordinate actions with other entities, and promote the coordination and articulation of women authorities and social organizations to implement public policies.

IMPLEMENTING THE ILO CONVENTION NO. 190

C190 has not yet been ratified in Bolivia, but the plenary of the Labor and Labor Regime Committee of the Chamber of Deputies is working on a bill for it. In May 2022, this committee disclosed the Convention with various sectors and representatives of the Executive Branch to get the State to ratify it.

On May 1, 2023, in a speech during Labor Day, President Luis Arce announced Bolivia's future ratification of C190. However, to date, it is not in force, according to the information in the official web page. Bolivia still appears among the countries that have not ratified it.

RELEVANT PRECEDENTS

The Plurinational Constitutional Ruling 0232/2018-S3⁵ of April 20, 2018, is noteworthy in this sense. In this case, the plaintiff claimed that her rights to non-discrimination, physical and psychological health, dignity, and labor stability had been violated due to a series of acts of labor harassment she experienced progressively until, through a company memorandum of March 13, 2017, she was forced to assume a position of lower hierarchy than the one she occupied, in addition to changing the place where she provided her services. The plaintiff initiated proceedings through the administrative channel, through a series of notes where she brought to the attention of the Ministry of Labor, Employment, and Social Welfare there existed acts against her that constituted labor harassment. She went before the Departmental Labor Headquarters in La Paz to request protection against the repeated and systematic harassment she had been suffering since 2016. Injurious acts were continued, despite the *Conminatoria de Cumplimiento* [Order to Comply] J.D.T.T.L.P./EVG/01/2017 of May 11 (confirmed after appeals for reversal and hierarchical appeals). This *Conminatoria* ordered COTEL Ltda. to cease the labor harassment and reassign her to her previous position. The plaintiff claimed her coworkers harassed her with other acts, as well as the theft of her belongings and documentation.

5 Plurinational Constitutional Ruling 0232/2018-S3, available at: www.tcpbolivia.bo, section “Jurisprudencia”.

6 Legal Grounds III.2 of the abovementioned Plurinational Constitutional Ruling.

The court that issued the ruling explained that the constitutional protection of work is not limited to its access; it must be carried out under dignified and fair conditions. Therefore, the persecution that may be evidenced through labor harassment injures the right to decent work.⁶

4 “Violencia laboral basada en género: Análisis de las leyes y regulaciones en el sector público y privado en Bolivia”, ILO Report, 2016.



3. BRAZIL

RULES AND LAWS

Brazil's Law 14457/2022 establishes the “Emprega + Mulheres” program that addresses sexual harassment and other forms of violence against women in the workplace. Companies with more than 20 employees must have a written policy on sexual harassment, adopt specific procedures for complaints, and train employees and supervisors on sexual harassment prevention. In addition, several regulations in the Brazilian legal system address workplace violence and harassment. The Brazilian Senate is considering a bill to incorporate workplace harassment to the Criminal Code, and Brazilian courts already recognize harassment as an illegal conduct.

Regarding the definition of violence and/or harassment in domestic regulations and the definition of gender-based violence and/or harassment, the intersectional approach and reference to circumstances such as disability, migration, and sexual orientation: section 216-A of the Brazilian Criminal Code defines sexual harassment as “constraining someone with the intention of obtaining a sexual advantage or favor, using the condition of hierarchical superiority or superiority inherent to the exercise of his or her position.” Although this definition does not refer to sexism or gender discrimination, Brazilian jurisprudence established that moral harassment is “any abusive conduct that damages the personality, dignity, and physical or psychological integrity of a person, jeopardizing their employment, and degrading the workplace.” Law 14457/2022 seeks to promote gender equality in the workplace and prevent and eliminate violence and harassment without defining “sexual harassment” or mentioning intersectional forms of discrimination. The Maria da Penha Law also seeks to protect women in situations of domestic violence, bringing a gender perspective to the fight against workplace violence.

As for rules recognizing the impact of domestic violence in the workplace and developing measures to mitigate it, the Maria da Penha Law and Law 14457/2022 seek to protect women in situations of domestic or family violence in the workplace. The former establishes that women must have priority access to transfer to another job and retain their employment relationship for up to six months. The latter grants preferential access to professional training courses and a recognition called “Selo Emprega + Mulher” to employers who hire women who have suffered domestic violence. Both laws are based on the constitutional law, which establishes state assistance to every member of Brazilian families and the reduction of violence within relationships.

There are criminal, civil, and labor laws addressing the issue. Regarding their alignment to the definitions, scope, and principles of C190, the definition of C190 is broader than that of the Criminal Code and covers physical, psychological, and economic harm. In addition, C190 is more advanced in principles and operations than Brazilian legislation, as it applies to all workers, regardless of the type of labor contract they have, and to all sectors of formal and informal economy.

In terms of legal and regulatory provisions, the Federal Constitution of Brazil prohibits discrimination and guarantees the equality of all persons, regardless of gender. In this sense, the regulatory provisions’ gender neutrality and reference to gender discrimination are aspects to be considered for distinction. The Constitution also prohibits labor discrimination and guarantees equal pay for equal work. There are specific laws as well prohibiting discrimination and harassment, although the Maria da Penha Law establishes affirmative actions towards women by giving them generic limits. As for

domestic violence, to be considered as such, it must be gender-based, according to the Maria da Penha Law.

Regarding the legal mechanisms available to accompany and require companies to support workers who have suffered violence and harassment in the workplace, Law 14457/2022 establishes that companies with more than 20 employees must have a written policy on sexual harassment, adopt specific processes to deal with complaints of sexual harassment, and train employees and supervisors at least once a year to prevent sexual harassment. Resolution 351/2020 of the Attorney General (PGJ) also contemplates policies for preventing and fighting against moral and sexual harassment and discrimination within the Judiciary. Courts will have permanent channels to receive, listen, monitor, and guide workers in situations of harassment and discrimination within the institutional context. Decree 9571/2018 provides that companies must establish operational mechanisms to report, identify risks and impacts, redress human rights violations, and institute mechanisms to report, investigate and implement corrective measures, ensuring confidentiality and anonymity of third parties.

The Brazilian legal framework does not distinguish between public and private sectors or between formal and informal economy in terms of prohibition of discrimination and equality before the law in the workplace. However, there are supra-constitutional legal provisions that may establish criteria for only one of the economic sectors, such as Resolution 351/2020, which creates policies for preventing harassment only within the scope of the Judiciary. There are also laws that establish the obligation of companies to adapt legal requirements in line with the fight against moral harassment, such as Decree 9571/2018. Law 11948/2009 also prohibits the Banco Nacional de Desenvolvimento Econômico e Social from giving loans to companies whose leaders have received convictions for moral harassment.

There are collective labor agreements against violence and harassment in the workplace. The issue has become more relevant since the 1990s, as the psychological damage that employees have suffered from carrying out their tasks in violent workplaces has affected economic activities.

There are entities in charge of enforcing the rules against harassment and violence in the workplace in Brazil.

These entities include the specialized labor justice, state agencies in charge of labor public policies, and the Public Ministry of Labor. These may investigate and take administrative and legal action against acts of harassment and violence in the workplace, and employers may also enter into agreements with them to comply with certain obligations and cease unlawful conducts.

IMPLEMENTING THE ILO CONVENTION NO. 190

Brazil has ratified 96 international conventions, including the ILO Convention 100 and the Convention 103. However, C190 has not yet been ratified and is in the first stage of the internalization process. Although there is a relevant mobilization of public agencies and civil society entities in favor of adopting C190, no progress has been made so far.

RELEVANT PRECEDENTS

From the analysis of the main judicial cases related to harassment in the Brazilian Superior Courts, we conclude that, although C190 has not yet been ratified, it has already been mentioned in local rulings related to gender violence and harassment in the world of work. Although these provisions are not binding, other courts base their decisions on the principles established in the Brazilian National Constitution, the Consolidação das Leis do Trabalho, and the Civil Code. The Brazilian Supreme Court and the Supreme Court of Justice are considered extraordinary instances, so the most relevant conclusions of the research are taken from regional and higher labor courts. The importance of the subject is highlighted in several recent rulings, and the courts base their decisions on the “core obligations” detailed in C190’s “On Fundamental Principles and Rights in the Workplace”.



REUTERS/ Adriano Machado



4. CHILE

RULES AND LAWS

In Chile, the legal framework for the prevention and elimination of violence and harassment at work, including gender-based violence, is approached from the fundamental rights of the victim. The rights protected are those generally injured by these behaviors, such as physical and psychological integrity, the right to privacy, honor, and non-discrimination. The Chilean Labor Code is the main regulation on the matter, incorporating the protection of fundamental rights in the labor sphere as well as the punishable conducts and the mechanisms to claim their reparation.

Section 2 of the Labor Code establishes labor relations must be based on dignified treatment and prohibits sexual and labor harassment, as well as acts of discrimination. It also establishes that employers must respect the constitutional guarantees of workers and take measures to protect their lives and health. Internal regulations must include provisions on the procedure for sexual harassment complaints. Employers must keep workers' private information confidential. Further, violence and harassment may be grounds for constructive dismissal under the rules of the Labor Code.

On the other hand, the Administrative Statute Law regulates the relations between the State and the public sector workers, including the employees of Ministries, Intendancies, and Governorships. In 2005, Law 20005 typified and punished sexual harassment, modifying the Administrative Statute Law and the Administrative Statute Law for Municipal Employees, and incorporating sexual harassment as an act that violates the dignity of other employees. In 2012, Law 20607 amended both statutes and established the prohibition of carrying out any act qualified as labor in the terms of section 2 of the Labor Code. The Administrative Statute punishes

employees' failure to comply with the obligations and duties with disciplinary measures ranging from censure to dismissal, the latter being the most serious punishment. If sexual harassment is proven, the punished public official may be dismissed from their position and their services will be terminated.

