

Advances in care policies in Latin America and the Caribbean

Towards a care society
with gender equality

Ana Güzmes García and María-Noel Vaeza
(Coordinators)



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Introduction

This document analyses the progressive incorporation of care into the legal and regulatory frameworks of the countries of Latin America and the Caribbean, in light of the commitments made by governments in the framework of the Regional Conference on Women in Latin America and the Caribbean.

The commitments made over the past 45 years have given rise to the development of a robust Regional Gender Agenda that recognizes women's rights and gender equality as central and cross-cutting elements of all State actions aimed at strengthening democracy and enabling a new development pattern characterized by sustainability and equality.

To achieve this, progress needs to be made in the recognition and implementation of care as a universal human right and in its effective exercise. The region's parliaments play a fundamental role in the design of legal mechanisms and policies for citizens to demand this right (Pautassi, 2007). From a human rights perspective, the concept of the right to care is presented as a right that States must guarantee, protect and respect in order to break down the structural constraints preventing gender equality.

The document begins by analysing international human rights instruments and references to care issues at the constitutional level in the countries of the region. National regulatory frameworks are then examined, along with laws on comprehensive care systems; maternity, paternity and parental leave; breastfeeding protection laws; and the regulation of care services. Data for the analysis are taken from the Gender Equality Observatory for Latin America and the Caribbean,¹ a repository of laws and regulations on care. This repository provides official information from member States of the Economic Commission for Latin America and the Caribbean (ECLAC) and facilitates the monitoring of international agreements on women's rights.

¹ See [online] <https://oig.cepal.org/en>.

I. The human right to care

The right to care, understood as the right to receive care, to provide care and to exercise self-care, is already recognized in international instruments and treaties as a human right to which every person is entitled regardless of vulnerability or dependence, and which, based on the principles of equality, universality, progressiveness and non-regression, as well as shared social and gender responsibility, enable the sustainability of human life and care for the planet. The right to care also implies recognizing the value of work and guaranteeing the rights of caregivers and persons who provide care, overcoming the stereotypical assignment of care as the exclusive responsibility of women, and advancing in ensuring that social responsibility is shared among those who provide it: the State, the market, the private sector and families (ECLAC, 2022).

In this regard, the recognition of care as a human right, irrespective of whether it is designated as such, as opposed to approaches that focus on basic needs or on population groups whose vulnerability lies in their economic, social or cultural condition, makes it possible to clearly define the material prerequisites for democratic legitimacy and the roles of the State and of different actors, based on the following: a) who the holders of the right to care are; b) who the holders of the duties or obligations are; c) what the mechanisms for enforcing the right to care are; and d) which means are used to reduce inequalities and gaps in the access to and enjoyment of this right (Pautassi, 2007). This does not mean reducing the role of the State to that of a mere service provider; rather, the State is responsible for organizing the entire governmental apparatus and, in general, the structures of public power, to guarantee rights, to adapt domestic law to international standards, and to regulate the responsibilities of other institutions and actors, such as families, the community and businesses (Güezmes, Scuro and Bidegain, 2022).

The main instruments following from the Universal Declaration of Human Rights have established foundations and have included care as a universal right, leaving its scope open to interpretation. For example, article 18, paragraph 1, of the Convention on the Rights of the Child (1989) establishes that it is incumbent upon the State to ensure “recognition of the principle that both parents have common responsibilities for the upbringing and development of the child [...]”, and reaffirms, in paragraph 3 of the same article, the linking of care infrastructure to the employment status of the parents, when it states that “States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible [...]” (United Nations, 1989).


Along these lines, most international instruments and treaties link care to a rights-based approach. This progressive development of care as a right, both in the universal human rights system and in the inter-American system, is in keeping with the argument that the notion of social rights encompasses autonomy and equality for women, and that subjectively, social rights are legally indistinguishable from civil and political rights, which can be asserted in court, thus obligating States to respect, protect and guarantee them by producing and providing goods and services (Abramovich and Courtis, 2002; Bidegain and Calderón, 2018). However, it is also true that, in light of limited State resources, a constraint for all interventions by public authorities and one that also relates to the standard of using the maximum available² resources, gradual implementation is possible through public policies. This allows for the development of indicators for monitoring (Morales, 2014).

Establishing care as a human right means overcoming the exclusive assignment, by the patriarchy, of the place and role of caregiver to women, and supporting care as a right on the basis of international human rights instruments, since rights can be claimed and are indivisible, interdependent and universal (Pautassi, 2007; Gherardi and Zibecchi, 2011). In particular, this should be achieved through the development and implementation of public policies and the prioritization of public spending, based on a ranking of demands and needs.

A. The right to care in international human rights standards






Initially, the right to care was not referred to as such. Its content was developed based on the Universal Declaration of Human Rights (see table 1), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities of 2007, and the general recommendations of the committees responsible for monitoring these conventions, which referred to living conditions and access to suitable material and cultural goods for the inherent dignity of the human family (Nikken, 2010; Pautassi, 2018). As a specific right, care appears in the 2015 Inter-American Convention on Protecting the Human Rights of Older Persons.

Table 1
Timeline for the development of the right to care in international human rights instruments

Organization	Regulatory instrument	Content related to the right to care
	Universal Declaration of Human Rights, 1948, art. 25, paragraph 2; art. 22.	<ul style="list-style-type: none"> Mothers and children are entitled to special care, assistance and social security, through national efforts and international cooperation.
	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979. Art. No. 5.a, 11.2 and 2.c. Art. No 11.2a, b and c.	<ul style="list-style-type: none"> To modify the sociocultural patterns of conduct of men and women. In order to prevent discrimination against women on the grounds of marriage or maternity, States shall take measures such as encouraging the provision of the necessary social service supports to enable parents to combine family obligations with work responsibilities and participation in public life. To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or maternity leave and discrimination in dismissals on the basis of marital status. Maternity leave with pay.

² "A State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*." (OHCHR, 1990, paragraph 10). Moreover, the obligations to monitor the extent of the realization of economic, social and cultural rights and to develop strategies and programmes for their promotion are by no means eliminated as a result of resource constraints, according to the Committee on Economic, Social and Cultural Rights in paragraph 11, General Comment No. 3. The obligation is enshrined in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Organization	Regulatory instrument	Content related to the right to care
	Committee on the Elimination of Discrimination against Women: general recommendation No. 17 (1991) on the measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product.	<ul style="list-style-type: none"> • Measure and value women's unpaid domestic work, collect statistical data. • Quantify women's unpaid domestic work and include it in the gross national product.
	Committee on the Elimination of Discrimination against Women: general recommendation No. 21 (1994) on equality in marriage and family relations.	<ul style="list-style-type: none"> • A woman has the right to decide on the number and spacing of the children she bears.
	Committee on the Elimination of Discrimination against Women: general recommendation No. 23 (1997) on women in political and public life.	<ul style="list-style-type: none"> • The most important factors that have impeded women's ability to participate in public life have been cultural values and religious beliefs, the lack of services and the fact that men have not been involved in the organization of the household and in the care and raising of children. • If women were freed from some domestic chores, they would participate more fully in community life.
	Committee on the Elimination of Discrimination against Women: general recommendation No. 26 (2008) on women migrant workers.	<ul style="list-style-type: none"> • Where accommodation is provided, especially in occupations that employ mostly women, such as factories, farms and domestic service, living conditions may be unacceptable and are often characterized by overcrowding and a lack of running water, adequate sanitation, privacy and hygiene.
	Committee on the Elimination of Discrimination against Women: general recommendation No. 27 (2010) on older women and the protection of their human rights, paragraphs 43 and 44.	<ul style="list-style-type: none"> • States Parties shall ensure that women who are responsible for taking care of children have access to adequate social and economic services, and receive all the help they need when they take care of their parents or older relatives.
	Convention on the Rights of the Child (1989), art. 3, 4, 18, 23, 30 and 24 paragraph 2.	<ul style="list-style-type: none"> • Children and adolescents are a group that need care for their survival, progressive autonomy and the exercise of their rights, with an emphasis on persons with disabilities and indigenous peoples, with responsibility shared between fathers and mothers.
	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (1988), article 17.	<ul style="list-style-type: none"> • Everyone has the right to special protection during old age.
 International Labour Organization	Workers with Family Responsibilities Convention, 1981 (No. 156), art. 5. b.	<ul style="list-style-type: none"> • States must develop community services, public or private, such as childcare and family services.
	Workers with Family Responsibilities Convention, 1981 (No. 156) Recommendation No. 165.	<ul style="list-style-type: none"> • Parental leave, a shorter working day, flexible work hours, and leave in the event of illness of children or close relatives.
	Maternity Protection Convention, 2000 (No. 183) and its Maternity Protection Recommendation, 2000 (No. 191).	<ul style="list-style-type: none"> • Paid maternity leave, no less than two-thirds of the regular wage, for a minimum of 14 weeks. • Right to return to the same position or an equivalent one with the same remuneration, at the end of the leave. In 2000, it was proposed that this be increased to 18 weeks.
	Domestic Workers Convention, 2011 (No. 189), art. 20 and 30; and its Domestic Workers Recommendation, 2011 (No. 201).	<ul style="list-style-type: none"> • Measures for ensuring the effective promotion and protection of domestic workers' human rights.
	General comment No. 3 (1990) on the nature of States parties' obligations under the International Covenant on Economic, Social and Cultural Rights, paragraph 1 of art. 2, paragraph 10.	<ul style="list-style-type: none"> • Minimum obligation to ensure that at least the basic levels of each right are met. • International Covenant on Economic, Social and Cultural Rights.

