Fighting Domestic Violence - El Salvador

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |



      

[El Salvador Full Report](https://resourcehub.bakermckenzie.com/en/-/media/fighting-domestic-violence/reports/reports/2021_fdv_el-salvador.pdf?sc_lang=en)

**How to use and navigate this report**

# 1. Legal provisions

## 1.1 What are the relevant statutes and codes?

[Inter-American Convention on the Prevention, Punishment, and Eradication of Violence](https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf) [Against Women (Convention of Belém do Pará)](https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf)(*Convención Interamericana para Prevenir, Sancionar y Erradicar la Violencia contra la Mujer*(*Convención de Belém do Pará*)) (IAC)

Decree No.[645: Law of Equality, Equity and Eradication of Discrimination Against Women](https://www.asamblea.gob.sv/decretos/details/494) (*Ley de Igualdad, Equidad y Erradicación de la Discriminacion contra las Mujeres*) (LEDW)

The terms did not apply to the questions listed in this questionnaire.

Decree No.[902 The Law Against Domestic Violence](https://www.oas.org/dil/esp/ley_contra_la_violencia_intrafamiliar_el_salvador.pdf) (*Ley contra la Violencia Intrafamiliar*) (LADV)

Article 3 defines "domestic violence" as "any act or omission, direct or indirect, that causes harm, physical, sexual, or psychological suffering, or death to members of the family" [translation] (Article 3, *ibid*.).

Article 200 of the Criminal Code prohibits domestic violence and provides for sentences from one to three years of imprisonment (Article 200, *ibid.* 1997).

Decree No.[1030: Penal Code](https://www.oas.org/dil/esp/Codigo_Penal_El_Salvador.pdf) (*CódigoPenal*) (PC)

Decree No.[733: Code of Criminal Procedure](https://www.asamblea.gob.sv/sites/default/files/documents/decretos/171117_072931433_archivo_documento_legislativo.pdf)(*Código Procesal Penal*) (CP)

Decree No.[133: Family Procedural Law](https://www.oas.org/dil/esp/ley_procesal_de_familia_el_salvador.pdf) (*Ley Procesal de Familia*) (FPL)

[Code of Civil Procedure](https://tramites.gob.sv/media/CODIGO%20DE%20PROCEDIMIENTOS%20CIVILES.pdf) (*Código de Procedimientos Civiles*) (CCP)

Decree No.[520: Special Comprehensive Law for a Life Free of Violence for Women](https://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/americas/ley%20especial%20integral%20vida%20libre%20violencia%20mujeres%20-%202011/ley%20especial%20integral%20vida%20libre%20violencia%20mujeres%20-%202011.pdf?vs=523) (*Ley Especial Integral para una Vida Libre de Violencia para las Mujeres*) (SCVW)

[Special Law for the Protection of Victims and Witnesses](http://www.ute.gob.sv/phocadownload/Documentos/Ley%20Especial%20para%20la%20Proteccion%20de%20Victimas%20y%20Testigos.pdf)(*Ley Especial para la Protección de Víctimas yTestigos*) (SLPVW)

## 1.2 What is the controlling case law?

N/A

## 1.3 What are the specific parts of the court system that address domestic violence?

N/A

## 1.4 What are potential causes of action?

N/A

# 2. Introduction: framework guiding domestic violence law

## 2.1 Are there civil and criminal legal remedies for domestic violence victims?

There are civil and legal remedies for domestic violence victims in El Salvador.

## 2.2 Is domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

The El Salvadorian legal system recognizes domestic violence as a violation of human rights under the IAC. In 1995, El Salvador signed the convention, which defines violence against women; establishes that women have the right to live a life free of violence and that violence against women constitutes a violation of human rights and fundamental freedoms; and calls for the establishment of mechanisms to protect and defend women's rights as essential to combating violence against women's physical, sexual and psychological integrity, whether in the public or the private sphere, and for asserting those rights within society (IAC).

## 2.3 Has your country signed and ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210)?

El Salvador has not signed or ratified the 2011 Council of Europe's Istanbul Convention on preventing and combating violence against women and domestic violence (CETS No. 210). This is not unusual. El Salvador it is not a member of the Council of Europe and no other Central American country has signed or ratified it.