Presidential Instruction 6, signed in May 2018, aims to promote equal rights between men and women, and to prevent and punish mistreatment, labor, and sexual harassment in the Central State Administration. State Administration services are instructed to carry out annual prevention plans, promote amicable and healthy work environments, carry out promotion and training, monitor and report compliance with measures, establish complaint procedures, and implement training and capacity building actions for relevant actors. Instructions also state the minimum contents of procedures for reporting mistreatment, labor, or sexual harassment in the State Administration.

Resolution 1 of the Civil Service of 2017 establishes the need for public services to develop a people management and development policy that includes promoting healthy work environments and gender equality. The National Civil Service Directorate and the Ministry of Women and Gender Equity designed a joint work plan to assist public services in implementing the principle of gender equality and in preventing labor mistreatment, and labor and sexual harassment. The Directorate has also highlighted two illustrative public agency procedures as reference for other services.

Law 20609 establishes anti-discrimination measures and modifies rules of criminal, labor, administrative, civil, and procedural nature. Section 2 defines "arbitrary

discrimination” as “any distinction, exclusion or restriction without reasonable justification that affects the exercise of fundamental rights in the Constitution or in international treaties, including sexual orientation and gender identity as protected categories.” The law establishes the Action of Arbitrary Non-Discrimination, which the person harmed in their right or any person representing the discriminated person can carry out.

Law 21120 protects the right to gender identity of persons in public and private instruments. It also prohibits discrimination and establishes that those affected by a discriminatory act or omission may file an action for arbitrary non-discrimination, as regulated by Law 20609. Section 25 of this law extends these guarantees and obligations to third parties, including employers.

Specifically, regarding the definition of violence and/or harassment in the internal regulations, the definition of gender-based violence and/or harassment, the intersectional approach and reference to circumstances such as disability, migration, and sexual orientation, the Labor Code defines the behaviors of labor and sexual harassment and punishes acts or omissions violating the dignity of female workers related to the performance of their specific jobs. The Protocol for the Surveillance of Psychosocial Risks at Work defines “violence and harassment at work” as “the exposure to intimidating, offensive and unwanted conduct by people, linked to characteristics of the person who suffers such conduct, such as physical appearance, gender or sexual orientation, ethnic origin, nationality, beliefs, etc.” In family law, Law 20066 on Domestic Violence establishes that any mistreatment affecting the life or physical or psychological integrity of the person who is or has been the spouse of the offender or life partner will be considered domestic violence. Two main types of abuse are highlighted here: physical aggression and violence, and psychological or emotional abuse.

There is a need in Chile for regulations to address domestic violence in the workplace. Measures are also needed, to mitigate its effects. A bill currently before Congress seeks to define violence against women and its manifestations, including workplace violence.⁷ At

a lower regulatory level, there is a questionnaire the Superintendency of Social Security prepared addressing work-life balance. However, it does not refer to gender-based violence at work or the interference of domestic violence at work. Another problem is that applying for the questionnaire is voluntary for companies with nine or fewer workers and the anonymity of the responses may be affected in companies with a low number of female workers.

Regarding the alignment of Chilean laws and regulations with the definitions, scope, and principles of C190, some of its principles are included in the Political Constitution and the Labor Code. The obligations in section 6 of C190—which include adopting legislation and policies that guarantee the right to equality and non-discrimination in employment and occupation—are included in the Labor Code and other laws, although the duty to protect workers belonging to one or more vulnerable groups is not expressly recognized in laws or in the Constitution. The Integral Violence Bill, currently in the Senate’s second constitutional procedure, is aligned with the criterion of protection for workers belonging to one or several vulnerable groups.⁸

Regarding legal and regulatory provisions on gender neutrality and gender discrimination in the workplace, labor laws are mostly gender neutral, although there are specific regulations for the protection of women in the workplace. In the case of domestic workers, although the majority are women, the laws regulating them use neutral language. Regarding maternity and paternity, labor regulations distinguish between men and women, although the presence of cis-hetero-normativity in the language is evident. In criminal matters, a protocol of the Public Prosecutor’s Office establishes that criteria on intersectionality, interculturality, human rights, gender, victimology, accessibility, dignified and respectful treatment, and mainstreaming must be applied.

The Labor Code states employers must respect the constitutional guarantees of the personnel and establish internal rules of order, hygiene, and safety with provisions that guarantee a dignified work environment and mutual respect among workers. These provisions include the

procedure and the safeguards and sanctions if there are complaints of sexual harassment. Specifically, section 211-A of the Labor Code establishes the procedure for complaints, investigation, and sanctions in case of sexual harassment. Employers usually include these rules in the internal regulations on order, hygiene, and safety without further development. The jurisprudence of the ordinary courts requires applying these procedures and considers non-compliance as a serious misconduct on the part of the employer, in addition to the re-victimization of the complainant. Persons working in public services may undergo the procedure before the ordinary courts or summary investigations or administrative inquiries in their own service, depending on the protocols that apply in each case.

Regarding the differences between the public and private sectors in terms of labor regulation, although the Labor Code is a supplementary rule in both sectors, public workers are subject to the Administrative Statutes and their internal regulations. Even so, public workers may resort to labor protection for violation of fundamental rights before the ordinary courts, and this includes cases of discrimination and harassment at work and sexual violence in the workplace. The proceedings for declaration of informal employment relationship requires a labor lawsuit before ordinary courts.

There is no information available on collective bargaining agreements addressing harassment and violence at work because there are no public platforms to review them.

IMPLEMENTING THE ILO CONVENTION NO. 190

Chile ratified C190 on June 12, 2023. It will become effective on June 12, 2024.

The new Sectorial Commission of the Superior Labor Council for the Implementation of ILO Convention 190, created on August 29, 2023, aims to analyze and advance the implementation of C190. This commission is a tripartite body including representatives of the Government, workers’ organizations, and private companies.



RELEVANT PRECEDENTS

Chile ratified the ILO Convention 190 only recently. Since it is not in force, there are few references to it in Chilean jurisprudence. In a recent labor judgment, a university professor dismissed for having been reported and investigated for sexual harassment sued the institution for dismissal without just cause and violation of fundamental rights⁹. The court ruled in favor of the plaintiff on the grounds of the lack of sufficient evidence in the dismissal letter. In a ruling issued by the Supreme Court, one of the judges emphasized that, although for formal reasons she could not make a judgment on the merits of the case, she considered that certain criteria should have been weighed and sanctioned by the lower court, pointing out that sexual harassment is a multi-face offense that violates several constitutional rights of the victim and noting that the ILO approved C190 in 2019.

⁹ Ruling issued on March 1, 2022, by the Chilean Supreme Court. Case Rol No. 24.942 - 2021, “Tito René Matamala Aburto con Universidad de Concepción y Otra”.

⁷ Bill “Sobre el derecho de las mujeres a una vida libre de violencia”, Senate Official Gazette 11.077-07. File: http://www.senado.cl/appsenado/tem-plates/tramitacion/index.php?boletin_ini=11077-07

⁸ Section 6, C190.



REUTERS/ Aime Saldarriaga

5. COLOMBIA

RULES AND LAWS

In Colombia, the legal framework preventing and eliminating violence and harassment at work, including gender-based violence, includes Law 1010 of 2006, which establishes the rules to prevent, correct, and punish labor harassment in Colombia, defines “labor harassment” as the “persistent and demonstrable conduct exercised on an employee by an employer, manager or hierarchical superior, co-worker, or subordinate, to instill fear, intimidation, terror, anguish, causing labor damages, demotivation at work, or inducing resignation.” This law also mentions labor discrimination as a form of harassment, covering reasons such as race, gender, age, family or national origin, religion, political preferences, or social situations.

Further, section 210-A of the Colombian Criminal Code addresses sexual harassment as a crime. It establishes that any person who, taking advantage of their evident superiority or relations of authority or power harasses, persecutes, or physically or verbally assaults another person for non-consensual sexual purposes. The punishment for such conduct is one to three years of prison. This section may be applied for cases of misconduct in the workplace.

Finally, Law 1257 of 2008 guarantees the right of women to a life free of violence. It defines “violence against women” as “any action or omission that causes death, harm, or physical, sexual, psychological, economic, or patrimonial suffering because of being a woman.” This law also recognizes economic violence as a form of violence against women: any action or omission that abuses women in an economic way, abusively controls their finances, or imposes monetary rewards or punishments based on their social, economic, or political statuses.

Regarding the intersectional approach and the inclusion of circumstances such as disability, migration, and sexual orientation, among others, section 2 of Law 1010 of 2006 includes within the definition of “labor discrimination” reasons such as national origin and gender. However, it does not expressly include disability. Nevertheless, it is clear that such definition *does* include disability, when interpreted under the light of section 13 of the Political Constitution and the jurisprudence of the Constitutional Court. Authorities and employers must act considering all forms of discrimination and violence at work, providing protection, and guaranteeing the rights of all persons, regardless of their gender, sexual orientation, disability, migrate status, or other characteristics protected by the Constitution.

As for regulations that recognize the impact of domestic violence in the world of work and create measures to mitigate it, Law 1257 of 2008—in force in Colombia—aims to guarantee a life free of violence for women, both in the public and private spheres. This law specifically addresses domestic violence. Section 12 states that the Ministry of Labor must promote the social and economic recognition of women’s work, apply measures to guarantee equality, carry out campaigns to eradicate discrimination and violence against women in the workplace, and encourage women entering non-traditional sectors. Further, Decree 4463 of 2011 establishes that the Labor Risk Administrators must advise companies to apply measures preventing violence against women in the workplace, considering psychosocial risk factors, and promoting healthy lifestyles and work.

Law 1010 of 2006 establishes legal mechanisms to support workers and require from employers that they support workers who have suffered violence and

harassment in the workplace. These mechanisms include creating a Workplace Coexistence Committee to handle complaints, a workplace harassment jurisdiction to protect against retaliatory dismissal, mandatory training on workplace harassment, prevention policies, and periodic assessments of the workplace environment. These provisions seek to ensure a safe work environment and promote protection.