Organization	Regulatory instrument	Content related to the right to care
 International Labour Organization	General comment No. 6 (1995) on the economic, social and cultural rights of older persons under the International Covenant on Economic, Social and Cultural Rights, paragraphs 20 and 30.	<ul style="list-style-type: none"> To provide care for elderly women who are in critical situations of helplessness because they have devoted all or part of their lives to caring for their families, without having engaged in productive activity that generates an old-age pension, or who are not entitled to widow's pensions.
 Organization of American States	Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), 1994, art. 8.	<ul style="list-style-type: none"> Modify sociocultural patterns so that women can pursue their life goals.
 United Nations	Convention on the Rights of Persons with Disabilities, (2006), art. 28.	<ul style="list-style-type: none"> Ensure access by persons with disabilities and their families living in situations of poverty to adequate training, counselling, financial assistance and respite.
 International Labour Organization	Social Protection Floors Recommendation, 2012 (No. 202).	<ul style="list-style-type: none"> Basic income security for children, at least equivalent to a nationally defined minimum, ensuring access to food, education, care and any other necessary goods and services.
 Organization of American States	Inter-American Convention on Protecting the Human Rights of Older Persons, 2015, art. 12.	<ul style="list-style-type: none"> The right to access a comprehensive care system that provides health protection and promotion, social service coverage, food and nutrition security, water, clothing and housing. States should design support measures and services for families and caregivers.

Source: United Nations, *Universal Declaration of Human Rights*, Paris, 1948; *Convention on the Elimination of All Forms of Discrimination against Women*, New York, 1979; *Convention on the Rights of the Child*, New York, 1989; *International Covenant on Economic, Social and Cultural Rights*, New York, 1966; *Convention on the Rights of Persons with Disabilities*, New York, 2006; Organization of American States (OAS), *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"*, San Salvador, 1988; *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará"*, Belém do Pará, 1994; *Inter-American Convention on Protecting the Human Rights of Older Persons*, San José, 2015; International Labour Organization (ILO), *C156 - Workers with Family Responsibilities Convention*, 1981 (No. 156), Geneva, 1981; *C183 - Maternity Protection Convention*, 2000 (No. 183), Geneva, 2000; *C189 - Domestic Workers Convention*, 2011 (No. 189), Geneva, 2011; *R202 - Social Protection Floors Recommendation*, 2012 (No. 202), Geneva, 2012.

B. Main milestones in the development of care as a right in the Regional Gender Agenda

In the last 45 years, in the framework of the Regional Conference on Women in Latin America and the Caribbean, governments have agreed on an in-depth, ambitious and comprehensive Regional Gender Agenda, which guides countries' public policies to achieve gender equality in law and in practice, guaranteeing women's rights and autonomy. It proposes solutions to break down structural inequality and lay the foundations to build societies characterized by equality through dialogue with women's and feminist movements in the region (ECLAC, 2021). In the Regional Gender Agenda, the right to care evolved and progressed on three distinct occasions in the region:

- (i) From the first Regional Conference on Women in Latin American and the Caribbean (Havana, 1977) to the tenth conference (Quito, 2007), care transitioned from partial provision for working women in the formal sector to include working fathers, finding balance between work and family life, and care for informal and seasonal working mothers.
- (ii) From the eleventh Regional Conference on Women in Latin America and the Caribbean (Brasília, 2010) to the thirteenth Regional Conference (Montevideo, 2016), care transcended the world of work to become a universal right of all people throughout their lives. There was a shift from reconciliation toward gender and social co-responsibility; the need for a connection between social policies and economic policies was raised; and the Regional Gender Agenda was integrated into the 2030 Agenda for Sustainable Development.

- (iii) From the fourteenth Regional Conference on Women in Latin America and the Caribbean (Santiago de Chile, 2020) to the fifteenth Regional Conference (Argentina, 2022), the environmental dimension, care for the planet and the link between equality and the sustainability of the care society were introduced. The need to move from the recognition of care as a human right to its cross-cutting implementation and to the design of comprehensive care policies and systems from a gender, intersectional, intercultural and human rights perspective was raised.

C. The conventional and constitutional approach to unpaid domestic work and the right to care

The countries of Latin America and the Caribbean, having ratified the main international human rights instruments and treaties, have transcended the limits of the nation State and moved towards the consolidation of a globalizing State, establishing regulations and legislation in accordance with the content of relevant instruments and within a compliance monitoring framework, as set forth in articles 1 and 2 of the 1969 American Convention on Human Rights (Pact of San José, Costa Rica):

Article 1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination (...).

Article 2. Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

This makes it possible to guarantee human rights from the international to the national level. In this regard, Bidart (1989) points out that, although the international laws enshrined in human rights treaties are an international source, they penetrate and become part of domestic or State law through the ratification of international instruments and treaties (see table 1), the coercive application of international precedent to national justice and their subsequent constitutional development.

In this regard, although the obligation to guarantee the right to care exists for all the countries of the region, only some have expressly incorporated it into their constitutions, endowing it with greater guarantees and broadening its interpretation through legislation, along with the recognition of unpaid domestic work as productive work, gender co-responsibility, and, in some cases, the creation of care systems (see table 2).

In the Plurinational State of Bolivia, article 338 of the Political Constitution (2008) establishes that the economic value of domestic work as a source of wealth must be recognized and quantified in public accounts. Similarly, the constitutions of the Bolivarian Republic of Venezuela (1999) and of the Dominican Republic (2009) recognize the productive value of domestic work as a generator of wealth and social well-being (CEM/FES, 2021). Only Ecuador and the Plurinational State of Bolivia recognize well-being as a guiding principle as it relates to the harmonious relationship between nature, people and social organization.

In terms of the recognition of care as a fundamental right and the organization of a care system, the Political Constitution of Mexico City (2017) expressly recognizes care as a fundamental right by stating that “everyone has the right to care that sustains their lives and provides them with the material and symbolic elements to live in society for their entire lives. The authorities shall establish a care system that provides universal, accessible, relevant, adequate and quality public services and develops public policies. The system will give priority attention to people in a situation of dependency due to illness, disability, and stage of life, especially childhood and old age, and those who are responsible for their care but are not paid.” (Government of Mexico City, 2017).

Subsequently, on 18 November 2020, the Chamber of Deputies of the Mexican Congress, although not the Senate, approved an opinion that incorporates the right of every person to dignified care that sustains their lives and provides them with the material and symbolic elements to live in society throughout their lives,

as well as the right to provide care, based on the principle of co-responsibility between women and men, families, the community, the market and the State itself; the freedom of individuals to decide whether or not to take on the obligation to care for those who need it; and the implementation of the national care system.³

In the case of Chile, during the 2021–2022 constitutional reform process, the proposed political Constitution incorporated the right to care for all people as well as the development of a comprehensive care system, incorporating a gender perspective,⁴ reforms that failed to pass in the referendum held on 4 September 2022.

However, the express recognition of the right to care in the constitutional charters of some of the region's countries does not preclude or deny the existence of the right to care in other countries that do not expressly mention it. Care is thus a right, with conventional and non-enumerated constitutional recognition.

Table 2
Unpaid domestic work and the right to care in the constitutions of Latin America and the Caribbean

Country	Category/ constitutional content
Ecuador (2008)	Unpaid domestic work: <ul style="list-style-type: none"> Recognizes as productive work the unpaid work of self-support and human care that is carried out in households. Progressive social security for unpaid domestic work in (art. 333). Gender co-responsibility: <ul style="list-style-type: none"> The State shall promote co-responsibility between mothers and fathers and shall ensure the fulfilment of reciprocal duties and rights (art. 69); it shall promote co-responsibility and reciprocity between men and women in domestic work and family obligations (art. 333).
Mexico City (2017)	Right to care: <ul style="list-style-type: none"> Every person has the right to the care that sustains his or her life and gives him/her the material and symbolic elements to live in society throughout his/her life (art. 9, section B). Care system: <ul style="list-style-type: none"> Establish a care system with universal, accessible, relevant, sufficient and quality public services; develop public policies for people in situations of dependency due to illness, disability, stage of life, childhood and old age, and for those who provide unpaid care (art. 9, section B).
Venezuela (Bolivarian Republic of) (1999)	Unpaid domestic work: <ul style="list-style-type: none"> Recognizes domestic work as an economic activity that creates added value, produces wealth and social well-being (art. 88).
Bolivia (Plurinational State of) (2009)	Unpaid domestic work: <ul style="list-style-type: none"> The economic value of household work as a source of wealth must be recognized. It must be quantified in public accounts (art. 38).
Dominican Republic (2009)	Unpaid domestic work: <ul style="list-style-type: none"> Recognizes domestic work as an economic activity that creates added value and produces wealth and social well-being, and will therefore be incorporated into the design and implementation of public policies (art. 55, paragraph 11).