## 2.4 If it has ratified the Istanbul Convention, how has this convention been implemented into national law?

N/A — El Salvador has not ratified the Istanbul Convention.

## 2.5 If it has not ratified or signed the Istanbul Convention, is it envisaged that your country will do so?

The Istanbul Convention concerns the Council of Europe. While the Istanbul Convention is open for accession by nonmember states and for signatures by nonmember states that participated in its elaboration, El Salvador is unlikely to sign it.

## 2.6 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?

El Salvador signed the 1979 Convention on 14 November 1980 and ratified it on 19 August 1981 ([Ratification Status for El Salvador — OHCHR.org](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=55&amp;Lang=EN)).

## 2.7 If the 1979 Convention has not been ratified or signed, is it envisaged that your country will do so?

N/A — El Salvador signed the 1979 Convention on 14 November 1980 and ratified it on 19 August 1981 ([Ratification Status for El Salvador — OHCHR.org](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=55&amp;Lang=EN)).

# 3. Similarities and differences in terminology

## 3.1 Domestic violence

According to Article 3 of the LADV, domestic violence or intrafamilial violence is any direct or indirect action or omission that causes physical, sexual or psychological suffering or harm, or even the death of family members (Article 3 of the LADV).

## 3.2 Stalking

Local regulations in El Salvador do not define stalking and they do differentiate between stalking and harassment.

## 3.3 Harassment

Local regulations in El Salvador do not define harassment, only "workplace harassment" and "sexual harassment." Article 8 of the SCVW defines "workplace harassment" as systematic and recurrent physical or psychological hostile action against a woman, for being a woman in the workplace, with the purpose of isolating, intimidating or destroying the communication networks of the person that faces these events, damaging her reputation, discrediting work performed or disturbing or hindering the performance of their duties (Article 8 of the SCVW). The PC defines "sexual harassment" as sexual conduct unwanted by the recipient, involving phrases, touching, gestures or other unequivocal conduct of a sexual nature or content (Article 165 of the PC).

## 3.4 Victim

According to Article 105 of the CP, a "victim" is considered the person directly offended by the crime, the spouse, life partner, relatives within the fourth degree of consanguinity or second degree of affinity, son or adoptive father, or testamentary heir in crimes whose result is the death of the offended person (Article 105 of the PC). Article 8 of the SCVW defines both "indirect" and "direct" victims. A "direct victim" refers to any woman whose right to live free from violence is violated, regardless of whether the aggressor is denounced, individualized, apprehended, prosecuted or convicted; while an "indirect victim" is any person whose right to live a life free from violence is violated, or who suffers damage by intervening to assist the direct victim or prevent the direct victim's victimization, regardless of the type of relationship that exists between the direct and indirect victims. For clarity, the law does explicitly draw a distinction between a direct victim being a woman and an indirect victim being a person (Article 8 (l and m) of the SCVW).

## 3.5 Abuser

Article 8 of the SCVW defines an abuser or aggressor as anyone who exercises any type of violence against women, in an unequal relationship of power and in any of its forms (Article 8 of the SCVW).

## 3.6 Civil protection order

While there is not a direct translation from English to Spanish, local regulations in El Salvador define civil protection orders as "judicial orders" (*Orden Judicial*) or "precautionary measures" (*medidas cautelares* or *medidas de protección*), which are orders to protect the victim from the aggressor (Article 7 of the LADV).

## 3.7 Causes of action

There is no definition for causes of action in local legislation in El Salvador.

## 3.8 Marital rape

Local legislation in El Salvador does not have a specific definition for marital rape. However, the LADV defines "sexual violence" as actions that oblige a person to have physical or verbal sexualized contact, or to participate in it, by means of force, intimidation, coercion, blackmail, bribery, manipulation, threat or any other mechanism that nullifies or limits personal will. The definition of sexual violence includes any situation in which an aggressor forces a person to carry out any of the aforementioned acts against third parties (Article 3 of the LADV).