The rules above apply to both the public and private sectors. However, in the specific area of the City of Bogota, there is a district decree urging employers to take measures against labor and sexual harassment. There is no legal distinction in the obligations regarding labor and sexual harassment depending on whether it occurs in formal or informal employment settings, but in informal work there is generally no compliance with the rules and regulations in force.

In Colombia, there are no significant collective bargaining agreements specifically addressing harassment and violence in the workplace.

Finally, the entities responsible for applying international rules, such as ratified Human Rights treaties and ILO conventions, are all legal operators, especially judges. The judiciary has the competence to interpret and apply these rules and judges are in charge of guaranteeing compliance with the obligations arising from these treaties and conventions.

IMPLEMENTING THE ILO CONVENTION NO. 190

Colombia has not ratified Convention 190. Therefore, for the time being, it does not have a rule of domestic law regulating the obligations in it.

RELEVANT PRECEDENTS

These precedents highlight the interpretation and application of international and national rules related to harassment and workplace violence. The Supreme Court of Justice and the Constitutional Court have used C190 and other international instruments to ground their decisions.

In Ruling SL194-2021, the Supreme Court of Justice sustained that the persistent conduct of requesting a female worker to resign is labor harassment, and it is prohibited by Law 1010 of 2006. The Court emphasized that the protection of the law starts once a complaint is filed, without any additional requirements. In Ruling T-198/22, the Constitutional Court declared null and void the resignation of a female worker due to labor harassment. The Court highlighted judges must correct unequal treatment and make the burden of proof more

flexible in cases of violence or discrimination. Further, it ordered her employer to create a timely and gender-focused protocol to address labor and sexual harassment complaints. In Ruling T-140/21, the Constitutional Court ordered an employer to take all necessary measures to determine whether a conduct constitutes workplace harassment and to take action to prevent such conducts. The Court emphasized that the employer must make a gender differential analysis and provide attention and support lines with a differential and gender approach.

It ordered the worker be reinstated and paid the labor claims. In Ruling SL3025-2022, the Supreme Court of Justice referred to C190 as an important criterion of interpretation, even though Colombia has not ratified it. The Court established that the employer is responsible for providing a safe work environment and that the lack of timely measures for harassment complaints may give rise to compensation for damages.

These precedents reflect Colombia's jurisprudence regarding harassment and workplace violence. There, reference is made to international and national rules to protect victims and establish employer responsibilities. Legislation in Colombia has more specific requirements regarding workplace harassment compared to C190. For example, Law 1010 of 2006 requires a persistent and demonstrable conduct of workplace harassment. C190 does not include such requirements. The local rules and laws state that harassment must cause fear, terror, distress, damages at work, demotivation, or resignation, while C190 covers physical, psychological, sexual, or economic harm, including gender-based sexual harassment. Although local rules and laws are more restrictive, the Supreme Court has understood that the precepts of C190 should be considered as important criteria of interpretation, enriching the standards established in ILO Convention 111. It would be beneficial for the labor sphere in Colombia if the Congress expressly ratified C190 to provide stronger protection for women and diversities in the labor sphere.





6. ECUADOR

RULES AND LAWS

Ecuador ratified C190. It was the third country in the region to do so. This convention provides a common framework to prevent and eliminate workplace violence and harassment, recognizing the right of all people to a violence-free work environment. In line with this, the Ecuadorian Constitution prohibits discrimination, harassment, and violence of any kind affecting women at work. The Comprehensive Organic Law to Prevent and Eradicate Violence against Women, and other specific regulations in the Labor Code and the Protocol for Preventing and Attending to Cases of Discrimination, Harassment, and Violence against Women in the Workplace promote an equitable and violence-free environment.

The Comprehensive Organic Law to Prevent and Eradicate Violence against Women in Ecuador defines “gender-based violence” as “any action based on gender that causes physical, sexual, psychological, economic, or patrimonial harm to women in the public and private spheres.” The same law considers “harassment” as “a form of psychological violence.” The Labor Code establishes that “harassment” is a “repeated behavior that violates the dignity of a person in the workplace, causing harm, mistreatment, or humiliation, and [that] may be considered discriminatory when it is motivated by reasons such as union membership.” The Convention on the Elimination of Violence and Harassment in the World of Work also prohibits harassment and defines “violence and harassment” as “unacceptable behaviors and practices that can cause physical, psychological, sexual, or economic harm, including gender-based harassment.” It recognizes the right of all persons to a work environment free from violence and harassment, including members of the LGBTIQ+ community. Both the Law and the Convention have intersectional approaches

and refer to circumstances such as disability, migration, and sexual orientation, in line with the provisions of the Constitution.

While C190 recognizes the effects of domestic violence and its impact on the world of work, and states that there is an obligation to create reasonable measures to try to mitigate it, Ecuadorian domestic regulations do not establish measures specifically relating to the impact of domestic violence. On the other hand, changes in domestic regulations could be further advanced to better align domestic laws and regulations with the definitions, scope, and principles of C190. National laws and regulations addressing the issue of violence are especially constitutional, labor, criminal, and civil: the Constitution of the Republic of Ecuador; the Labor Code; the Comprehensive Organic Law to Prevent and Eradicate Violence against Women; the Protocol Preventing and Attending to Cases of Discrimination, Labor Harassment, and all forms of violence against women in the workplace; and the Organic Law to Promote the Violet Economy.

Ecuador’s laws and regulations promote gender neutrality and refer to gender discrimination. The Labor Code addresses the issue in a broad manner, without making specific gender distinctions, and focuses on guaranteeing equality for all persons. However, specific regulations have also been enacted to protect women, recognizing their vulnerable situation in the workplace. An example of this is the Protocol for Prevention and Attention to Cases of Discrimination, Harassment at Work, and all forms of violence against women in the workplace, which aims to specifically address situations of discrimination, harassment, and violence affecting women at work.

Regarding the legal procedures to support—or require the employer to support—the worker who has suffered violence and harassment in the workplace, the Protocol the Ministry of Labor issued states that a preventive culture must be implemented, the protocols must be socialized, and the victims must be treated with impartiality, protection, and confidentiality. The Code maintains the prohibition of retaliation, non-repetition, and interpretation more favorable to the victim. The Labor Code also penalizes any type of harassment or discrimination or violent conduct in the workplace. There is no specific provision requiring implementing a report channel or preventive activities for situations of violence and harassment, although employers have the power to create internal policies for this purpose.

Likewise, Ecuador enacted the Organic Law to Promote the Violet Economy, which the National Assembly approved on January 10, 2023. This law promotes gender mainstreaming, proposing measures to promote women's access to the labor and economic environment, thus reducing those barriers that have hindered such access in the past.

Labor relations in the private sector are governed by the Labor Code. In the public sector, however, they are governed by the Organic Public Service Law. Both laws prohibit labor harassment. The Organic Law Reforming the Organic Law of the Public Service and the Labor Code to Prevent Labor Harassment defines “labor harassment” as “repeated behaviors violating the dignity of the person and [that] may cause harm, mistreatment, humiliation, or prejudice in the workplace.” Harassment may be considered discriminatory when it is motivated by reasons listed in the Constitution. The Organic Law of Public Service recognizes the right of public officials to not be subject to labor harassment, while the Labor Code includes labor harassment as a prohibition for the employer. The Ministry of Labor issued a Protocol for preventing and attending to cases of discrimination, labor harassment, and all other forms of violence against women in the workplace. This Protocol establishes that institutions and employers must adapt their regulations in accordance with its provisions and guidelines, as defined by the Ministry. There are no specific regulations to address violence and harassment at work in the formal and informal economy.

Collective bargaining agreements do not usually specifically address harassment and violence in the

workplace. These issues are usually addressed and regulated in the internal work regulations of each employer. Collective bargaining agreements tend to focus on job stability and improving working conditions.

The enforcement authority for rules regarding labor harassment and the protection of labor rights is the Ministry of Labor. The Ministry may receive complaints and carry out investigations to determine whether a violation of the labor rules and laws has occurred. The Ministry also has specific mechanisms and procedures to address these complaints, such as mediation, conciliation, and imposing administrative sanctions. If the actions are a crime, the criminal justice system can be approached by filing a complaint before the corresponding Prosecutor's Office. Judicial authorities may carry out investigations and, if it is determined that a crime has been committed, impose criminal punishments. Further, if individuals in a higher power dynamic violate constitutional rights, jurisdictional guarantees such as the action for protection can be started. This remedy makes it possible to request of fundamental rights to be protected before the courts.

IMPLEMENTING THE ILO CONVENTION NO. 190

Ecuador ratified C190 and R206. The ratification process included a ruling issued by the Constitutional Court. The National Assembly approved it unanimously. The State reformed the Labor Code and the Public Service Organic Law to address workplace harassment. In 2018, the Comprehensive Organic Law to Prevent and Eradicate Violence against Women was published, including provisions related to labor protection for women and prevention programs. A Protocol for Prevention and Attention in Cases of Discrimination, Labor Harassment and/or All Forms of Violence against Women in Workspaces was created, and it applies to both the public and private sectors.

In January 2023, the Congress passed the Organic Law to Promote the Violet Economy. This Law proposes some measures, incentives, and guarantees focused on promoting women's access to the labor and economic environment, such as creating employment programs for women and equality plans to prevent any type of labor discrimination between women and men. The Law also includes specific measures to prevent sexual harassment and gender-based harassment at work, incentives for

women in productive sectors and for teenage girls. The main goal is to insert women in productive areas such as agriculture, poultry, pecuniary, and fishing. This Law also seeks to guarantee labor equality by eliminating gender roles, giving equal pay, bringing down barriers that keep women away from work, equal treatment, and opportunities in the access to employment, training, and promotion of professionals. All these implied modifying the Labor Code, for example the prohibition for employers to demand requirements other than those aimed at proving applicants' competence and capacity for the job position, as well as the prohibition to ask discriminatory questions during the selection process. However, specific legislation to comply with the requirements of C190 has not yet been enacted.