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of National Constituent Assembly of the Bolivarian Republic of Venezuela, "Constitution of the Bolivarian Republic of Venezuela", *Gaceta Oficial Extraordinaria*, No. 36860, Caracas, 1999; National Constituent Assembly of Ecuador, *Constitución de la República del Ecuador 2008*, Quito, 2008; Plurinational Legislative Assembly, *Nueva Constitución Política del Estado*, La Paz, 2008; Reviewing National Assembly, "Constitution of the Dominican Republic", *Gaceta Oficial*, No. 10561, Santo Domingo, 2010; Government of Mexico City, *Constitución Política de la Ciudad de México*, Mexico City, 2017.

³ Belisario Domínguez Institute. (2020).

⁴ "Everyone has the right to care. This includes the right to care, to be cared for and to care for oneself from birth to death. The State is obligated to provide the means to ensure that care is dignified and provided in conditions of equality and co-responsibility. The State guarantees this right through a Comprehensive Care System, regulations and public policies that promote personal autonomy and that incorporate human rights, gender and intersectional approaches. The system will be state-run, parity-based, solidarity-based, universal and culturally relevant. Its financing will be progressive, adequate and ongoing. This system will pay special attention to infants, children and adolescents, the elderly, persons with disabilities, persons in situations of dependency and persons with serious or terminal illnesses. It will also ensure that the rights of those who carry out care work are safeguarded." Constitutional Convention, 2022 (article 50).

II. Care in national regulatory frameworks

In addition to constitutional advances, parliaments have ratified international conventions and have drafted comprehensive laws and regulations on care policies and services. These laws recognize paid domestic work and implement policies regarding time, co-responsibility and maternity, paternity and parental leave, among other measures. The vast majority of these provisions are systematized and available in the repository of laws of the ECLAC Gender Equality Observatory for Latin America and the Caribbean.

A. Laws on comprehensive care systems

Care systems are defined as “a set of policies aimed at implementing a new social organization of care with the purpose of caring for, assisting and supporting people who require it, as well as recognizing, reducing and redistributing care work—which today is mostly performed by women—from a human rights, gender, intersectional, and intercultural perspective. These policies must be implemented based on inter-institutional coordination from a people-centred approach. The State is the guarantor of access to the right to care, based on a model of social co-responsibility—with civil society, the private sector, and families—and gender. The implementation of the system implies intersectoral management for the gradual development of its components—services, regulations, training, information and knowledge management, and communication for the promotion of cultural change—that considers cultural and territorial diversity” (ECLAC /UN-Women, 2022, p. 22).

In Latin America, comprehensive care systems have been gaining momentum, with Uruguay as the trailblazer. At present, countries such as Argentina, Chile, Colombia, Cuba, the Dominican Republic, Ecuador, Mexico, Panama, Paraguay and Peru are making strides in their implementation, with varying degrees of development. In Argentina, Ecuador, Mexico, Paraguay and Peru, there are bills under debate that propose the creation of these care systems.

In December 2015, Uruguay enacted Act No. 19553, which created the National Integrated Care System, based on an integrated concept of care as a right, through a solidarity-based model that involves a co-responsibility pact between genders and generations, and is universal in nature. It also includes a new organization of child care that takes into account the recipients, providers, and territorial differences and highlights the State’s management role, as well as the need to share costs. This right applies to people who are in a situation of dependency due to old age and disability, children up to the age of 12, and paid and unpaid caregivers.

Its governance structure links 10 public institutions through the National Care Board and institutionalizes social participation in a Committee for Consultation on Care. Its actions are structured in five-year plans that link services, training, regulation, generation of information and knowledge, and communication. In terms of financing, most of the funds come from the national budget, individual co-payment, blended financing with companies and trade unions and other forms of spending, such as non-repayable credits and tax exemptions.

On 11 November 2021, the Bolivarian Republic of Venezuela published the Lifelong Care Systems Act in Official Gazette No. 6665, a law that will be administered by the Ministry of the People's Power, and includes the following objectives: to recognize and guarantee the rights of caregivers; ensure the development of policies, programmes and plans for the protection, care and integrated support of caregivers; promote and encourage the co-responsible, cohesive and coordinated participation of service providers, caregivers, families, the community and the private sector, in order to reassign care activities; promote access to recreation, education, health and social security for caregivers; and ensure the training, recognition and certification of caregivers' knowledge to perform caregiving and care activities, thereby promoting their continuous personal and occupational development.

Ecuador's bill for an organic law for a national comprehensive care system has been pending since 2017. This law seeks to settle a historical debt and guarantee the rights of people who perform unpaid self-supporting and care work in households, as a right and a social good, as well as to establish the responsibilities of the State, the business sector and the co-responsibility of families, thereby promoting gender mainstreaming, as well as the reciprocity of men and women in domestic work and family obligations.

In Mexico, there has been an omnibus bill since 2020 for the creation of the National Care System with a view to linking existing programmes and actions, which seeks to reverse the unfair social organization of care, which has negative consequences for women and girls in terms of rights and the achievement of their autonomy. This same document also states that the lack of policies that address this situation leads to the "*persistence of discriminatory sociocultural patterns that perpetuate inequality and violence against women*" (Government of Mexico City, 2021). In short, in both cases, the idea that a comprehensive care policy is a form of reparation for gender-based violence is affirmed.

In Paraguay, since the end of 2021, there has been a draft law that proposes the creation of a National Care System of Paraguay (Sistema Nacional de Cuidados del Paraguay, SINACUP), geared towards guaranteeing the well-being of people in situations of dependency, guaranteeing their right to care and the rights of the people who care for them, through intersectoral linkages and cooperation between the public sector, the private sector and civil society, with a view to promoting a new social organization of care. It also establishes, as a target population, children from 0 to 13 years old, adolescents from 14 to 17 years old, people over 60 who lack autonomy, persons of any age with physical, intellectual or psychosocial disabilities, people in a situation of dependency due to permanent or temporary illnesses, among others.

Last year, in Argentina, the Ministry of Women, Genders and Diversity, along with the Ministry of Labour, Employment and Social Security, presented a proposal for the creation of the Comprehensive Care Policy System (SINCA) to the Congress of the Argentine Nation, a set of public care policies for a coordinated comprehensive care system organized by society to provide accessible and quality care, with gender equality and a human rights-based approach.

This bill also proposes the modification of the leave system in the public and private sectors, increasing the rights of pregnant workers, non-pregnant workers and adoptive parents who work as dependent or independent workers. The initiative seeks to protect all caregivers, whether paid or unpaid, and all those in need of care, in particular children up to the age of five and adolescents, persons aged 60 and over, when they need it, and persons with disabilities. In all cases, priority is given to women, LGBTI+ communities, and persons who, due to their socioeconomic status, ethnic origin or any other condition, are in a particularly vulnerable situation.

Finally, in July 2022, the President of Peru submitted to Parliament Bill No. 2735-2022/PE, which recognizes that people in a situation of dependency have the right to care, and created the National Care System, comprising the Ministry of Women and Vulnerable Populations, Ministry of Development and Social Inclusion, Ministry of Labour and Promotion of Employment, Ministry of Health, Ministry of Education, and local and regional governments. The bill highlights the relevance of the system for the development of society and the functioning of the economy, the overcoming of the sexual division of labour and the promotion of healthy family relationships between men and women. Applicable to public, private, social and community administration, it is governed by the principles of universality, solidarity, social and gender co-responsibility, equality and non-discrimination, the best interests of the child, and the promotion and protection of the elderly and persons with disabilities.

At the level of regional parliaments, the 2012 Framework Law for a Comprehensive Care System stands out,⁵ as well as the Latin American and Caribbean Parliament's 2013 Framework Law on the Economy of Care.⁶ Also noteworthy is the contribution made to the Inter-American Model Law on Care (CIM, 2022) by the Inter-American Commission of Women (CIM) of the Organization of American States (OAS).

In addition, although some countries in the region, such as Chile and Costa Rica, do not have comprehensive care systems, they have legislated the creation of care policies for a specific population, especially children. In Costa Rica, Law No. 9220 created the National Child Care and Development Network (REDCUDI), in order to establish a public, universal and solidarity-financed child care and development system that coordinates the different modalities of public and private provision of child care and development services for children under the age of seven, especially those from poor and socially vulnerable families (IMAS 2022). In the case of Chile, Law 20379, enacted in September 2009, created the Intersectoral Social Protection System and institutionalized the "*Chile Crece Contigo*" Subsystem for the Comprehensive Protection of Children, which supports the development process of children who receive care in the public health system, from their first prenatal check-up to their entry into the school system.

B. Time-use measurement in national legislations

An important tool for the valuation and recognition of unpaid work performed by women in the domestic and care sphere is time-use measurement, and its incorporation into national statistical systems is an important element for ensuring the regularity of the use of the measurement instruments and their budgets.

Time-use measurement is a central tool for the analysis of inequalities originating in the sexual division of labour. Its results reveal the gaps and inequalities between women and men, as they allow for the study of various aspects of people's daily lives. Time-use surveys are of great relevance because they provide inputs for the design, monitoring and evaluation of economic and social equality policies. They therefore allow for the analysis of the sexual division of labour and gender inequalities, studies on the link between monetary poverty, income and the distribution and allocation of time, studies on the relationship between production according to the system of national accounts and household production, measurements of well-being, national, regional and international needs for data on unpaid work, among others (ECLAC, 2022b).

