

Article title: Recognize unpaid care work in Colombia: a historical debt to women

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Resume

This socio-legal research article aims to address unpaid care work in Colombia, so the first part will address how women despite the existence of the right to Equality and non-discrimination as a human right, in the reality of this right is not fulfilled, since it is women who must face unequal conditions in access and permanence in the labor market, they will endure salary gaps and it is difficult for them to access the old-age pension.

All this added to the fact that women in times of pandemic have had to face circumstances worse than those faced by men, the above because they are the ones who have lost their jobs in a greater proportion, they are the ones who are exposed to the risk of contagion because they develop assistance health and social more than men

In the second part of this article, likewise, it is stated how the pandemic has made women have to increase the workload of care work, now in addition to this, they accompany the schoolwork of the minor children, adding the work in case or the telecommuting.

In addition to the above, it is proposed that in Colombia care work has not been recognized, the only rule being Law 1413 of 2010, which establishes that the Colombian State must account for the economic value of the care economy and determine the economic contribution that is reflected in the Gross Domestic Product-GDP in Colombia.

In the third part, a relationship is made between the Social Security in Old-age Pension and the unpaid care work performed by mostly women, where it is evidenced that the two pension regimes in Colombia do not take into account gender mainstreaming. Which makes women's access to the old-age pension even more difficult.

Finally, some findings are raised among them, that the precarious work carried out by women in unpaid care work in Colombia was evidenced and the development of a norm that recognizes care work within the context of decent work is proposed and also that it is proposed to recognize care work as a Human Right.

Keywords: Care Work, Decent Work, Pandemic, Research, Socio-legal, Social Security.

Introduction

Women in this health and economic crisis as a result of the Pandemic generated by Covid-19 have been the ones who have suffered disproportionately the loss in their jobs, added to the fact that the confinements “have made evident the increase in women in the care work, increasing gender inequality, already existing prior to the pandemic” (ILO, 2020, p.1).

Colombia has not been immune to this situation, women in times of pandemic generated by Covid-19 have faced the increase in the workload assuming a triple workload: they will develop the care work that prior to the pandemic they already developed in greater proportion, but now they will assume the educational responsibilities of their minor children and many of them will carry out work or telework from their homes at the same time.

And although in Colombia it was determined in Law 1413 of November 11, 2010, the inclusion of the unpaid care economy within the national accounts, to demonstrate the contribution that women make in the economic and social development of the country. Contribution that for the year 2017 was 20% of GDP, in reality there has not been an effective recognition of this contribution. Therefore, it is necessary that care work be recognized for women within the social security system in Pensions, the foregoing because the one who most benefits from unpaid care work are the State itself.

I. Women in times of Pandemic in Colombia

Within the legal systems of human rights, one of the rights that has had the longest historical trajectory is the Right to equality and non-discrimination, being within it the prohibition of

discrimination based on the condition of sex. This right has been elevated to constitutional norm in most modern countries, including Colombia.

The right for women to achieve real equality in relation to the conditions of men in reality has not been achieved, aspects such as access and permanence in the labor market, salary gaps, access to an old-age pension among many other circumstances place women in constant inequality. In today's society women have different living conditions than those experienced by men for authors like Martha Nussbaum “Women lack support in fundamental functions of human life in most of the world. They are worse nourished than men, they have a lower level of health, they are more vulnerable to physical violence and sexual abuse” (Nussbaum, 2002, p.27).

These conditions of inequity are constant from birth and continue throughout life. In the terms in which Nussbaum expresses it; “They lack opportunities for play and for the cultivation of their imaginative and cognitive faculties” (Nussbaum, 2002, p.27). These situations prevent them, on many occasions, from participating effectively in political life. And that lack of participation in politics leads to their situation being replicated.

The reality of women is also analyzed by authors such as Nancy Fraser, for this author the problem of women is established in two dimensions: recognition and redistribution (Butler and Fraser, 2016, pp. 24-25). With regard to recognition, these are eminently socioeconomic aspects, based on the economic-political structure of society; evidenced in labor exploitation and economic inequality, by assigning women undesirable or poorly paid jobs, as well as depriving them of an adequate material standard of living. Second injustices are of a cultural or symbolic nature, determined by “social models of representation, interpretation and communication” (Butler and Fraser, 2016, pp. 27-28). What will have as a consequence that Women suffer from lack of recognition, lack of respect, or cultural invisibility.

These, among many other circumstances, are those experienced by Colombian women, who prior to the pandemic had unemployment of 13.9% much higher than that of men, which reached 8.1% in the quarter of November 2019- January 2020 (DANE 2020). This is added to the fact that women are the ones who in a greater proportion developed informal work, this situation being evident in the period November 2018 to January 2019 where 48.5% of female informal work was found while men developed it in a 44.6%, according to OECD data, complementary to the fact that Colombia is the country that has the most temporary OECD contracts. (OECD, 2019, p.7)

In addition to the above, the demographic bonus that was considered the condition of better development for Colombia is being lost, as the young population, especially the female population, has even fewer opportunities, because at this stage of life it is evident that women are the ones who in a greater proportion neither study nor work, they are marginalized, due to the abandonment of education, inadequate labor insertion, or also early motherhood.

