

# 1 JUS5910 assignment V21

## JUS5910 Women's Law and Human Rights - Exam - Spring 2021

Patagonia is a republic with a population that is made up of different ethnic and religious groups. Most of the ethnic groups are patrilineal. The majority of the population are Catholics, but there are large groups of Muslims and Christians. A large part of the rural areas population is, due to lack of investment in infrastructure like water, sanitation, schools and hospitals, living in poverty. The National Front Party, which is a union between traditional and religious leaders, was in power until 2018. In 2018 the Modernization party, with the support of small-scale farmers, agricultural workers, small business owners and civil society organizations, won the election. One of the aims of the new government is to improve the life of rural women and girls and to ensure equal treatment regardless of religion, ethnicity, sex, gender and sexual orientation.

### Central provisions in Patagonia's legislation:

#### *Article 2 in Patagonia's Constitution:*

No discrimination shall take place on the basis of sex, marital status, race, tribe, place of origin or political opinion.

In matters related to marriage, divorce and inheritance customary norms and practices shall prevail.

#### *Article 1 in Patagonia's Marriage Act:*

Marriage is a union between a man and a woman.

The rights and duties of the spouses shall be interpreted in the light of custom and tradition.

### CEDAW Committee's Comments to Patagonia's state report:

Patagonia ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) without reservations in 2008. It submitted its third periodic report to the CEDAW Committee in 2019. The CEDAW Committee submitted its Concluding Observations in 2020.

The Committee congratulated Patagonia for its effort to promote gender equality through a new Constitution. The Committee saw the Government's decision to appoint a Constitutional Commission with members from different ethnic and religious groups, representatives of the rural population and civil society including women's rights and LGBTQ organizations, as a step forward. The Committee was, however, concerned that both the Constitution and a number of acts still fell short of the CEDAW's gender equality standard. The Committee was also concerned about the lack of separate toilets for women and girls in rural schools and in local health centers, and the prevalence of hostility towards homosexuality in the society.

In its concluding observations, the CEDAW Committee raised the following specific concerns regarding Patagonia's laws and practices:

1. The Committee notes that the Constitution is limited to sex discrimination. It also notes that the prohibition against sex discrimination does not take precedence when coming into conflict with religion and custom in the field of family affairs. Furthermore, it notes that Patagonia's Constitution sees the legal system as monist and is concerned that the Constitution is silent about CEDAW's status in national law. The Committee calls upon Patagonia to ensure that its Constitution is in line with the CEDAW.
2. The Committee notes that article 2 in the Marriage Act defines marriage as a union between a man and a woman. It also notes that the rights and duties of the spouses shall be

- interpreted in the light of custom and tradition. The Committee calls upon Patagonia to ensure that the Marriage Act is in line with the CEDAW's principle of gender equality.
3. The Committee is also concerned about the lack of separate toilets for women and girls in schools in the rural areas. It calls upon Patagonia to take appropriate measures to ensure women's and girl's equal right to sanitation.
  4. The Committee is also concerned about the continued existence of hostility towards homosexuality, including violence. It calls upon Patagonia to take appropriate measures to combat negative stereotypes and prejudice against homosexuality.

### **The exam questions:**

You are, as CEDAW expert, hired by the Ministry of Family and Culture to write a consultancy report that addresses the CEDAW Committees concerns regarding law and practice in Patagonia. The consultancy report shall address the following questions with reference to the relevant literature, general recommendations and comments from international human rights committees, and case law:

- 1) How does Patagonia's Constitution and Marriage Act define gender? How does the CEDAW define gender and what implications does it have for the Constitution and the Marriage Act?
  - A) How can Patagonia's Constitution be amended to ensure that it is in line with the CEDAW in this regard?
  - B) What does CEDAW require that Patagonia do to ensure that the CEDAW is made part of national law in Patagonia?
- 3) How does the CEDAW address women's and girl's equal right to sanitation? What measures should Patagonia take to ensure that this right is respected, protected and fulfilled?
- 4) Patagonia's constitution, laws and social norms are based on gender stereotypes rooted in tradition and religion. The new government fear that the CEDAW's call for equal rights for women and LGBTQ-persons will be met with fierce resistance from traditional and religious leaders, and is therefore planning to engage in dialogue. How does the CEDAW Committee see dialogue as a means of social, cultural and legal transformation? How would you counter the argument that homosexuality is a sexual practice without roots in Patagonian society?

**All four questions must be answered, and the answer to each should form about 1/4<sup>th</sup> of the exam paper.**

**Word limit: 4000 words**



**Upload your file here. Maximum one file.**

The following file types are allowed: **.pdf** Maximum file size is **2 GB**

Select file to upload

---

Maximum marks: 0