To date, 23 countries in the region have conducted at least one measurement of the time spent on domestic and care work, with fewer having institutionalized this mandate through a law that ensures its regularity.

Since 2019, Argentina has had Act No. 27532, which includes the National Time-Use Survey in the National Statistical System as a module of the Permanent Household Survey. Its purpose is to collect and quantify, from a gender perspective, information on participation and time spent on the different activities of daily life, disaggregated by gender and age, in order to develop public policies that promote an equitable distribution of paid and unpaid work between women and men.

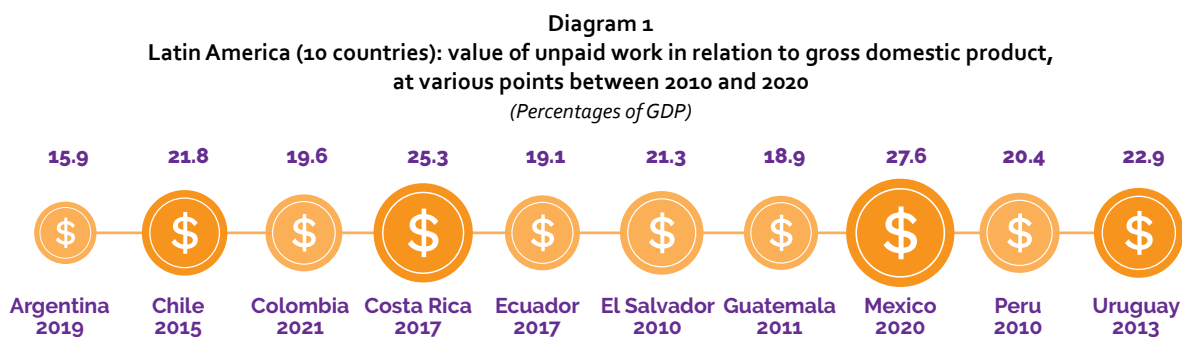
⁵ Latin American and Caribbean Parliament (2012).

⁶ Latin American and Caribbean Parliament (2013).

In Colombia, since 2010, Act No. 1413 has included the care economy or unpaid domestic work in the System of National Accounts. In addition, the Intersectoral Care Commission was created by decree No. 2490 of 2013, which establishes the regular conduct of the National Time-Use Survey and the inclusion of unpaid domestic work through a satellite account.

Mexico has been conducting the National Time-Use Survey since 1996. Initially (1998 and 2002), it was conducted as part of the National Survey of Household Income and Expenditure (ENIGH). Subsequently, since 2009, it has been conducted every five years independently and includes the indigenous population, and since 2018, it has included the Satellite account on unpaid household work in Mexico (CSTNRHM).

Finally, in Peru, Act No. 29700 of 2011 established the obligation to include an unpaid domestic work satellite account in the national accounts, through the application of national time-use surveys, as the main input for the quantification and economic valuation of unpaid domestic work. This mechanism is regulated by supreme decree No. 056-2014-PCM and the entity responsible for its implementation is the National Institute of Statistics and Informatics.



Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of Ministry of Economy of Argentina, *Los cuidados, un sector económico estratégico: medición del aporte del trabajo doméstico y de cuidados no remunerado al producto interno bruto*, Buenos Aires, 2020; S. Salvador, "The economic valuation of unpaid work", *Los tiempos del bienestar social: género, trabajo no remunerado y cuidados en Uruguay*, K. Batthyány (ed.), Montevideo, National Women's Institute, 2015; official data from the respective countries.

C. Regulations regarding policy, care services and care time

Maternity leave

Paid maternity leave with employment protection is a universal individual and labour human right, to address an issue that concerns society as a whole, as motherhood is not only a biological function but also a social function. It includes a period of employment-protected rest, which is granted to pregnant women towards the end of pregnancy and continues immediately after childbirth in order to safeguard the health of the mother by allowing for physical and mental recovery from the physiological changes associated with pregnancy and childbirth. It also supports the integrated development of girls and boys in their first months of life and contributes to the entry of women into the labour market and to the care of children as a right, in order to achieve integrated development (IPC-IG/UNICEF, 2020). As such, it is usually granted to biological mothers, including foster and adoptive mothers, and can sometimes even be transferred to other caregivers.

The International Labour Organization (ILO), in its Maternity Protection Convention 2000 (No. 183), provides for a minimum maternity leave of 14 weeks. Maternity Protection Recommendation 2000 (No. 191), which accompanies this Convention, proposes an increase to 18 weeks and an additional extension for multiple births, to ensure that both the mother and the father have sufficient time for rest and recovery, in the case of the mother, and in the case of both, to promote child development.

In the region there is a long-standing and extensive regulatory structure for maternity leave, but it is not framed within an approach that adequately integrates the rights of children, gender equality and the social inclusion of families; therefore, given the widespread informal nature of employment in the countries of the region, this paid leave only covers a small percentage of working women. In situations where pregnancy is coupled with adolescent or university maternity, this right does not exist, although there are some measures for dealing with these cases, not always formalized, which include leaves of absence, prolonged justified absences and the assessment of the subjects taken, in order to prevent school drop-out.

Cuba was the first country in the region to recognize 18 weeks of maternity leave as early as 1973, the highest standard set by the ILO. In Chile, maternity leave protection covers the adoptive mother and includes six weeks before childbirth and 12 weeks after childbirth. As of 2011, the 12 weeks post-partum can be taken full-time or as 18 weeks of half-time. It also establishes additional periods, up to 18 weeks for premature births, low-birth weight and multiple or complicated births. In addition, it establishes a mechanism for pregnant women in representative positions, such as mayors, to take up to 130 days of leave.

In 1988, Colombia started with 12 weeks of maternity leave. In 2011, it increased it to 14 weeks and included adoptive mothers. In 2017, it reached the ILO standard of 18 weeks. In 2021, it decided to go even further by establishing a maternity and paternity leave replacement system for female councillors, council members and deputies. Since 1988, Brazil has established 120 days in its Constitution. In 2002, it extended it to adoptive mothers for a certain number of days according to age range. This includes unemployed female workers. Currently, it grants 180 days of leave (24 weeks), which improves on the ILO standard. In 1990, the Bolivarian Republic of Venezuela recognized protection for pregnant workers, six weeks before and 20 weeks after childbirth, which not only places it above the ILO standard, but also above all other countries in the region.

Since 1976, Argentina has recognized 90 days of maternity leave for normal births. Since 2010, leave has been extended to six months for women pregnant with children with Down syndrome. Since 2000, it has granted 30 days of justified absence, due to pregnancy, for students in basic, poly-modal and higher education.

Paraguay grants 18 weeks of maternity leave. Uruguay started in 1980 with 13 weeks of leave, one before and 12 after childbirth; in 2013, it specified 14 weeks for the private sector.

The Dominican Republic started in 1992 with 12 weeks, six before and six after childbirth. In 2014, it increased this to 14 weeks. Costa Rica reached 17 weeks in 1996. Since 2016, El Salvador has been granting 16 weeks.

In the case of Argentina, the law dates back to 1976 with 90 days of maternity leave, and in 2010 a law was passed extending the leave to 180 days with full pay for women with children with Down syndrome. Since 1942, in the Plurinational State of Bolivia, 60 days of paid leave have been granted (15 days before and 45 days after childbirth). Subsequently, in 2010, it reached 90 days of leave. In 2009, Ecuador introduced a 12-week leave of absence. In the case of adoption, the paid leave for the mother and father is 15 days. Guatemala has established 12 weeks of leave since 1992, and Honduras has maintained 10 weeks since 1959. Peru, in 2016, reached 14 weeks.

In the Caribbean, Suriname is the country that grants the longest leave, with 16 weeks, as of 2019. Trinidad and Tobago and Belize grant 14 weeks, while Anguilla, Antigua and Barbuda, the Bahamas, Barbados, Dominica, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines grant less than the ILO standard of 14 weeks of maternity leave.

Diagram 2
Maternity leave in Latin America and the Caribbean, according to the ILO standard



Source: Economic Commission for Latin America and the Caribbean (ECLAC), Gender Equality Observatory for Latin America and the Caribbean [online] <https://oig.cepal.org/en>.

^a There is a specific law that grants up to 6 months' maternity leave if the child is born with Down syndrome.

In summary, six countries have surpassed the ILO standard of 18 weeks of maternity leave: Brazil, Chile, Colombia, Cuba, the Bolivarian Republic of Venezuela and Paraguay, while nine countries provide for more than 14 weeks and less than 18 weeks: Argentina, Belize, Costa Rica, Dominican Republic, El Salvador, Peru, Suriname, Trinidad and Tobago and Uruguay. However, a large number of countries in the region are below the ILO minimum standard of 14 weeks: Anguilla, Antigua and Barbuda, Bahamas, Barbados, Dominica, Ecuador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Plurinational State of Bolivia, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines (see diagram 2).

While it is noted that maternity leave is being extended, this should not occur in isolation from paternity leave. This type of leave must be extended, making it compulsory and comparable to maternity leave, and moving towards parental leave.

All countries have legislated maternity leave protection, this means that the employer is prohibited from discriminating against and illegally dismissing the pregnant worker or mother for a certain period of time.

As regards the amount of maternity leave cash benefits, ILO standards state that they should be set at an amount that guarantees the woman and her child an adequate standard of health and standard of living. Where it is to be set on the basis of previous earnings, this amount should not be less than two-thirds of earnings.