## 3.9 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

**Economic violence**

This means acts or omissions of an aggressor that affect the economic livelihood of the victim through limiting, controlling or impeding her economic income (Article 9 of the SCVW).

**Patrimonial violence**

This means an action or omission of the individual that prevents adequate attention to the needs of the family; and any act that damages, loses, steals, destroys, retains, distracts or appropriates objects, instruments or property (Article 3 of the LADV).

**Physical violence**

This means actions, behaviors or omissions that threaten or injure the physical integrity of a person (Article 3 of the LADV).

**Psychological violence**

This means a direct or indirect action or omission with the intent of controlling or degrading the actions, behaviors, beliefs and decisions of other people, by means of intimidation, manipulation, direct or indirect threat, humiliation, isolation or any other conduct or omission that causes damage to the psychological health, self-determination, integral development or personal growth of an individual (Article 3 of the LADV).

**Violence against women**

This means any action taken against a woman because of her gender that causes death, damage or physical, sexual or psychological suffering to women in both the public and private spheres (Article 8 of the SCVW).

# 4. Protection for domestic violence victims and relief granted

## 4.1 Civil protection orders

## 4.1.1 Are there civil protection orders available to victims of domestic abuse?

Yes, civil protection orders are available in El Salvador to prevent, punish and eradicate various forms of domestic violence. A court can require the aggressor to refrain from harassing, persecuting, intimidating or threatening an individual in the family group, as outlined in the FPL (Articles 7(a) and 7(b)). Other laws also contain procedural provisions regarding civil protection orders (Article 76 of the FPL; Article 200 of the PC; the SCVW; the CPP).

**Jurisdiction**

The jurisdiction of family judges extends to the entire country to decide the relevant precautionary measures (Article 78 of the FPL).

## 4.1.2 Who can petition for civil protection orders?

Anyone can petition for civil protection orders as long as the petition is in writing and includes detailed facts about the abuse (Article 79 of the FPL).

## 4.1.3 Are there temporary custody of a child or child support orders?

In El Salvador, an aggressor can be temporarily suspended from the care and custody of their children, as well as temporarily lose their right to visit their children (Article 7(i) of the LADV).

## 4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?

The law in El Salvador contains provisions to order the abuser to move out of or stay away from places the victims frequent, as follows:

The aggressor must immediately move out of the common residence by a court order. If they resist, the National Civil Police can enforce the move (Article 7(e) of the LADV).

The aggressor cannot visit the victim's permanent or temporary place of residence, or their place of work or study (Article 7(j) of the LADV).

The aggressor can be prohibited from threatening the victim in the public and private spheres (Article 7(c) of the LADV).

If requested by the victim, the victim can be put up in a new home/address to protect them from the aggressor (Article 7(f) of the LADV).

## 4.1.5 Are there any other types of emergency, preventive and civil protection orders?

There are no additional types of emergency, preventive or civil protection orders in El Salvador in addition to those already described.

## 4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

When the victim is a minor or a vulnerable or disabled person, the facts may be reported by their legal representatives, by the victim and by welfare, social and educational institutions, as well as by any authority or person who has knowledge of the acts of violence in the family (Article 15 of the LADV). In the case of protection measures for minors, the judge will review them *ex officio* every six months to maintain, replace, modify or terminate them (Article 83 of the FPL).

## 4.1.7 Are there different types of civil protection orders, e.g., for a short- term period?

When a protection order or precautionary measures are requested as a previous act of a claim or suit, the petitioner has 10 days to present the claim; otherwise, the precautionary measures will end (Article 75 of the FPL). The judge sets the duration in the judicial resolution. This duration will be maintained until the execution of the sentence, unless it is necessary to extend its period to guarantee compliance with the sentence (Article 76 of the FPL). Further, the judge must establish the scope of the precautionary measures and they may order their modification, replacement or cessation (Article 77 of the FPL).

## 4.1.8 Are ex parte orders permitted without the aggressor being present?

Yes, El Salvadorean law permits *ex parte* orders without the aggressor being present. The interested party can request a protection order without notification or a prior hearing for the counterparty. Once the protection order is executed, the counterparty will be notified of the obligation (Article 80 of the FPL).