It was proposed that the annual socialization of C190 and collaboration with the Ministry of Labor should be used to approve resolutions to prevent and eradicate discrimination and harassment in the workplace, including creating protocols for personnel selection and organizational culture. The current rules and laws refer specifically to women. Even though the Comprehensive Organic Law to Prevent and Eradicate Violence against Women recognizes gender diversity, in practice it does not include trans and non-binary people in the protection against workplace harassment.

RELEVANT PRECEDENTS

We will review two important rulings of the Constitutional Court of Ecuador related to C190 and women's rights in the workplace. Ruling 983-18-JP/21 is the case of a pregnant woman and her family who were refugees in Ecuador. The Court understood the rights to health, life, equality, and non-discrimination were violated, and workplace harassment was included as an example of structural discrimination. Ruling 1292-19-EP/21 analyzes the case of a disabled teacher who requested a change in her working day due to health problems. The Constitutional Court ruled the rights to life with dignity and to work as a person with a disability were violated, and also defined labor harassment as a form of abuse by employers.

Ruling No. 986-19-JP/21 reviews four cases of labor harassment against women. Case A stands out: here, the right to effective administrative protection was violated because Casa de la Cultura and the Labor Inspectorate failed to respond to the complaint of labor harassment. In case C the Court concluded there was a violation of the right to work in dignified conditions due to a detrimental administrative change. These rulings contribute to defining labor harassment as a form of violence that affects workers' health, integrity, and right to work in dignified conditions.



REUTERS/ Ricardo Moraes



REUTERS/Reuters Photographer

7. MEXICO

RULES AND LAWS

The legal framework for the prevention and elimination of violence and harassment at work, including gender-based violence, includes among others: the Political Constitution of the United Mexican States; the Federal Labor Law; the Federal Law to Prevent and Eliminate Discrimination; the Federal Criminal Code; the General Law on Women's Access to a Life Free of Violence; the Trade Agreement between Mexico, the United States, and Canada; the Official Mexican Standard NOM-035-STPS-2018; and Psychosocial Risk Factors at Work-identification, analysis, and prevention.

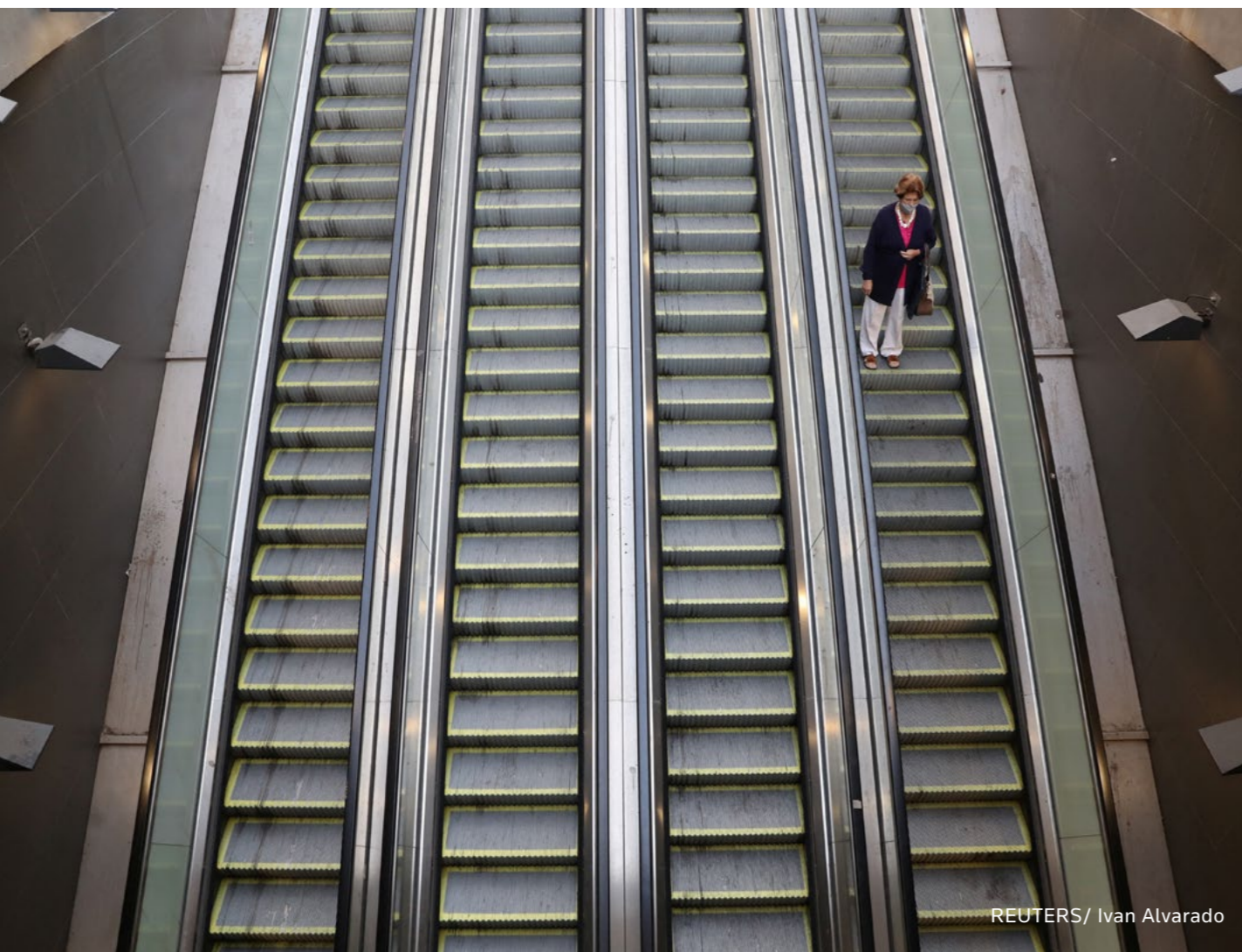
Domestic rules and laws in Mexico address violence and harassment from an intersectional perspective, considering circumstances such as disability, migration, sexual orientation, among others. The Political Constitution of the United Mexican States (CPEUM) has provisions on the prevention of gender-based violence and equal employment opportunities. The Federal Labor Law (LFT) defines "sexual harassment" as "a form of violence based on the abuse of power that causes defenselessness and risk for the victim." The Federal Law to Prevent and Eliminate Discrimination does not define violence and harassment; it seeks to create inclusive working conditions and fight discrimination in various dimensions. The General Law on Women's Access to a Life Free of Violence defines "violence against women" as "any action based on their gender that causes harm or suffering in various spheres." The Federal Criminal Code establishes criminal penalties for denying or restricting of labor rights based on gender, among others. Mexican Official Standard NOM-035-STPS-2018 defines workplace violence as acts of harassment, bullying, or mistreatment that harm the integrity or health of the worker and establishes specific definitions of harassment, bullying, and mistreatment.

Finally, the Trade Agreement between Mexico, the United States, and Canada (T-MEC) includes the objective of eliminating discrimination in employment and promoting gender equality, establishing policies to protect workers against discrimination and harassment based on sex, pregnancy, sexual orientation, gender identity, and caregiving responsibilities.

There are standards that recognize the impact of domestic violence in the workplace and propose measures to mitigate it, such as Standard NMX-R-025-SCFI-2015 on Labor Equality and Non-Discrimination. This Standard seeks to prevent labor discrimination based on gender, sexual orientation, and pregnancy. Although such Standard is not mandatory, it can be used to certify that a workplace promotes equality and inclusion. On the other hand, the General Law on Women's Access to a Life Free of Violence defines family violence and establishes that the State must protect the victims and guarantee their human rights.

C190 was recently ratified by Mexico and became effective on July 6, 2023. However, most existing labor, civil, criminal, and constitutional rules and laws are already aligned with the definitions, scope, and principles of C190, and share its focus on preventing discrimination-based violence/harassment.

Rules and laws are gender neutral and do not distinguish regarding protection. Laws prohibit discrimination based on gender and apply to both men and women, unless there is a specific law for protecting women, such as the General Law on Women's Access to a Life Free of Violence. This is established in the CPEUM, in the LFT, and others.



REUTERS/ Ivan Alvarado

There are different legal mechanisms to assist or require employers to support a worker who has suffered violence and harassment in the workplace. The LFT establishes employers must apply protocols to prevent and pay attention to violence, harassment, and sexual harassment, as well as to eradicate forced and child labor. Workers have the right to terminate the employment relationship and demand compensation if they are victims of violence, harassment, or bullying. Workers may initiate administrative proceedings before CONAPRED, alleging violation of their human rights, and CONAPRED may issue recommendations to employers. Workers may also sue for civil damages and file criminal complaints. Finally, NOM 035 establishes that workplaces must have safe and confidential channels to receive complaints and reports on workplace violence and harassment, make information on workplace violence known, establish procedures for action and follow-up, train the personnel responsible, and provide information on how to report acts of workplace violence.

Regarding the differences in the public and private sectors and in the formal and informal economy, in principle, the regulations mentioned above apply and are enforceable at the federal level. Therefore, both individuals and authorities must comply with them. However, in practice, supervising compliance in the informal sector can be complicated, since this sector is not duly regulated (which means that, in many cases, they do not pay taxes, do not have permits and, in general, do not comply with the regulations to protect employees). Therefore, it may be more difficult to prevent cases of violence, since the government itself does not have sufficient resources for a comprehensive supervision of informal employers.

Regarding collective bargaining agreements addressing harassment and violence in the world of work, in principle, collective bargaining in Mexico must be governed by the principles of non-discrimination, violence and/or harassment established in the LFT

and the Constitution. Likewise, according to Chapter 23 “LABOR” of the T-MEC, workers and unions must be able to exercise collective rights free of violence. In recent years, complying with the T-MEC, several companies from different industries—especially those with foreign investment—have incorporated provisions preventing harassment and/or labor violence. These also comply with the international commitments Mexico assumed.

The Ministry of Labor and Social Welfare, through its Labor Inspection Department, monitors the correct compliance with labor standards, including international treaties assumed by Mexico. Likewise, CONAPRED intervenes as an autonomous agency that verifies compliance with international and national standards on human rights and discrimination, at the request of a party.