Most Latin American countries complement maternity leave with 100 percent pay for working women. In the Caribbean, some countries grant 60% (Anguilla, Antigua and Barbuda, Barbados, Belize, Haiti, Jamaica and Dominica); 65% (Saint Kitts and Nevis, Saint Vincent and the Grenadines and Saint Lucia); 70% (Guyana); and some others have mixed regimes: Trinidad and Tobago grants 100% for one month and 50% for the remaining months, and Grenada grants 60% for the first two months and 40% for the last month.

Breastfeeding

International agreements state that all women should be entitled to paid daily breaks during the working day for breastfeeding, which could be grouped into a single time at the beginning or end of the working day, as set out in the ILO Maternity Protection Convention 2000 (No. 183) and its Maternity Protection Recommendation 2000 (No. 191), and in accordance with the recommendations of the World Health Organization (WHO).

In the same vein, breastfeeding facilities in the workplace, school or training centre are an essential element for encouraging and continuing breastfeeding. Imposing conditions based on gender and the number of workers in order to provide such breastfeeding facilities is discriminatory. Latin America has made progress towards the recognition and implementation of the right to breastfeed in the workplace, in terms of the frequency, adequate facilities and, in some cases, maternity outside of formal employment, as in the case of female students pursuing higher education. To date, 19 countries in the region have implemented such regulations (see diagram 3).

The Plurinational State of Bolivia has made it mandatory for public and private institutions to provide the optimal logistical conditions for mothers to breastfeed exclusively up to six months of age, taking their children to work and school, and granting them one hour's leave per day during the first year. Similarly, in Brazil, female workers have the right to take two paid half-hour breaks to breastfeed their babies or one hour a day until they are six months old.

Argentina provides for two 30-minute breaks per day or a one-hour break during the first year. In the case of students, they are only granted this right for six months. In Chile, female workers in the formal sector are entitled to at least one hour per day to feed their babies under two years of age, either in the crèche or wherever they are. In addition, since 2019, no matter where, no conditions, requirements or demands to conceal breastfeeding can be imposed.

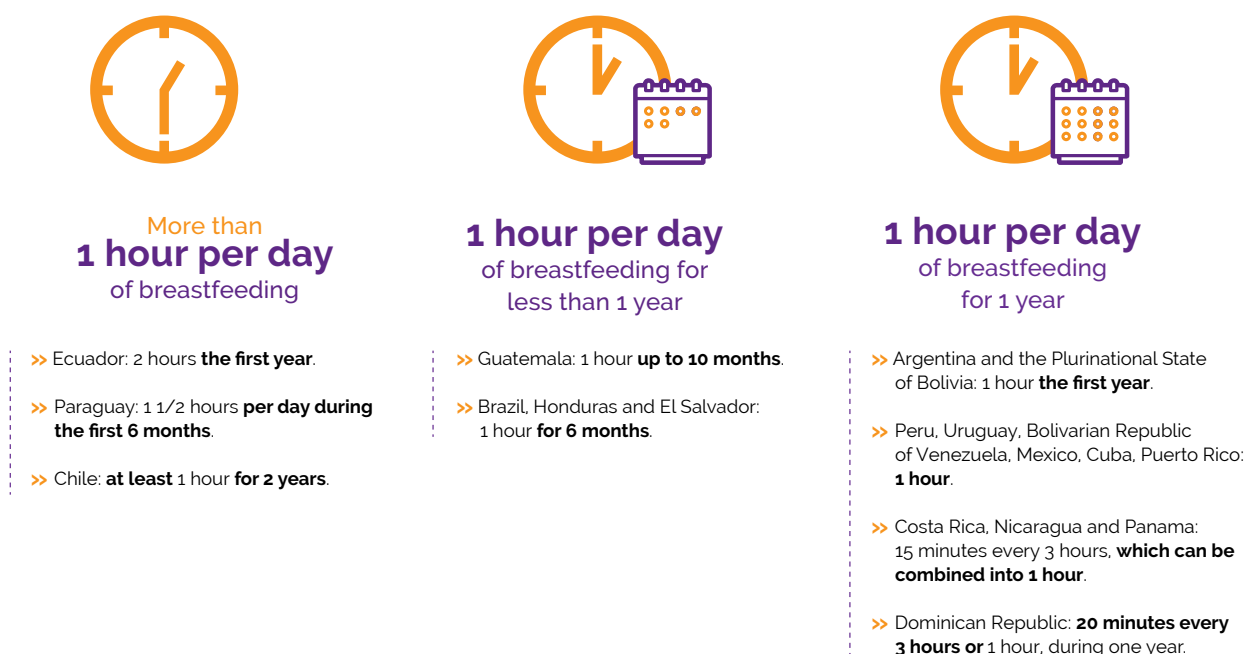
Ecuador and Paraguay have established this right more extensively. Ecuador regards it as a natural right of the child and, since 2012, provides for two hours of breastfeeding per day during the first year of life. Meanwhile, in Paraguay, mothers have ninety minutes of breastfeeding breaks per day to breastfeed their babies during the first six months, as they see fit, calculated from the first day of return from maternity leave. In the case of multiple births, such leave shall be increased to an additional 60 minutes per day from the second child onwards. The employer shall provide the necessary time for expressing breast milk, and shall provide suitable conditions and a breastfeeding room. Breastfeeding rooms will also be established in higher education institutions for students and their children, and in any institution where more than 10 women work.

In the Bolivarian Republic of Venezuela, Cuba, Mexico, Peru, Puerto Rico and Uruguay, at the end of the post-natal period, the working mother is entitled to one hour a day and in some cases two half hours of breastfeeding breaks until her child is one year old. In the case of Cuba, since 2021, this right corresponds to the mother or the father. In Mexico, it is a constitutional right.

Guatemala and Honduras grant two paid daily breaks for breastfeeding: Guatemala for 10 months after childbirth and Honduras until the child is six months old. El Salvador provides one hour a day for six months for breastfeeding. When the mother is medically unable to breastfeed, the law provides for assistance in cash or in kind, subject to medical advice.

Costa Rica, Nicaragua and Panama provide for 15-minute breaks every three hours or half an hour twice a day, at the beginning or end of the working day. Similarly, in the Dominican Republic, during the breastfeeding period, the worker is entitled to three breaks of 20 minutes or one hour a day during the first year of the child's life. In addition, she can have half a day each month for paediatric check-ups.

Diagram 3
Breastfeeding breaks in Latin America and the Caribbean



Source: Economic Commission for Latin America and the Caribbean (ECLAC), Gender Equality Observatory for Latin America and the Caribbean [online] <https://oig.cepal.org/en>.

Regarding the infrastructure and logistics for expressing and conserving breast milk and for breastfeeding, known as lactation or mother and baby rooms with adequate sanitary facilities, comfort and safety, as indicated in the legislation of Argentina, Chile, Colombia, Ecuador, El Salvador, Honduras, Panama, Paraguay, Peru and Puerto Rico, some countries make lactation rooms compulsory for a certain number of female workers of childbearing age. In Brazil, this will be enforceable in companies with more than 30 female workers over 16 years of age; in Costa Rica, it is enforceable when more than 30 women work there. Ecuador initially established it for workplaces with more than 20 female workers of childbearing age, and in 2019, it made it mandatory for private companies, starting with one breastfeeding worker; Honduras, starting with 20 female workers; Paraguay, starting with 10 women; since 2003, Guatemala has made it mandatory for employers to provide adequate conditions for breastfeeding, including in facilities for women who are in custody. Since 1970, Mexico has made it mandatory for the employer to provide an adequate and hygienic place.

Peru has made it mandatory, once there are at least 20 working women of childbearing age with children up to 24 months of age. In exceptional areas, breastfeeding services can be provided in an adjoining building used by the public or private institution itself that satisfies the conditions; in Puerto Rico, public entities must designate an area that guarantees the breastfeeding mother privacy, safety and hygiene; and in Colombia, they are called "Workplace Infant and Family-Friendly Rooms".