This was the reality of women in Colombia, prior to the emergence of the Covid-19 coronavirus and prior to being declared a Pandemic on March 11, 2020 by the World Health Organization. (OMS, 2020, p1.). With the spread of the pandemic and the health crisis that is being experienced worldwide, where by May 26, 2021, around 3,493,704 people have died worldwide from Covid-19, with infections of 168,175,450 and vaccinated as only 1,737,285,632 (University Johns Hopkins, 2021).

The health measures adopted to control the pandemic have had a negative effect on the world economy, but the negative repercussions are being directly suffered by women. And this is so because to safeguard the health and life of all citizens, states have had to take measures such as prolonged quarantines, which generates the total confinement of citizens in their homes, the closure of businesses, or the closure of schools., among many. All this means that Women must assume the care and educational attention of their children, in addition to the burden of domestic work and the workload at home or telework, which poses not only a work overload, but also when doing work informal care within family's limits women's employment and economic opportunities (UNFPA, 2020.p.6).

Consequently, the pandemic situation experienced in 2020 and prolonged even in 2021 has generated a setback in the fulfillment of goal 5 of the 2030 agenda that sought to achieve gender equality. As stated by the ILO, the greatest negative effects of the pandemic are occurring in female employment as a consequence of the fact that the jobs developed by women are those that are disappearing, such as hotels and services. In addition to the fact that the risk of contagion occurs in its vast majority in health and social assistance personnel, and those who provide this service in a greater proportion are women. (ILO Observatory, 2020, p.1)

In Colombia the situation of women has been similar to that evidenced worldwide, for the year 2020 the unemployment of women in Colombia was 50.7% and that of men 49.3%. Likewise, in the period between March and July 2020, about two million women lost their jobs, this due to the fact that women worked in sectors where the crisis caused by the pandemic has had a special impact, such as the hotel sector, restaurants and domestic work, these sectors have a considerable number of women, which means that they are the ones who face exclusion from work at this time of pandemic, therefore, they suffer vulnerability in the context of Covid-19 (DANE 2020, p.1). To this must be added that the economic opening in Colombia opened in the civil works sector, where women have low participation.

II. Unpaid Care Work

With regard to care work, in the pandemic with the confinement of people in their homes, it has been exacerbated in such a way that women have been forced to develop a greater proportion of care tasks, this unpaid care work than in the vast majority of them are carried out by women as a result of the sexual division of labor. The sexual division of labor that for authors like Wikander arises in the market economy of the 19th century, with industrialized society (Wikander, 2016, p. 34). It has lasted to the present day, as evidenced as it has been manifested in the fact that women are the ones who develop reproductive or care work in a greater proportion, this will have negative consequences for women in access and permanence in the labor market and, taking into account that in Colombia the pension systems are based on the contributory system with contributions from formal work, women who have precarious jobs or are not in the labor market due to care work will hardly be able to access the old-age pension.

From an international perspective, various institutions and organizations have been trying to formally recognize care work, the work carried out by the International Labor Organization - ILO has been important. That it has developed conventions and recommendations, the most important of which are Convention 156 of 1981 on workers with family responsibilities, Convention 183 of 2000 on maternity protection and Convention 189 of 2011 on domestic workers. Along with recommendations 201 of 2011 on decent work for domestic workers and recommendation 202 on Social Protection Floors of 2012.

In Colombia there are no specific public policies for those who are engaged in unpaid care work in a direct way, the only thing that is done is recognition of the population that receives care, that is, the elderly, people in a situation of disability and childhood and adolescence.

The foregoing is evidenced in regulations such as Law 1251 of 2008, which establishes the protection and defense of the rights of the elderly, but with regard to care work, it is only stated in paragraph 10 of article 7 that Informal caregivers who care for an elderly relative in their homes need training. Likewise, in paragraph 8 of article 8 it is proposed to strengthen the networks of support, protection in solidarity and co-responsibility between the family, society and the State.

Added to the above in Statutory Law 1618 of 2013 on people with disabilities, in article 13 section 2 c) it is stated that the Ministry of Labor must determine the plans and programs for labor inclusion, in which caregivers and family members can intervene. In the same way, Law 1850 of 2017 was issued, which in article 8 reiterates that informal caregivers must be trained. As can be seen, the norms only mention the co-responsibility that caregivers must have regarding care work, nor do they collect or foresee any benefit for those who perform unpaid care work, which is mostly performed by women.