IMPLEMENTING THE ILO CONVENTION NO. 190

The Senate of the Republic of the United Mexican States approved C190 on March 15, 2022. It entered into force on July 6, 2023. Mexico must take measures in several areas, strengthening labor regulations and inspection to prevent and eradicate violence in the workplace. In recent years, amendments have been made to address this problem, such as publishing NOM 035 and including obligations in the Federal Labor Law, for example the mandatory implementing of a protocol to prevent gender-based discrimination and for attending to cases of violence and sexual harassment, as well as for eradicating forced and child labor in the workplace. Despite these advances, Mexico must still make further reforms and action plans to comply with the provisions of C190.

RELEVANT PRECEDENTS

There are many jurisprudential criteria understanding that labor and other authorities must judge the facts alleged by victims with a gender perspective. Some even define violence and harassment in the workplace and/or sexual harassment. The administration of the Government in office has focused its efforts on the protection of women and, for several years, the Mexican Supreme Court of Justice has ruled following the “pro persona” principle, which consists of preferring the

broadest rule or criterion in protecting human rights and the rule or criterion that least restricts the enjoyment of such rights. A related criterion is the “Harassment and Sexual Harassment in the Workplace: lawsuits involving any of these conducts must be judged with a gender perspective, even when the women complainants and/or victims are not parties in the proceedings.” The facts for which this criterion was issued involved an employee who was reported and subsequently dismissed on the grounds of harassment and sexual harassment to a group of women. The employee filed a lawsuit before the labor authorities alleging unjustified dismissal. The labor authorities determined the nullity of the termination because the employer failed to offer as evidence the ratification of those who intervened in the minutes where the facts were recorded, i.e., the complainant women.

In reviewing the case, the Collegiate Court determined that, in cases where there is evidence of sexual harassment or sexual harassment at work committed against women, labor authorities must rule with a gender perspective, even when the complainants and/or victims are not a party in the labor lawsuit. The reason for this is that, including gender when assessing the facts allows to identify situations that would otherwise go unnoticed, even though they are key to a full understanding of the dispute. Thus, harassment and sexual harassment in the workplace are prohibitions associated with guaranteeing dignified work and the right to a life free of violence for women and, since their incorporation in section 47 of the Federal Labor Law, causes for termination must be read in a different way. In this sense, there is no excuse for ignoring the facts related to these prohibitions, even when the complainants and/or victims are not a party in the labor lawsuit proceedings where the nullity of a termination based on these conducts is claimed, since the purpose of judging with a gender perspective is that the formal conception of law does not make women invisible but, on the contrary, transforms and takes care of leveling the situation of historically disadvantaged groups such as women. Doing otherwise would foster an environment of impunity, facilitating and promoting acts of violence in general to be repeated. This would deepen a feeling of insecurity among women, and a persistent distrust in the justice.



8. PARAGUAY

RULES AND LAWS

Paraguay's domestic laws, especially Law 5777/16, establish relevant definitions of violence and harassment. "Violence against women" is defined as "behaviors causing physical, sexual, psychological, patrimonial, or economic harm based on their status as women and unequal power relations." "Discrimination against women" is defined as "any distinction or restriction undermining their rights in different spheres." This law describes various types of violence, such as psychological, sexual, labor, telematic, symbolic, institutional, and violence against the dignity of women.

The Criminal Code also typifies sexual harassment as a crime involving harassment for sexual purposes by abusing authority or influence in a relationship of subordination to a superior hierarchy. In the area of labor law, discrimination for reasons of physical disability, race, color, sex, religion, political opinion, or social condition is prohibited and considered a justified cause for termination of employment. However, unlike other legislation, Paraguayan law focuses mainly on violence against women and does not explicitly include an intersectional approach that considers circumstances such as disability, migration, and sexual orientation, among others.

Regarding regulations that recognize the impact of domestic violence in the world of work and take measures to mitigate it, section 16 of Decree 6973/17, which regulates Law 5777/16, establishes that women suffering violence have the right to tolerance and flexibility in their working hours to attend proceedings, follow the status of such proceedings, receive medical and psychological treatments, or any other situation related to the situation of violence. All companies, regardless of whether they are public or private, must include this provision in their internal regulations.

Regarding the alignment of laws and regulations with the definitions, scope, and principles of C190, the research shows that the rules and laws in force in Paraguay are in line with the provision in it, although Paraguayan regulations emphasize discrimination against *women*. These laws are of a civil, criminal, and labor nature.

Paraguayan rules and laws are not neutral in terms of the terminology they use and in the level of protection they provide. In Paraguay, the rules and laws on gender discrimination refer mainly to women, not considering the intersectional approach provided in other legislations.

There are legal mechanisms in Paraguay to support and require employers to support workers who have suffered violence and harassment in the workplace. These mechanisms are based on different laws, such as MTESS Resolution 388/2019, which states that employers with more than 10 employees must have an Internal Work Regulation approved by the Ministry of Labor, Employment and Social Security. These regulations must include an explicit internal procedure for complaints of workplace violence, as well as applicable consequences and measures to prevent, control, and eliminate violence in the workplace.

Law 5777/16 on Integral Protection Law for Women Against All Forms of Violence establishes policies and strategies to prevent violence against women, both in the public and private spheres. This Law defines violence and discrimination against women, recognizing there exist various forms of violence in all areas of women's lives.

Finally, Decree 6973/17, which regulates Law 5777/16, establishes additional protection measures. If the person reported and the victim work or study in the same place,

employers must guarantee a minimum distance from the woman in a situation of violence. Such distance cannot affect her labor rights. These laws seek to promote a safe and violence-free work environment, and provide affected workers with the necessary resources and protections to deal with situations of violence and harassment at work.

In Paraguay, rules and laws do not require collective bargaining agreements to include specific provisions on harassment and workplace violence. These agreements focus on regulating matters such as wages, categories, nature of work, breaks, hygiene and safety measures, and conflict resolution. However, there is a specific case: Itaipu Binacional, an international public entity, includes provisions related to gender equity. Itaipu's Collective Bargaining Agreement establishes the commitment to promote women's participation, eliminate obstacles that prevent their full exercise, and create mechanisms to address sexual and moral harassment in the workplace through a Gender Equality Committee and awareness-raising campaigns.

IMPLEMENTING THE ILO CONVENTION NO. 190

C190 has not been ratified in Paraguay. Currently, according to public sources, we have not identified efforts from national authorities or other labor referents to ratify the Convention.

RELEVANT PRECEDENTS

Some relevant decisions on the matter include the case "S. P., P v. Cadena Farmacenter SA." Here, an employee was dismissed for sexual harassment. The first instance court ruled in favor of the employee, requesting he be reinstated. The company appealed the ruling. The court of appeals stated that a prior criminal judgment is not necessary to establish a dismissal justified for sexual harassment, in line with C190.¹⁰

In the case "Cooperativa Santísimo Redentor Ltda.", an employee alleged her manager had sexually harassed her. The court of appeals recognized sexual harassment as a form of discrimination based on gender, on the grounds of the Labor Code and the ILO Convention No. 111.¹¹

However, in the case "O.L.S. s/ acoso sexual," the court of appeals declared the nullity of the ruling and of the defendant's dismissal on the grounds that the facts of the case did not meet the legal requirements of sexual harassment, as established in the Criminal Code. In this case, the ruling is not aligned with C 190, since it does not consider sexual harassment as repeated violence causing physical, psychological, sexual, or economic harm, nor does it require a relationship of authority between the aggressor and the victim.



REUTERS/ Jorge Silva

¹⁰ S. P., P c. Cadena Farmacenter S.A. s/ Reintegro al trabajo y cobro de guaraníes (Ac. y Sent. N° 44), 09/08/2019, Tribunal de Apelación del Trabajo de Asunción, Sala 1; La Ley Online, at: <https://online.laley.com.py/search/document/1/0E21E89D-DDAB-9D54-37AA-06671F12C821>

¹¹ C.S.K. c/ Cooperativa Santísimo Redentor Ltda. s/ cobro de guaraníes (Ac. y Sent. N° 40), 26/05/2000, Tribunal de Apelación del Trabajo, Segunda Sala: <https://compendium.itcilo.org/es/compendium-decisions/tribunal-de-apelacion-del-trabajo-segunda-sala-carmen-sachelaridi-knutson-c-co-operativa-santisimo-redentor-ltda-sobre-cobro-de-guaranies-en-diversos-conceptos-26-de-mayo-de-2000-acuerdo-y-sentencia-num-40>



9. PERU

RULES AND LAWS

In Peru, Law 30364 focuses on preventing and punishing violence against women and family members, although its scope does not explicitly include the workplace. However, it does establish some resources employers must provide to workers victims of domestic violence. On the other hand, Law 27942 focuses on preventing and punishing sexual harassment specifically in the workplace. This law highlights the importance of addressing cases of sexual harassment from a gender perspective. Finally, the Criminal Code includes harassment as a crime, considering it occurring in an employment relationship is an aggravating circumstance.

Regarding the definition of violence and/or harassment in Peru's rules and laws, there is no specific rule or law about these issues in the workplace. However, definitions related to it can be found in other laws. Law 30364 defines violence against women and members of the family group, covering both violence within the family and the community, including sexual harassment in the workplace and in educational institutions, among others. This law also recognizes different types of violence, such as physical, psychological, sexual, and economic, or patrimonial violence.

Regarding sexual harassment at work, Law 27942 defines "sexual harassment" as "a form of violence that occurs when there is an unwanted conduct of a sexual or sexist nature or connotation, which may create an intimidating, hostile, or humiliating environment, affecting the activity or work situation of the person."

The Peruvian Criminal Code includes the crime of harassment, defining it as "the surveillance, persecution, harassment, or pursuit of unwanted contact with a person in a repeated, continuous, or habitual manner, which may

alter this person's daily life." Aggravating circumstances include the victim being a minor, being elderly, pregnant, having a disability, having or having had a relationship with a partner, being or having been a partner or spouse, having a parental relationship, living in the same home or sharing common areas of a property, or if the conduct is carried out within the framework of an employment, educational, or training relationship.