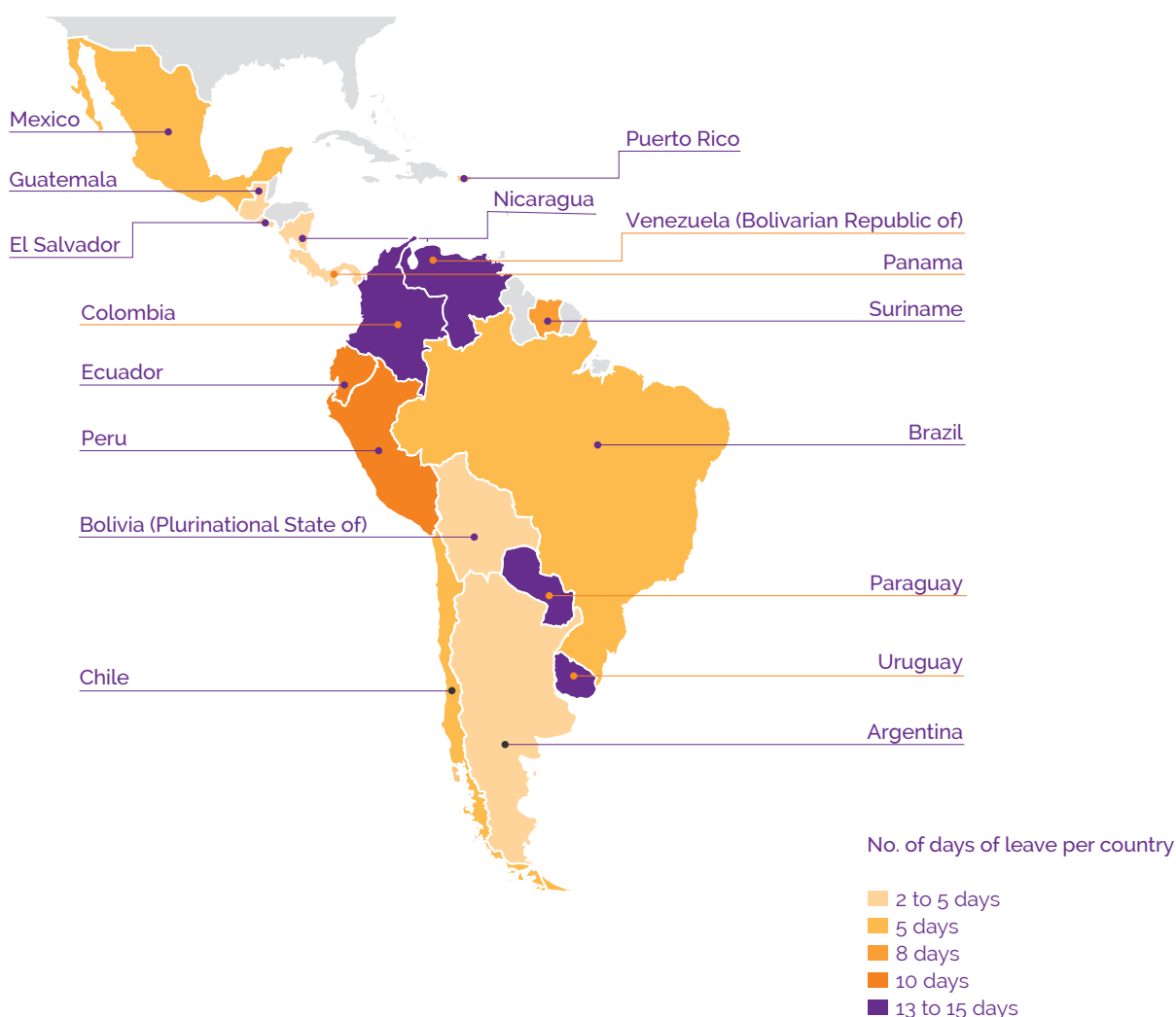
Paternity leave

Paternity leave is underpinned by the principle of non-discrimination and equal opportunities for women and men and, in turn, is directly related to the principle of the best interests of the child, as it fosters a greater and better emotional bond during the first months of life (Alfaro, 2019).

From the gender equality perspective, this type of leave, even if it is reduced, helps to change stereotypes and cultural practices that assign household work and the raising of children exclusively to mothers and women in the family. In this regard, paternity leave helps to reduce so-called “privileged irresponsibility” or the “ways in which the division of labour and existing social values allow some individuals to excuse themselves from basic caring responsibilities because they have other and more important work to perform” (Tronto, 2013). Similarly, implementing paternity leave that is equal to maternity leave would reduce the possibility of companies engaging in conscious or unconscious bias by avoiding the hiring of women of childbearing age (Barquero, 2019), and preferring to hire men in order to avoid paying maternity leave.

In several Latin American countries, gradual and sustained changes are taking place in relation to the extension of duly paid, inclusive and compulsory leave, in order to reverse the trend identified in regional studies that show its low use (see map 1).

Map 1
Paternity leave in Latin America and the Caribbean



Source: Economic Commission for Latin America and the Caribbean (ECLAC), Gender Equality Observatory for Latin America and the Caribbean [online] <https://oig.cepal.org/en>.

Note: The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.

In general, they are mostly short, only for wage earners in the formal sector and heterosexual couples.

The first countries in the region to establish paternity leave were Mexico, since 1979, with five days; Argentina, since the 1970s, with two days, and there are currently discussions for a bill to extend it to 15 days during the first year of the law, which would progressively reach 90 days in the eighth year.⁷ In 1988, Brazil established five days of paternity leave. Since 2008, workers in companies that are part of the *Empresa Ciudadana* programme have had an additional 15 days of paternity leave, that is, a total of 20 days. In 1990, Uruguay established three days, and at present, it grants 13 days, including for adoption, and a six-week leave period for one of the partners. The Cuba Family Code of 1975 established the shared responsibility of the mother and father to nurture, care for, protect, educate, assist, show deep affection towards and prepare children for life.

Countries have gradually modified their rules. There has been an extension of the time periods and the incorporation of different types of relationships, not only paternal relationship by blood, but also by adoption. In addition, some countries, such as the Plurinational State of Bolivia and Panama, both with three-day leaves, have established paternal privilege to prevent the illegal dismissal of the worker for the duration of the leave or even up to the first year if the mother does not have a paid job. In the case of the Plurinational State of Bolivia, the leave is conditional on the fulfilment of legal obligations towards the children.

Paraguay and the Bolivarian Republic of Venezuela provide for a compulsory leave of 14 days. In the Bolivarian Republic of Venezuela, the leave can be extended to 21 days for multiple births. Peru moved from 3 to 10 days and added that leave may be taken from 3 days before the probable date of birth. In addition, it provides for 20 and 30 days' leave for premature, multiple and congenital births, respectively.

Chile went from a four-day paternity leave in 2005 to a mandatory five-day paternity leave in 2011, which can be taken from the date of birth. The situation is similar in Colombia, where paternity leave has increased from four days to two weeks and is gradually extended by one additional week for each percentage point decrease in the country's structural unemployment rate compared to the level at the time of the entry into force of Act No. 2114 of 2021, without exceeding five weeks in any case.

It is only in Ecuador that the right to paternity leave has constitutional status, according to article 332 of the Political Constitution. The father is entitled to 10 days' leave, extendable to 15 days in the case of multiple births or a Caesarean section, and up to 25 days in the case of births with serious illnesses or severe disability. In addition, at the end of the maternity or paternity leave, a request can be made for an optional and voluntary leave without pay, for up to nine months, to care for children.

Box 1

Ruling 3-19-JP/20 of the Constitutional Court of Ecuador: the right to care with gender co-responsibility through paternity leave

"Care as a right and as public policy calls for social co-responsibility as a principle in order to overcome the feminization of care, develop masculinities based on respect for diversity and participation in roles other than the traditional ones, reduce poverty and inequality..." (paragraph 120).

"In order to ensure co-responsibility, protect the right to care and eliminate the gender gap, the National Assembly should enact legislation on: the extension of paternity leave for care, where possible, and making it progressively comparable to maternity leave; the extension of leave for mothers and adoptive parents, the conditions for its exercise, the cases in which it would not be possible to exercise this right (such as in the case of domestic violence or suspension of parental authority); the ways to ensure that leave time is effectively allocated to care; the consequences for non-compliance with care roles, if applicable, through appropriate and proportional sanctions; and other circumstances deemed necessary, observing the rights recognized in this ruling." (paragraph 147).

Source: Constitutional Court of Ecuador, "Case No. 3-19-JP/20 and others", Quito, 2020 [online] <https://www.salud.gob.ec/wp-content/uploads/2020/09/3-19-JP-y-acumulados-firmado-1.pdf>.

⁷ Proposal of the Ministry of Women, Genders and Diversity of the Nation along with the Ministry of Labour, Employment and Social Security to the Congress of the Nation for the creation of the Comprehensive Care Policy System (SINCA) in Argentina.

In the Caribbean subregion, only Suriname, as of 2019, has established eight days of paternity leave.

In Central America (Guatemala, El Salvador, Nicaragua, Puerto Rico and Panama), paternity leave is granted for between 2 and 5 days. Only Panama provides paternity leave protection for 12 months after childbirth. Puerto Rico maintains the requirement of a marital relationship or cohabitation with the mother in order to enjoy such leave.

Parental leave

Parental leave is a much longer period of employment-protected leave available to one or both parents to enable them to care for their child after maternity and/or paternity leave ends. The period is determined by national laws, parents do not have to give up their employment and the corresponding rights are protected. Few countries in the region have successfully implemented this type of leave.

In Chile, if both the mother and the father are workers in the formal sector, either of them, at the mother's choice, may take post-natal parental leave as of the seventh week. In Colombia, from the date of birth, the mother and/or father may opt for flexible part-time parental leave, in which they may exchange a certain period of their maternity or paternity leave for a period of part-time work, equivalent to double the time selected, with the limitation that initially this was only applicable to children born to spouses or permanent partners, that is, the right to receive parental care was restricted by the bond of origin between the parents or the marital status of the couple. Also excluded from parental leave are parents who have been convicted in the previous five years for crimes against sexual freedom, integrity and development, or for crimes against the family.

In Uruguay, once the maternity benefit period has ended, the father and mother may alternate in using the leave, up to the first six months of the child's life. In Cuba, since 2003, it has been established that after the mandatory post-natal and breastfeeding leave, mothers and fathers can decide how to distribute the rest of the available leave between them until the child is one year old. Parental leave provides that, after maternity leave, the mother and father can decide which of them will take care of the child and who will receive the social benefit equivalent to 60 percent of the calculated paid maternity leave.