Despite the importance of the contribution made by workers who provide services as unpaid caregivers in the economy, only until 2010 was Law 1413 approved, the purpose of which is to include the care economy in the system of accounts. in order to measure the contribution of women in the economic and social development of the country. Regarding the measurement and coordination of care work, this is in charge of the National Administrative Department of Statistics-DANE-, which has the responsibility of issuing periodic analyzes through a National Survey of Time Uses -ENUT- that should not exceed the three years (Law 1413, 2010, art.1-5).

The National Administrative Department of Statistics- DANE-, carried out the last National Survey of Time Uses -ENUT-, in 2017, determining that for this year the economic value of unpaid domestic and care work amounted to 185,722 billion pesos, which represented a 20.0% share of the Gross Domestic Product, and implied an advance in the assessment of the role of care work carried out in Colombian households (DANE, Cuenta Satélite de Economía del Caring, 2017, p. 1).

Despite this contribution from unpaid care work performed mostly by women, such work is not recognized within the Colombian legal system, nor within the benefits as contributions to social security, as they are carried out in countries such as Spain, Brazil or Chile where care work is recognized through the recognition of weeks of contributions to the pension system. In addition to this, no regulations have been created in the Pandemic so that in Colombia family life can be reconciled with working life, which increases the situation of vulnerability of women who mostly face the loss of employment due to dedication to unpaid care work.

III. Social Security in Pensions and Unpaid care Work

In Colombia, with regard to social security in pensions, it is developed in two pension regimes: an average premium regime with defined benefit administered by the Colombian Pensions Administrator-COLPENSIONES, (It is a Colombian social security agency) an industrial and commercial company of the State, and by the Savings Regime. Individual with Solidarity administered by the Private Pension Funds. (Article 12 of Law 100 of 1993)

With regard to the regime administered by COLPENSIONES to access the old-age pension, two requirements are established, the first being the age that is differentiated by sex, being 57 years for women and 62 years for men. This age difference is presented as a positive action in terms of the recognition of favorable treatment because women are considered a historically disadvantaged and marginalized group, and also to recognize care work. (Sentence C-540 of 2008- Constitutional Court) But this difference that is presented as an affirmative action is misconfigured by having to comply with the second requirement to be entitled to the old-age pension, that is, 1300 weeks of contributions, which makes this affirmative action inoperative, since women require a long employment history and in formal jobs. (Article 33 of Law 100 of 1993, modified by Law 797 of 2003 Article 9).

In the individual savings scheme with Solidarity administered by the Private Pension Funds, to access the old-age pension, not only a certain age is required, but also that a saving of more than 110% is taken into the individual pension savings account. , to guarantee the old-age pension with a minimum salary, being able to save only up to the age of 60 for women and 62 for men, after which if they did not meet the capital, they are not allowed to continue contributing to the system and the respective return of balances is made (Article 64 of Law 100 of 1993).

This affirmative action of differentiating the age between men and women will pose the same inconvenience as the Public Fund since it requires both men and women a saving of more than 110% that guarantees even a minimum wage, which is detrimental to the Women, as already evidenced, also in the private regime differential tables are used by sex, which makes it even more difficult to access a pension because women require more capital saved because they have a longer life expectancy and Likewise, they have more gaps in their work histories, many of these due to the unpaid care work that they develop throughout their lives.

Therefore, Colombia needs to recognize a Social Security system with a gender perspective, in which it is required to overcome the model of sexual division of labor, coming to recognize care work as work within the context of decent work, in which the respective quotes are recognized. For this, the States must not only take into account the workers who make contributions to the pension systems, but also "the provision of tasks in the field of care." (Jiménez et al., 2014).

As can be seen from all of the above, from the very structure of the pension system in Colombia, the condition of gender mainstreaming is not raised, so this condition leads to not taking into account the condition of being a woman within the pension systems, which will cause women in the future not to be granted an old-age pension due in part to the fact that women will have gaps in their work histories, many of them as a result of the development of informal, precarious or non-care work paid.

In addition to the fact that the recognition of unpaid care work has not been carried out within the regulatory framework, either by making a recognition from the benefits in social security contributions in pensions or through economic transfers for the development of said work, much to the regret that such work, as evidenced, contributes 20% to the Gross domestic product in Colombia, so without a doubt there is a historical debt with female caregivers in Colombia.

Findings

In the present investigation it has been possible to show:

- That unpaid care work in Colombia is precarious work that is mostly carried out by women.
- That it is convenient to recognize care work within the context of decent work.

- That care work should be a co-responsibility between the State, society and family
- That care work must be considered with a human right, in the condition of having the right to care and be cared for.
- That it must be recognized that post-pandemic care work will contribute to the construction of a better society in Colombia.
- That it is required to implement a rule that recognizes care work in Colombia, a first step would be to recognize within the social security in pensions the respective contributions to said workers, and that the contributions are made by the State, as a way of recognizing the contribution that from the care work is made to the social and economic development of Colombia by women.

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