The intersectional approach is not specifically mentioned. However, reference is made to circumstances such as disability, migration, and sexual orientation as aggravating factors in the crime of harassment, which suggests some consideration of intersectionality in the legislation.

Regarding regulations recognizing the impact of domestic violence in the world of work and developing measures to mitigate it, section 11 of Law 30364 recognizes the labor rights of victims of domestic violence. These rights include protection against dismissal, the possibility of changing workplace and schedule, leaves of absences and tardiness arising from violence, and the suspension of the labor relationship for a period of up to five months without pay. Supreme Decree 009-2016-MIMP extend these rights and establishes that employers must change the workplace if the violence stems from the work environment.

Regarding the alignment of rules and laws with the definitions, scope, and principles of C190, the laws and regulations analyzed have not been enacted as a result of it, but they are aligned with its definitions, scope, and principles. Thus, violence and harassment are regulated by criminal, labor, and human rights protective legislation.

The legal and regulatory provisions relating to sexual harassment use neutral terminology and protect any person, regardless of gender. In contrast, the rules and laws preventing violence against women and family members do not use neutral terminology, but seek to protect both men and women. The terminology in the Criminal Code is not neutral. However, in practice, it is applied regardless of the gender of the persons involved in the crime.

Legal mechanisms to support workers who have suffered violence and harassment in the workplace are limited. Supreme Decree 003-97-TR establishes that acts of violence and serious misconduct may be grounds for dismissal, but there is no clear obligation to sanction the aggressor or take protective measures for the affected worker. Employers are not required to implement prevention and communication policies on violence and harassment, except in the case of sexual harassment, regulated by Law 27942 and Supreme Decree 014-2019-MIMP.

The regulations analyzed here do not distinguish between public and private sectors, except for the Supreme Decree 003-97-TR, which might not be applicable to some workers in the public regime.

In Peru, most collective bargaining takes place at company level, so each company has its own collective bargaining agreement. To determine whether there are collective bargaining agreements addressing harassment and violence in the workplace, it would be necessary to request the Ministry of Labor a copy of all current collective bargaining agreements registered in its database.

The exception to this rule is the construction sector, which negotiates collective bargaining agreements by activity. However, no provision related to harassment and violence in the world of work has been included in the Collective Agreement 2021-2022 of this sector. It is important to note that, in practice, it is not common for collective bargaining agreements to include provisions similar to those established in C190.

Although there are no specific bodies responsible for implementing international standards in Peru, the country must submit periodic reports on the measures taken to comply with human rights treaties. These reports are prepared on a multisectoral basis, and are



submitted to the corresponding treaty committees. At a national level, the National Superintendence of Labor Oversight (SUNAFIL) oversees compliance with domestic labor legislation. However, it is not responsible for overseeing international standards not incorporated to national legislation. Finally, the Judiciary Branch must hear workers' claims and enforce employers' obligations.

IMPLEMENTING THE ILO CONVENTION NO. 190

Peru ratified C190 on June 8, 2022, through Supreme Decree 016-2022-RE. However, the Convention entered into force on June 8, 2023. Domestic rules and law regulating the obligations assumed under C190 have not yet been enacted. Nevertheless, as mentioned above, we currently have rules and laws regulating sexual harassment, among them Law 27942 for the

Prevention and Punishment of Sexual Harassment and its regulation.

RELEVANT PRECEDENTS

The following cases stand out regarding violence in the workplace in Peru.

- Case 05652-2007-PA-TC (Labor): this case classifies the dismissal of a female worker because of her pregnancy as direct discrimination based on sex. The Court declared the *amparo* suit was well founded and ordered the employer to reinstate the worker, considering that the company violated her right to equality.
- Case 3804-2010, before the Court of Appeals of Del Santa (Administrative): the court understood that propositions of sexual content made by a worker towards a female coworker were a disciplinary offense. The University imposed a suspension on the employee for sexual harassment, which the second instance court confirmed.
- Plenary Agreement 1-2011/CJ-116 (Criminal): this agreement establishes criteria for weighing evidence in sexual crimes. Among them, the victim's consent cannot come from threats, coercion, taking advantage of a coercive environment, or silence. Evidence of previous or subsequent sexual conducts of the victim will not be admitted.
- Resolution 065-2021-PLENO-JNJ (Disciplinary Proceeding before the Peruvian National Judicial Board): in this disciplinary proceeding, a provisional superior judge was charged with sexual harassment and inappropriate treatment of a female judicial worker. The resolution highlights the inappropriate conduct of the judge in requesting the rotation of the female employee based on personal and subjective aspects, which constituted an expression of violence against women.

These precedents are relevant in the fight against gender violence in the workplace in Peru, and serve as a guide for interpreting and applying the law in similar cases.



REUTERS/Andrés Stapff

10. URUGUAY

RULES AND LAWS

Within the legal framework for preventing and eliminating violence and harassment in the workplace, especially gender-based violence, there is no specific rule or law on violence and harassment in the workplace. However, there are laws addressing the issue in different contexts. Law 18561, enacted in 2009, focuses on preventing and punishing sexual harassment in the workplace and in education. It defines “sexual harassment” as “unwanted conducts of a sexual nature that create an intimidating, hostile, or humiliating environment for the victim.” Law 19580 on Gender-Based Violence Against Women, enacted in 2017, modified provisions of the Civil and Criminal Codes. This law addresses different forms of gender-based violence, including patrimonial and labor violence and defines “labor violence” as “acts that hinder a woman’s access to work or her job stability, such as moral or sexual harassment, imposing illegal requirements based on marital status, age, physical appearance, or unnecessary medical examinations.” This law also establishes guidelines for labor and social security policies, promoting gender equality and the right to equal pay. The law requires incorporating gender perspective in the Ministry of Labor and Social Security and implementing programs to train and include women with restricted employment opportunities due to gender-based violence.

Section 40 of the law grants rights for women to ensure they keep their jobs, including full payment of their salary during judicial proceedings related to gender violence, paid leave for complaints, flexible working hours or place of work, and job stability for a certain period of time after the precautionary measures for acts of gender violence are imposed. This is how the legal framework in Uruguay to address violence and harassment at work, with a

special focus on gender-based violence and considering circumstances such as disability, migration, and sexual orientation is highlighted.

Regarding the importance of regulations recognizing the impact of domestic violence in the workplace and taking measures to mitigate it, although there is no specific law expressly addressing this issue, Law 19580 recognizes the overall impact of domestic violence and defines it as any action that illegitimately undermines women’s human rights, by a person with whom she has or has had a relationship of kinship, marriage, courtship, affection, or cohabitation. This law also integrates domestic violence with the rights it affects, including its impact on the workplace. To mitigate this violence, specialized prosecutors’ offices were created, and labor rights were granted to protect the employment stability of victims of gender-based domestic violence.

Regarding the alignment of rules and laws with the definitions, scope, and principles of C190, Uruguay became the first country in the world to ratify the International Labor Organization’s Convention on Violence and Harassment 190.

There are laws of a civil and labor nature. Law 19846 on equal rights and non-discrimination and Law 19854 on complaints to the General Labor and Social Security Inspectorate, both reflect the country’s obligations upon ratifying the Convention. Law 19846 aims to guarantee equal rights and non-discrimination between women and men. It has an intersectional approach that considers factors such as disability, migration, and sexual orientation. This law seeks to modify sociocultural patterns and stereotyped gender roles, strengthening women’s economic autonomy and fighting

discrimination against specific groups of women, such as women of African descent, rural women, and women with disabilities. This law also promotes an equitable and co-responsible distribution of productive and domestic work between women and men. Law 19854 grants broad investigative powers to the General Labor and Social Security Inspectorate to address complaints on labor and gender violence. It establishes procedures to protect the privacy of complainants and witnesses. Both laws assign new tasks to the National Women's Institute, to guarantee equal rights and opportunities between women and men and to promote the integration of the principle of equality and non-discrimination in the public policies of all agencies. They also create the National Gender Council, to advise and coordinate public policies on gender issues, and require all public agencies to have specialized gender units.

Legal and regulatory provisions must be gender neutral and recognize the equal dignity and rights of women and men. All forms of discrimination based on gender are prohibited; equal rights and non-discrimination based on gender are guaranteed, as established in Law 19846.

Regarding the legal mechanisms to support or require the employer to support the worker who has suffered violence and harassment in the workplace, Laws 19846 and 19854 establish the administrative process to address situations of violence or harassment at work stemming from complaints or affectation of freedom of association. Harassment processes allows interviewing the complainant in a confidential manner, without identifying their details, and keeping such information safeguarded by the General Inspectorate of Labor and Social Security (IGTSS) for five years, if the courts require so.

Companies must protect workers against harassment and develop internal policies to protect them. There is an extensive protocol called “Protocolo de Prevención y Atención de Situaciones de Violencia en el Ámbito Laboral” [Prevention and Attention Protocol for Situations of Violence in the Workplace], established through Decree 62/2020 and prepared by the Labor Health and Security Committee. This protocol seeks to guarantee the physical and psychological safety of workers, promoting a free-of-violence organization. The guiding principles include respect for diversity, equal and non-discriminatory treatment, respectful communication, personal well-being, healthy environment and coexistence, and protection of dignity and integrity.

In short, the laws and protocols establish legal mechanisms to support workers who have suffered violence and harassment in the workplace, and oblige companies to implement protection and prevention measures.

There are no differences in the public and private sectors and in the formal and informal economy. As for collective bargaining agreements addressing harassment and violence in the world of work, all economic sectors have Wage Council Agreements. The vast majority of them include specifications and/or clauses on labor harassment and violence in the world of work, as determined by the laws.

Finally, the General Inspectorate of Labor and Social Security (IGTSS)—within the Ministry of Labor and Social Security—enforces regulations on compliance with policies to protect against workplace harassment and violence at work. The IGTSS conducts inspections to assess companies' compliance with these policies and also receives complaints from workers. Besides its work on workplace harassment and violence, the IGTSS also responsible for the general working conditions, such as minimum wages, wage rates, and the safety, health, and environmental conditions in which workers work.