Maternity and paternity leave and benefits for students

A case of particular concern, given the impact of early motherhood on educational trajectories with real possibilities, is that of maternity and paternity leave and benefits for students. Few countries grant entitlements to the student population. For example, in Brazil, from the eighth month of pregnancy and up to three months after giving birth (extendable by medical recommendation), students have the right to receive the contents of school subjects at home, as well as to take exams. In Argentina, in the province of Buenos Aires, mother and baby rooms have been established in secondary schools or agreements have been made with nearby kindergartens, with places for the children and siblings of young students so that they can continue their secondary studies and to guarantee care for children who need it (resolution No. 5170/08). Likewise, since 2018, Chile has had a directive to ensure that pregnant students and student mothers and fathers remain in the education system and that their right to childcare is guaranteed.

Paraguay provides academic facilities for pregnant students or mothers to attend medical check-ups and practise breastfeeding; absences are considered justified upon presentation of a medical certificate. Since 1999, Uruguay has had a special attendance monitoring and support system for pregnant and post-partum students at secondary and higher education centres, to ensure that despite excessive absenteeism, they maintain their student status and, based on the National Comprehensive Care System, it developed a strategy that includes care centres for students' children, which are socioeducational services located close to high schools that provide coverage at times when childcare centres do not. They are education and care environments that promote the integrated development of girls and boys, as well as the promotion and exercise of their rights.⁸

⁸ See Ministry of Social Development, "Care solutions for children of students" [online] <https://www.gub.uy/sistema-cuidados/tramites-y-servicios/servicios/soluciones-cuidados-para-hijas-hijos-estudiantes>.

Leave for the care of elderly and dependent adults

The care crisis transcends childcare needs. The demand for long-term care services targeted at populations of older adults in different stages of ageing and persons with disabilities who need care or support, whether within their own home or family group, in their own housing or in their interactions with society, has intensified due to the increase in life expectancy, demographic ageing and the impact of the COVID-19 pandemic. This situation has disproportionately affected those who depend on long-term care and those who provide it, thereby increasing women's responsibilities as primary or sole caregivers.

However, these types of care services, whether paid or unpaid, are peripheral to labour legislation, with limited offerings in terms of modalities, schedules, subsidies and quality control. For example, in Chile and Peru, there are laws on palliative care for people with terminal or serious illnesses; Chile has the Payment Programme for Caregivers of Persons with Disabilities, which establishes the payment of remuneration for those who work as unpaid caregivers for people with severe dependency or disability; in Peru, workers can have up to seven days a year to care for family members with health problems; in Costa Rica, the Law for the Promotion of the Personal Autonomy of Persons with Disabilities establishes rights for persons with disabilities and duties for their family members or caregivers.

Childcare services in the workplace

Care for children encompasses material care, which implies "work", as well as economic care, which implies "economic cost", and psychological care, which implies an "affective, emotional, sentimental bond" (Batthyány, 2015).

Childcare services offer multiple benefits to promote child development, reduce unpaid care work for mothers and fathers, and especially to promote women's autonomy, employment and sustained income throughout their lives. However, in most countries in the region, there is no national system or public policy that ensures universal access to these care services outside of formal employment. In this regard, the regulation and provision of childcare in the region has gaps, demonstrating the need to move towards the recognition of care as a universal right of children.

In general, care services are offered by the State and some others are provided by the private sector, mainly for children, albeit for a limited number of hours or not always coinciding with work and study hours in their multiple modalities.

In Argentina, companies with a minimum of 100 workers with children between 45 days and three years old must provide mother and baby rooms and care centres within the establishment, or pay for the cost of care. Since 2008, there has been a push for the creation of maternity care rooms in secondary schools, for the children and younger siblings of their students. In the Plurinational State of Bolivia, the obligation to provide nursery services attached to the workplace only applies to companies with more than 50 working mothers with children under one year of age.

In Brazil, this obligation is established in the case of companies with more than 30 female workers over 16 years of age with children under 5 years of age. In Paraguay, Act No. 496 states that establishments with more than 50 workers of either sex (previously only women) are obliged to provide mother and baby rooms. In Ecuador, companies with more than 50 workers and/or workers with children under seven years of age must have a nursery attached to the workplace. In the Bolivarian Republic of Venezuela, companies with more than 20 female workers must have a nursery attached or close to the workplace, or pay childcare costs to the worker.

In Chile, there is still an obligation for companies with more than 20 workers to provide nurseries within the establishment, in conjunction with other employers, or to pay the cost of childcare. This was extended by Act No. 20399 to include mothers and fathers who have legal guardianship of their children under two years of age.

Box 2**Care as an eligible electoral expense: Electoral Service of Chile**

The Electoral Service of Chile (SERVEL), at the request of the political party Social Convergence, included in the Electoral Financing and Expenditure Consultation Manual (January, 2021), under the item “minor and frequent campaign expenses”, the care of newborns, children and adolescents, dependent persons and the elderly, as reimbursable electoral expenses incurred by candidates for public office, which may not exceed 10% of the total limit authorized for the candidate or political party. This measure lifts barriers and improves conditions for women’s participation in political competition.

Source: Electoral Service of Chile (SERVEL), *Manual de Consulta de Financiamiento y Gastos Electoral*, Santiago, 2021.

El Salvador, through Decree No. 20, approved the Special Law for the Regulation and Installation of Crèches for workers’ children between four months and three years of age, for the duration of the parent’s working day, provided that the company or organization has more than 100 employees. In Guatemala, crèches are established in companies or organizations with more than 30 workers. In Honduras, the service is offered to workers with children under the age of seven. In Mexico, the General Act for the Provision of Comprehensive Care and Development Services for Children, amended in 2018, guarantees children’s access to equitable and quality services, up to the age of four.

Box 3**Protection for paid domestic workers in the legislation of the region**

In Latin America and the Caribbean, care —be it for children, the elderly or dependent persons— is a highly feminized occupation. Of 14.8 million domestic workers, 91.1% are women.

Paid domestic work is an important source of employment for migrant and indigenous women workers. Discrimination in the labour market is greater for them, so that paid domestic work becomes one of the few options for entry into the labour market. Language, cultural barriers and racism also make it difficult for them to access their rights.

Despite the fact that 18 countries in the region have already signed and ratified the Domestic Workers’ Convention, 2011 (No. 189), the legal coverage of domestic workers, whether through their inclusion in general labour legislation, the creation of specific rules or lower-level regulations, or a combination of both, still has regulatory gaps, 93% of which are due to the lack of application of the regulations, so that guaranteeing these rights continues to be a challenge.

However, legal coverage is only a first step towards guaranteeing decent work for female domestic workers, but does not ensure decent work and access to all rights on an equal footing with those working in other sectors. The main gaps are reflected in longer working hours, lack of recognition of the minimum wage, lack of the right to social security or lack of access to security benefits on equal terms, among others.

A detailed account of the progress made in this area can be found in the ILO report *El trabajo doméstico remunerado en América Latina y el Caribe, a diez años del Convenio núm. 189*, published in November 2021.

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of International Labour Organization (ILO), *El trabajo doméstico remunerado en América Latina y el Caribe, a diez años del Convenio núm. 189*, Lima, 2021.

III. Challenges

- An analysis of the current legislation reveals the complex process of recognizing the right to care. To a greater or lesser extent, the countries of the region are debating and implementing actions related to care.
- The demands of feminist movements, academic research and intergovernmental commitments have promoted the adoption of measures to gradually advance towards the development of comprehensive care systems from a gender perspective.
- The recognition of care as a human right of all people makes it possible to clearly outline the central role of the State and the different actors: (i) who are the holders of the right to care; (ii) who are the duty-bearers; (iii) what are the mechanisms for enforcing the right to care; and (iv) what are the measures aimed at reducing inequalities and gaps in access to and enjoyment of this right (ECLAC/UN-Women, 2022).
- Beyond the diversity of economic and cultural situations and institutional legacies, all countries of the region must design comprehensive care systems that aim for universal access to and quality of services, coordination and intersectoral policies, financial sustainability, social and gender co-responsibility and the participation of the social actors involved in public policy (ECLAC/UN-Women, 2022).
- The experience in the region shows that the processes by which care policies and systems are established can be diverse, and care can even be approached from the conventionality of rights in international covenants or treaties, or through the development of non-enumerated rights or their constitutionalization; but at all times, whatever the route followed, the right of all persons to receive care, to provide care and to exercise self-care must be guaranteed, bearing in mind that investing in care can contribute positively to the consolidation of women's autonomy.
- Although the approval of a regulatory framework that regulates the creation of a comprehensive care system is a central element for the institutional architecture and competencies as well as intersectoral entities and control mechanisms, the design and implementation of care policies should not necessarily be subordinated to the approval of a law.