## 4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

There is no specific term for "emergency orders" in local regulations. However, protection orders include victims of violence or any other person in the family group, whether or not they share the same house (Article 7 of the LADV).

## 4.1.10 How long do the orders last?

The judge establishes the duration of a protection order in the resolution and the protection order is maintained until the execution of the sentence, except for when it is necessary to extend its validity to guarantee compliance with the sentence (Article 76 of the FPL).

## 4.1.11 Please provide any data or hyperlinks to government or NGO websites that include information on how often civil protection orders are issued, and any relevant demographics information, e.g., police reports, convictions, etc.

[El Salvador's Femicide Crisis](http://yris.yira.org/essays/3794), [The Yale Review of International Studies](http://yris.yira.org/)

[How Violence Affects Women in El Salvador](https://www.lawg.org/how-violence-affects-women-in-el-salvador/), Latin America Working Group

[El Salvador: Information Gathering Mission Report — Part 2. The Situation of Women Victims of Violence and of Sexual Minorities in El Salvador](https://www.refworld.org/docid/57f7ac384.html), Canada: Immigration and Refugee Board of Canada, September 2016

[Women on the Run: FIRST-HAND ACCOUNTS OF REFUGEES FLEEING EL SALVADOR](https://www.unhcr.org/56fc31864.pdf), GUATEMALA, HONDURAS, AND MEXICO, The United Nations Refugee Agency

[EL SALVADOR: Submission to the Human Rights Committee for the 114th Session](https://www.theadvocatesforhumanrights.org/uploads/el_salvador_loipr_submission_final_the_advocates_for_human_rights_2015.pdf), The Advocates for Human Rights, July 2015

[ACCESS TO JUSTICE FOR WOMEN VICTIMS OF VIOLENCE IN THE AMERICAS](https://www.cidh.oas.org/women/Access07/chap3.htm), Inter-American Commission on Human Rights

## 4.2 Steps for receiving a protective order

## 4.2.1 What documentation is needed to obtain a civil protection order?

The victim's request for precautionary measures must be made in writing stating the facts, the basis for the measures, and the precise determination of them and their scope (Article 79 of the FPL).

## 4.2.2 Does the victim need to attend a hearing?

No, the victim does not need to attend a hearing. The protection order can be requested before the preliminary hearing. To request a protection order, the victim first has to file a complaint before the attorney general of El Salvador or the National Civil Police. The protection order can be requested thereafter and the judge must immediately decree the precautionary, preventive or protection measures that they deem pertinent if the case requires it (Articles 21 and 23 of the LADV).

## 4.2.3 Can you request remedies?

Yes, the victim can request remedies. As a result of a hearing, the judge can oblige the aggressor to pay the victim damages arising from the violent conduct, such as health services, medicine, value of goods and other expenses derived from the violence (Article 28 of the LADV).

## 4.2.4 Are there time limits?

Precautionary measures may be requested and decreed at any stage of the process (Article 75 of the FPL). If the petition is made before suing or claiming, then the victim has 10 days to present the claim, otherwise the precautionary measures will end (Article 75 of the FPL).

## 4.2.5 Are there different rules in emergencies?

Local regulations do not mention emergency protection orders.

## 4.3 Judicial discretion

## 4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

It appears that judges have complete discretion in granting protection orders, considering the severity of the circumstances of the case. The judge may consider the following, among other things:

When there is domestic violence that seriously jeopardizes the physical, sexual, psychological or physical integrity of its inhabitants, a court order can allow for the residence to be searched (Article 7(g) of the LADV).

A court order can help the victim get public safety/police assistance (Article 7(m) of the LADV).

Per the judge's judgment (not necessarily a court order), the judge can prohibit the aggressor from ingesting alcoholic beverages, narcotics, hallucinogens or substances that generate physical or mental dependence (Article 7(d) of the LADV).

The aggressor's permit to carry weapons can be suspended or the aggressor's weapons can be confiscated while a protection order is valid (Article 7(h) of the LADV).