IMPLEMENTING THE ILO CONVENTION NO. 190

Uruguay became the first country to ratify C190 on June 12, 2019, after the National Parliament went through the process of adaptation on December 17, 2019, and enacted the Law 19849.

RELEVANT PRECEDENTS

There are several relevant precedents where C190 and other regulations applicable in cases of labor harassment and violence at work are quoted. One of these precedents is Judgment 218/2021 of the Labor Court of Appeals of the 3rd judicial district. In this case, the plaintiff claimed her superior had harassed her at work, which led her to resign. The defendant claimed that the hours and overtime were voluntary and that the plaintiff's perceptions of harassment did not conform to reality. The judge considered C190, including gender-based harassment. He also mentioned Law 19580, which



REUTERS/ Luisa González

establishes interpretative guidelines and a gender perspective to address cases of gender-based violence of any kind. The court also highlighted that C190 and R206 enshrine the right of all people to a world of work free of violence and harassment. Law 19580 especially defines gender-based violence against women, and its section 6 has a definition of labor violence that includes

acts hindering access to work or promotion, such as moral or sexual harassment, demanding unlawful requirements, among others. The case is interesting because it involves labor harassment between two women, the one with a higher hierarchy in the company discriminating against the other.



11. VENEZUELA

RULES AND LAWS

Venezuela's rules and laws for preventing and eliminating violence and harassment at work, including gender-based violence, are dispersed. The Constitution of the Bolivarian Republic of Venezuela prohibits moral and psychological harassment, protecting all persons' dignity and right to honor. The Organic Law of Labor, Workers, and Women Workers (LOTTT) defines "labor harassment" as "an abusive conduct that attempts against the dignity of the worker, affecting their biopsychosocial integrity, and endangering their job." It also includes sexual harassment as a form of arbitrary discrimination based on gender. The Organic Law of Prevention, Conditions, and Work Environment (LOPCYMAT) establishes employers must abstain from and prevent any type of violence or harassment to the worker, defining "harassment" as "offensive conducts that harm workers psychologically or morally." The Organic Law of Amendment to the Organic Law on the Right of Women to a Life Free of Violence defines "harassment" as "a form of violence against women, including behaviors, words, acts, or electronic messages that may threaten their emotional integrity, dignity, or employment."

Venezuelan regulations in general address workplace harassment and gender-based harassment, establishing sanctions and measures to protect workers and, especially, women affected by these forms of violence.

The Law on Violence Against Women recognizes the impact of domestic violence in the world of work and establishes measures to mitigate it. It states that entities of the public sector must implement programs to prevent domestic violence and promote women's human and labor rights. It prohibits using mediation and conciliation in cases of violence involving violation or threat to the right to life and physical integrity. The

law also guarantees rights to female workers victims of violence, such as changing work center, suspending work, and leaves of absence. The law could also protect some LGBTIQ+ people if the aggression comes from a man, without being directly linked to their sexual orientation, but to their biological sex.

C190 establishes a broader definition of harassment and violence—which includes threats—that that in Venezuelan law. While Venezuela requires material harm for harassment to be considered as such, C190 includes cases where there has been no material harm, but only potential harm. Further, Venezuelan law requires repeated acts over time for harassment to be considered as such. C190 includes conducts where there has been a single isolated act. In terms of scope of application, Venezuelan rules and laws are less developed and must therefore rely on general rules that do not specifically focus on workplace harassment and gender-based violence.

The laws and regulations for preventing and eliminating violence and harassment at work are mainly of a labor nature, such as the LOTTT and the LOPCYMAT, together with their regulations. The Law on Violence against Women, on the other hand, is of criminal nature. There are also isolated regulations of administrative nature addressing issues related to violence and harassment in the workplace, such as codes of ethics in different agencies and specific rules in investigative and police bodies.

Laws and regulations remain gender neutral. There are also isolated regulations of an administrative nature that protect all persons, including those in the LGBTIQ+ community. On the other hand, the Organic Law on Women's Right to a Life Free of Violence establishes

specific definitions and sanctions for gender-based discrimination, threats, harassment, and stalking women in the workplace.

Laws and regulations establish legal mechanisms to support workers who have suffered violence and harassment in the workplace. Preventive measures mainly work using the threat of sanctions in case of non-compliance. The Organic Law on Prevention, Conditions, and Working Environment (LOPCYMAT) establishes criminal, administrative, or civil liability of employers if they fail to ensure a safe environment and labor health. Employers are also required to carry out activities preventing situations of violence or harassment. The LOPCYMAT establishes a general duty of prevention and a special duty to prevent sexual harassment at work and to eradicate it from the workplace.

The rules and laws on labor harassment and sexual harassment in the LOTT and in the LOPCYMAT apply to both the public and private sectors, as well as to the formal and informal economy. The Law on Violence Against Women, which specifically protects women, applies to facts occurring in public or private workplaces, but does not expressly exclude the informal economy. On the other hand, administrative regulations apply only to the public institutions they regulate and to the public employees of those institutions. No collective bargaining agreements were found that address harassment and violence in the world of work.

In Venezuela, there are enforcement bodies for human rights protection, gender diversity, and occupational safety standards. The Plenary Prosecutor's Office 98 for the Protection of Human Rights and Gender Diversity, recently created by the Public Prosecutor's Office, receives and attends to claims and complaints from the LGBTIQ+ community. In the area of labor health and safety, the National Institute for Prevention, Occupational Health, and Safety (INPSASEL)—a specialized public agency—hears complaints and issues regulated by the LOPCYMAT. Regarding complaints of harassment or labor violence, there is an ongoing debate about the competent body. The constitutional protection is considered an effective way to deal with labor rights violations, based on the LOTT Regulations and the National Constitution.

In general, state agencies must oversight and control complaints, especially on issues of violence and

harassment at work, in line with state policies. The Public Prosecutor's Office of the Public Ministry handles cases related to labor issues and the LGBTIQ+ community, while the Directorate for the Defense of Women handles gender-related complaints. The administrative and constitutional remedies differ in their objectives. The administrative procedure before INPSASEL seeks to certify occupational diseases and then claim damages in civil proceedings. On the other hand, *amparos* seek to put an end to and reestablish the violated legal situation, which makes it more effective in these cases.

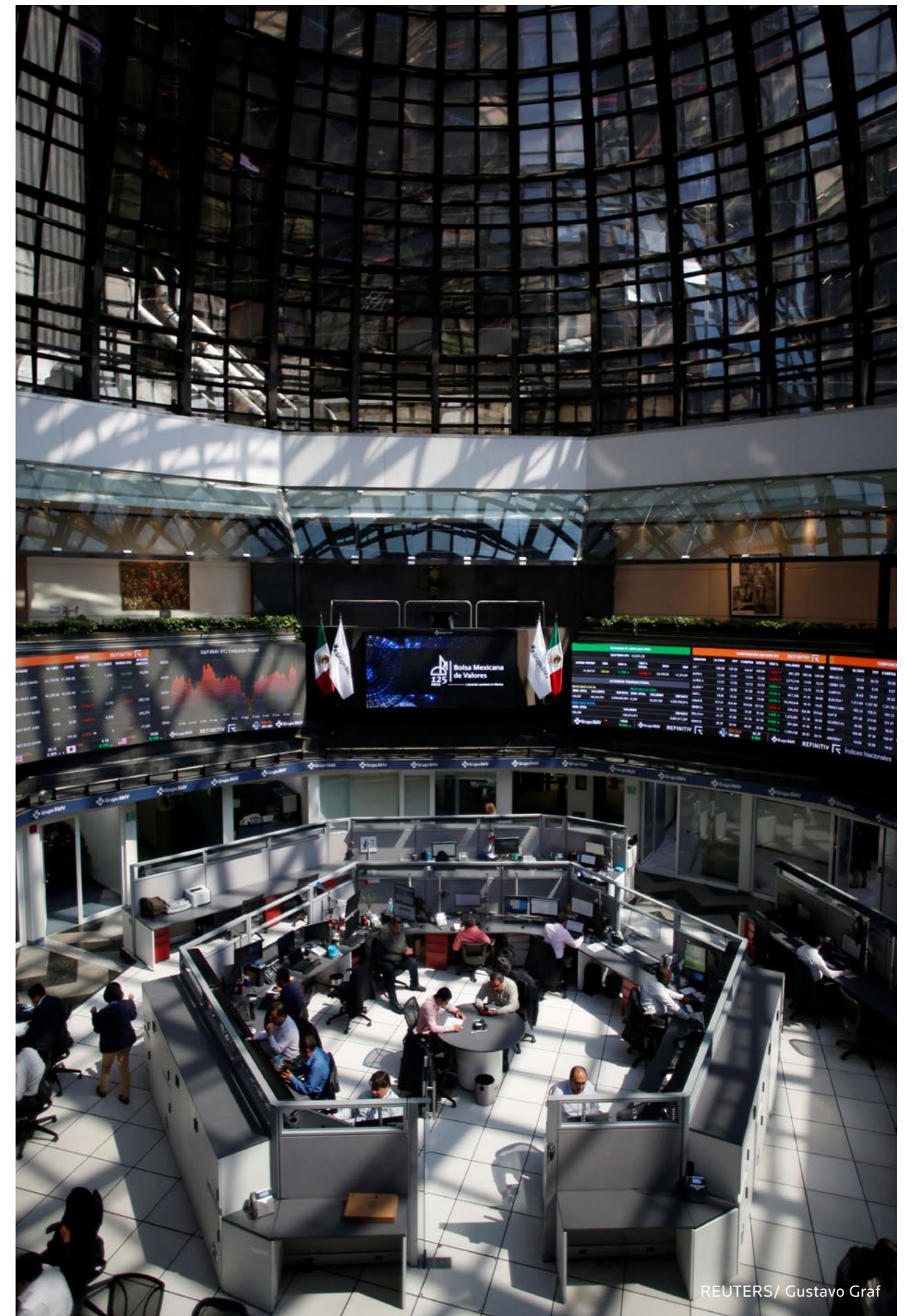
IMPLEMENTING THE ILO CONVENTION NO. 190

Currently there are no legislative efforts in Venezuela to ratify C190. However, sectors of civil society, such as the Instituto de Altos Estudios Sindicales, have initiated efforts with the International Federation of Workers' Education Associations (IFWEA) to promote its ratification.