- It is very important for care systems to define in their governance the system's institutional framework, as well as the joint working spaces and jurisdictional competencies of the central/national/federal, state/provincial/departmental and municipal levels of government (ECLAC/UN-Women, 2022).
- States need to implement mechanisms backed by legislation to ensure the regular conduct of time-use surveys to break the statistical silence and facilitate the comparability of data and time series construction in the region (ECLAC, 2017 and ECLAC, 2020) in order to calculate the amount of time spent on care work.
- Maternity leave has been progressively extended, both in terms of time spent on care and in terms of who is entitled to it, but there are still countries in the region that do not meet the ILO minimum standard. In addition, countries have not yet adequately mainstreamed children's rights, gender equality and non-discrimination in terms of the diversity of families and situations, such as co-parenting, pregnancy and motherhood during adolescence, and other stages of development.
- Gender co-responsibility requires extending the time for paternity leave, ensuring its compulsory use or enjoyment, which must be non-transferable, duly remunerated and inclusive of all people in the labour market, that is, those outside of the formal economy, and recognizing the diversity of families; in the same vein, parental leave or leave that can be used by fathers and mothers after maternity or paternity leave for birth or adoption should be encouraged, making it clear that care practices are also men's obligations.
- Care involves time and services. In the region, regulatory development focuses on the child population, leaving without adequate protection those workers with long-term care responsibilities for people in situations of dependency due to old age or disability who need present and future care.
- Progress is being made in the recognition of the rights of LGBTI+ people, such as identity laws, civil unions or same-sex marriage and adoption rights; however, countries still do not provide maternity or paternity leave for those in same-sex unions.

Bibliography

- Abramovich, V. and C. Courtis (2002), *Los derechos sociales como derechos exigibles*, Madrid, Editorial Trotta.
- Alfaro, B. (2019), "Paternidades 2.0: los papás del futuro", *La Nación*, San José, 11 June [online] <https://www.revistaperfil.com/vida/actualidad/paternidades-20-los-papas-del-futuro/MGKFIWFIOVC3TFOZB6G275F7S4/story/>.
- Barquero, K. (2019), "¿Avanza la licencia de paternidad para sector público en Costa Rica?", *La República*, San José, 26 November [online] <https://www.larepublica.net/noticia/avanza-la-licencia-de-paternidad-para-sector-publico-en-costa-rica>.
- Batthány, K. (2015), "Policies and care provision in Latin America: A view of regional experiences", *Gender Affairs series*, No. 124 (LC/L.3958), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC).
- Belisario Domínguez Institute (2020), *Mirada Legislativa*, No. 195, Mexico City.
- Bidart, G. (1989), *Teoría general de los derechos humanos*, Mexico City, National Autonomous University of Mexico.
- Bidegain, N. and C. Calderón (comps.) (2018), *Los cuidados en América Latina y el Caribe: textos seleccionados 2007-2018* (LC/M.2018/4), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC).
- CEM/FES (Center for Women's Studies/Friedrich Ebert Stiftung) (2021), "Comparativo Constituciones América Latina", *Material Pedagógico*, No. 109-110, Santiago.
- CIM (Inter-American Commission of Women) (2022), *Inter-American Model Law on Care*, Havana, Organization of American States (OAS).
- Constitutional Convention (2022), *Propuesta Constitución Política de la República de Chile 2022*, Santiago.
- ECLAC (Economic Commission for Latin America and the Caribbean) (2022a), *The care society: a horizon for sustainable recovery with gender equality* (LC/CRM.15/3), Santiago.
- _____ (2022b), *Methodological guide on time-use measurements in Latin America and the Caribbean* (LC/CEA.11/17), Santiago.
- _____ (2021), *Towards a care society: the contributions of the Regional Gender Agenda to sustainable development* (LC/MDM.61/3), Santiago.
- _____ (2020), *Santiago Commitment*, Santiago.
- _____ (2017), *Montevideo Strategy for Implementation of the Regional Gender Agenda within the Sustainable Development Framework by 2030* (LC/CRM.13/5), Santiago.
- ECLAC/UN-Women (Economic Commission for Latin America and the Caribbean/United Nations Entity for Gender Equality and the Empowerment of Women) (2022), *Towards construction of comprehensive care systems in Latin America and the Caribbean: elements for their implementation* (LC/TS.2022/26), Santiago.
- Gherardi, N. and C. Zibecchi (2011), "The right to care: a new social question before the Argentine Courts of Justice?", *Política*, vol. 49, No. 1, Santiago, University of Chile.

- Government of Mexico City (2021), *Iniciativa con Proyecto de Decreto por el que se Expide la Ley del Sistema de Cuidados de la Ciudad de México*, Mexico City.
- _____. (2017), *Constitución Política de la Ciudad de México*, Mexico City.
- Gúezmes, A., L. Scuro and N. Bidegain (2022), "Igualdad de género y autonomía de las mujeres en el pensamiento de la CEPAL", *El Trimestre Económico*, vol. 89, No. 353, Mexico City, Fondo de Cultura Económica (FCE).
- ILO (International Labour Organization) (2021), *El trabajo doméstico remunerado en América Latina y el Caribe, a diez años del Convenio núm. 189*, Lima.
- _____. (2012), *R202 - Social Protection Floors Recommendation, 2012 (No. 202)*, Geneva.
- _____. (2011), *C189 - Domestic Workers Convention, 2011 (No. 189)*, Geneva.
- _____. (2000), *C183 - Maternity Protection Convention, 2000 (No. 183)*, Geneva.
- _____. (1981), *C156 - Workers with Family Responsibilities Convention, 1981 (No. 156)*, Geneva.
- IMAS (Joint Institute for Social Aid) (2022), "Secretaría Técnica de la Red Nacional de Cuido y Desarrollo Infantil", San José [online] <https://www.imas.go.cr/es/general/secretaria-tecnica-de-la-red-nacional-de-cuido-y-desarrollo-infantil>.
- IPC-IG/UNICEF (International Policy Centre for Inclusive Growth/United Nations Children's Fund) (2020), *Maternidad y paternidad en el lugar de trabajo en América Latina y el Caribe — políticas para la licencia de maternidad y paternidad y apoyo a la lactancia materna*, Brasilia.
- Latin American and Caribbean Parliament (2013), "Ley Marco sobre Economía del Cuidado", Panama City [online] https://parlatino.org/pdf/leyes_marcos/leyes/ley-economia-cuidado-pma-19-oct-2013.pdf.
- _____. (2012), "Proyecto de Ley Marco de Sistema Integral de Cuidados", Buenos Aires [online] https://parlatino.org/pdf/leyes_marcos/leyes/proyecto-sistema-integral-pma-30-nov-2012.pdf.
- Morales, L. (2014), "La constitucionalización de los derechos sociales en la encrucijada entre las exigencias de la democracia y las demandas de la justicia distributiva", *Libertas*, vol. 1, No. 2, Ouro Preto, Federal University of Ouro Preto.
- Muñoz, C. (2017), "El cuidado como objeto de políticas públicas inclusivas con enfoque de género y de derechos", *Estado, gobierno y gestión pública*, No. 30, Santiago, University of Chile.
- Nikken, P. (2010), "La protección de los derechos humanos: haciendo efectiva la progresividad de los derechos económicos, sociales y culturales", *Revista IIDH*, vol. 52, San José, Inter-American Court of Human Rights.
- OAS (Organization of American States) (2015), "Inter-American Convention on Protecting the Human Rights of Older Persons" [online] https://www.oas.org/en/sla/dil/inter_american_treaties_a-70_human_rights_older_persons.asp.
- _____. (1994), "Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women 'Convention of Belém do Pará'" [online] <https://www.oas.org/juridico/english/treaties/a-61.html>.
- _____. (1988), "Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights 'Protocol of San Salvador'" [online] <https://www.oas.org/juridico/english/treaties/a-52.html>.
- _____. (1969), "American Convention on Human Rights" [online] <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.
- OHCHR (Office of the United Nations High Commissioner for Human Rights) (1990), *CESCR General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, Geneva.
- Pautassi, L. (2018), "El cuidado: de cuestión problematizada a derecho. Un recorrido estratégico, una agenda en construcción", *El trabajo de cuidado: una cuestión de derechos humanos y políticas públicas*, Mexico City, United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women).
- _____. (2007), "El cuidado como cuestión social desde un enfoque de derechos", *Women and Development series*, No. 87 (LC/L.2800-P), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC).
- Tronto, J. (2013), *Caring Democracy: Markets, Equality and Justice*, New York, NYU Press.
- United Nations (2006), *Convention on the Rights of Persons with Disabilities*, New York.
- _____. (1989), *Convention on the Rights of the Child*, New York.
- _____. (1979), *Convention on the Elimination of All Forms of Discrimination against Women*, New York.
- _____. (1966), *International Covenant on Economic, Social and Cultural Rights*, New York.
- _____. (1948), *Universal Declaration of Human Rights*, Paris.

The commitments made over the last 45 years have led to the development of a robust Regional Gender Agenda in which women's rights and gender equality are recognized as central and cross-cutting elements of all State action geared toward strengthening democracy and enabling a new style of sustainable development with equality.

The right to care, understood as the right to receive care, to provide care and to exercise self-care, is part of the human rights already recognized in international covenants and treaties that benefit all people. The right to care also implies the recognition of the value of work, the guarantee of the rights of caregivers and the overcoming of stereotypes in which care is deemed to be the exclusive responsibility of women. Beyond the diversity of economic and cultural situations and institutional frameworks, all the countries of the region must design comprehensive care systems that aim for universal access to and quality of services, coordination and intersectoral policies, financial sustainability and social and gender co-responsibility.