RELEVANT PRECEDENTS

In the case “Nilda Rengifo vs. Exxonmobil de Venezuela, S.A.”, decided by the First Instance Third Labor Trial Court in Caracas on September 1, 2004, established that to prove labor harassment as a cause of damage there must be a causal link between the alleged wrongful act and the damage suffered. In general, most of the cases of labor harassment in Venezuela are decided against the employee, since employees bear the burden of proof to demonstrate the facts, the causal link, and the damages suffered.

On the other hand, in a ruling issued by the Social Cassation Chamber of the Supreme Court of Justice, case 720 of July 30, 2004, it was understood that mobbing or psychological terror suffered by a worker in the workplace may give rise to an indemnity for moral damages. This judgment considered the culpability of the perpetrator, the conduct of the victim, and the level of suffering experienced. Labor jurisprudence has adopted concepts from civil law to determine the applicability of compensation for damages suffered in cases of mobbing, although the difficulty in proving harassment to some extent limits recovering moral damages and other indemnities.



REUTERS/ Gustavo Graf

CONCLUSIONS

The analysis of the jurisdictions regarding violence and harassment against women in the workplace shows that, as of the date of this report, five countries have ratified Convention 190¹² (Argentina, Ecuador, Mexico, Peru, and Uruguay), and it is in force in all five countries, with Peru being the last one to bring the Convention into force. Six countries have not yet ratified it (Bolivia, Brazil, Chile, Colombia, Paraguay, and Venezuela). In Chile, in March 2023, the Senate approved the draft agreement on Convention 190. Several countries recognize that C190 is an essential tool to protect victims of violence and harassment in the workplace more effectively. Most jurisdictions include in their domestic legislation rules and laws for protecting all workers in situations of harassment and violence, and some grant special protection to certain vulnerable groups. Some countries have specific definitions of workplace violence or harassment.

The analysis of the existing regulatory frameworks on violence and harassment against women in the workplace shows that the protection of women and other structurally disadvantaged groups has become more relevant in the regional agenda. The study shows differences and similarities based on the definition and guidelines established by C190. Most of the countries include in their domestic rules and laws the protection of all workers in situations of harassment and violence. Some have regulations that also grant special protection to persons belonging to one or more groups identified as

vulnerable, such as women and diversities (Argentina, Bolivia, Brazil, Colombia, Ecuador, Mexico, Paraguay, Uruguay, and Venezuela).

GOOD PRACTICES FOR IMPLEMENTING THE ILO CONVENTION NO. 190

Even in countries where C190 has already entered into force, the lack of adaptation of domestic legislation to the provisions of the Convention persists. However, signing C190 has had actual effects on the political and jurisprudential reality of the analyzed States.

In Argentina, the Court of Appeals on Labor Matters, Chamber I, of the City of Buenos Aires has held, on the basis of C190, that even a single isolated episode of violence allows the factual situation of workplace violence and harassment to be defined.¹³ Subsequently, Chamber II of the same Court reported on a practical implementation of C190 when it ordered a company to provide training on labor violence and gender perspective to its personnel.¹⁴ Another interesting decision was that of the Labor Court in the Province of Misiones, Chamber I, which considered the provisions of C190 as a valid tool of interpretation despite the fact that, at the time of the facts of the case, the convention was not part of the domestic law.¹⁵

In Brazil, there are also rulings that quote C190 even though it has not been ratified. The Superior Labor Court¹⁶ and the Regional Labor Court, Region 1a recognized that C190 provides hermeneutical guidelines for jurisdictional bodies, so that judges must consider its principles and provisions because they are compatible with the Brazilian Constitution.¹⁷ The Regional Labor Court, Region 3, explicitly mentioned the provisions of C190¹⁸ in its rulings. The Regional Labor Court, Region 4, also based its decisions on the “core obligations” listed in C190, the Fundamental Principles and Rights at Work, and emphasized that these fundamental obligations must be observed by ILO member states simply because they are part of the ILO.¹⁹ The Regional Labor Court, Region 6, recognized that C190 provides hermeneutical guidelines for jurisdictional bodies, so judges should consider its principles and provisions since they are compatible with the Brazilian Constitution.²⁰ The Regional Labor Court, Region 9, has repeatedly recognized that applying C190 in Brazil is also in line with the general principles of labor law.²¹ Finally, the Regional Labor Court, Region 15, ruled aligned with C190 in cases related to gender inequality in the work environment in terms of lack of promotion to positions of power for reasons of gender.²²

In Chile, the vote of Supreme Court Justice Andrea Muñoz Sánchez expressly referred to the concept of sexual harassment and C190 in a case of gender-based workplace violence.²³ In Colombia, the Supreme Court of Justice considered that, although C190 has not been ratified, its provisions set an important criterion of interpretation, as they enrich the standards in Convention 111 by incorporating more developed requirements for

protecting victims of violence and harassment in the workplace.²⁴ In Ecuador, the Supreme Court of Justice ruled that disabled person’s—who should be considered a priority group—rights to life with dignity and to work were violated. It detailed the circumstances that constitute labor harassment and pointed out that it is a form of abuse by the employer. As parts of the grounds for this decision, it quotes C190.²⁵ Finally, in Uruguay, the Supreme Court of Justice intervened in a case involving a situation of harassment at work between a female complainant and the accused, and the judge used the principles in C190 as a basis for his decision.²⁶

The analysis of these decisions allows us to highlight certain common criteria when considering the provisions in the Convention. Further, courts also analyze the obligation to apply C190 taking into account it is compatible with the rules of each country’s Constitution. Therefore, courts use C190 as a tool for interpretation when deciding on cases of gender-based workplace violence.

The guidelines offered by C190 contribute to strengthening the national framework of the legislation in force, paving the way for States of the region regarding the protection of women and diversities in the face of different situations of violence and harassment in the workplace.

12 Disponible en: <https://www.senado.cl/chile-ratifica-convenio-190-de-la-oit-sobre-violencia-y-acoso> [accessed March 23, 2023].

13 Cámara Nacional de Apelaciones del Trabajo, Sala I, “TAYPE GUELAC, JENIFFER MELISSA VS. OPTICAL SYSTEM S.R.L. Y OTROS. DESPIDO”, issued on November 5, 2021.

14 Cámara Nacional de Apelaciones del Trabajo, Sala II, “G. M. L. C/ KOPELCO S.A. Y OTRO S/ DESPIDO”, issued on May 30, 2022.

15 Cámara de Apelaciones en lo Laboral de la Provincia de Misiones, Sala I, “SÁNCHEZ PÉREZ, LORENA DEL CARMEN C. GARCÍA DE ALAMO Y OTROS S/ COBRO DE CRÉDITOS LABORALES”, issued on March 25, 2022.

16 Tribunal Superior de Trabajo de Brasil, ARR - 924-74.2013.5.08.0012. 2ndo Panel, Senteno Panel, Juez Enoque Ribeiro dos Santos, resuelta el issued on Setember 23, 2020. See also the sentence issued on August 8, 2019.

17 Tribunal Regional del Trabajo, Región 1.a Demanda n.º 0101040-59.2018.5.01.0028, 5.tén: Demanda n.º 0010622-55.2015.5.01.0004, 7.mo Panel, Jueza Sayonara Grillo Coutinho, resuelta el September 2, 2022, y Demanda n.º 0100649-27.2019.5.01.0010, 7.mo Panel, August 6, 2022.

18 Tribunal Regional del Trabajo, Región 3.era, en este sentido: Demanda n.º 0010325-42.2021.5.03.0017, 4.to Panel, September 14, 2022; Demanda n.º 0010119-31.2021.5.03.0113, 4.to Panel, 05/05/2022; y Demanda n.º 0011429-86.2019.5.03.0131, 1.er Panel, January 11, 2022.

19 Tribunal Regional del Trabajo, Región 4.ta Demanda n.º 0020545-65.2018.5.04.0021, 8.vo Panel, July 19, 2022.

20 Tribunal Regional del Trabajo, Región 6.ta Demanda n.º 0001702-38.2017.5.06.0019, August 25, 2021.

21 Tribunal Regional del Trabajo, Región 9.na. En este sentido: Demanda n.º 0000923-28.2019.5.09.0020, 4.to Panel, September 9, 2021; Demanda n.º 0000833-78.2019.5.09.0130, 3.er Panel, September 2, 2022; Demanda n.º 0000345-48.2021.5.09.0585, 4.to Panel, October 6, 2022; y Demanda n.º 0001162-92.2020.5.09.0021, 4.to Panel, November 5, 2022.

22 Tribunal Regional del Trabajo, Región 15.ta. En este sentido: Demanda n.º 0011980-77.2017.5.15.0042, 6.to Panel, May 28, 2020 y Demanda n.º 0012154-35.2017.5.15.0059, 11.vo Panel, November 26, 2020.

23 Corte Suprema de Chile, CAUSA ROL Nº 24.942 - 2021, “TITO RENÉ MATAMALA ABURTO CON UNIVERSIDAD DE CONCEPCIÓN Y OTRA”, sentencia del March 1, 2022.

24 Corte Suprema de Justicia de Colombia, Sala Laboral, “SENTENCIA SL3025-2022. MP: ANA MUÑOZ SEGURA”.

25 Corte Suprema de Justicia de Ecuador, SENTENCIA N° 1292-19-EP/21.

26 Corte Suprema de Justicia de Uruguay, SENTENCIA N° MARÍA DEL PILAR PÉREZ c. ELISKO S.A. (MOTEL “SÉPTIMO CIELO”).



REUTERS/Nacho Doce