## 4.3.2 Are there age limits on who can obtain orders?

The LADV does not specify age limits for protection orders. However, it does state that when the victim is a minor or a vulnerable or disabled person, the facts may be reported by their legal representatives, by the victim and by welfare, social and educational institutions, as well as any authority or person who has knowledge of the acts of domestic violence (Article 15 of the LADV).

## 4.4 Restitution and remedies available to victims

## 4.4.1 Can victims obtain reimbursement for costs and restitution paid?

Yes, victims can ask for costs and restitution to be paid. As a result of a hearing, the judge can oblige the aggressor to pay the victim the damages arising from the violent conduct, such as health services, medicine, value of goods and other expenses derived from the violence (Article 28 of the LADV). In addition, when the main objective of the judicial process is to protect a minor, the judge can set the amount of compensation for the damages that the offender must pay to the minor. This includes compensation for moral and material damage (Article 144 of the FPL).

## 4.4.2 Can they recover wages and profits lost?

N/A

## 4.4.3 Is a separate civil process required?

N/A

# 5. Prosecutorial considerations

## 5.1 Police procedures

## 5.1.1 When do the police get involved in domestic disputes or legal actions?

Whenever the National Civil Police gains knowledge or receives notice that a person is a victim of domestic violence, it must take necessary measures to prevent the victim from being mistreated.

The National Civil Police must then immediately notify the competent court, including preparing a report of what happened. Agents of the National Civil Police may be accepted as witnesses if the aggressor is caught *in flagrante delicto* (Articles 10-12 of the LADV).

## 5.1.2 What circumstances effect law firm involvement?

The parties may or may not be assisted by a lawyer, especially when the victim sues the abuser in civil court. If the parties or one of them lack economic resources and request legal assistance from the judge, the state, through the Attorney General's Office, will provide them with an attorney to assist them (Article 38 of the LADV).

## 5.2 Standard of proof

## 5.2.1 Is proof required by any legal means?

Proof is required for acts of domestic violence except when the facts asserted by one of the parties are admitted by the other party. However, well-known and obvious facts do not require proof (Article 22 of the LADV; Article 55 of the FPL). In criminal cases, proof is required to find the abuser guilty and the burden of proof rests with the prosecutors. In case of doubt, the judge will consider the facts most favorable to the accused (Articles 6 and 7 of the CP).

## 5.2.2 Are there any requirements regarding evidence and documents?

All evidence must be produced at a hearing (except for legal exceptions), under penalty of nullity (Article 52 of the FPL). The law does not define any other specific requirements for evidence. For criminal cases, elements of proof will only be valid if they were obtained in a legal way in good faith, due to an unavoidable finding or the existence of an independent source (Article 175 of the CP). Proof must be lawful, pertinent and useful (Article 179 of the CP).

## 5.2.3 Is proof "beyond a reasonable doubt" required?

In criminal cases, any person charged with a crime will be presumed innocent and will be treated as such at all times, as long as their guilt is not proven. The burden of proof rests with the prosecutors. In case of doubt, the judge will consider the evidence most favorable to the accused (Articles 6 and 7 of the CP). In addition, this law applies the rules of "reasoned judgment" for assessing the evidence (Article 179 of the CP). The LADV applies to domestic violence cases that are not subject to penal or civil law. This law also applies the rules of "reasoned judgment" for assessing the evidence (Article 22 of the LADV).

## 5.2.4 Is the standard of proof different for ex parte orders?

There is no obligation to present proof. To request precautionary measures or a restriction order the petitioner/victim needs to present a formal request in writing stating the facts (Articles 75 and 79 of the FPL). However, if it is proven that the precautionary measures or restriction order was based on false facts, the petitioner will be responsible for the damages caused, without prejudice to any criminal liability that may arise (Article 81 of the FPL).

## 5.3 Affirmative defenses

## 5.3.1 Are affirmative defenses available to the accused?

Yes. There are several situations where the accused/aggressor will not be held criminally liable, including self-defense and insanity (Article 27 of the PC).

## 5.3.2 Is willful intent required?

Neither the LADV nor the FPL state that willful intent is required in domestic violence cases. The PC, on the other hand, differentiates between willful intent and unintentional crimes in general (i.e., not specifically related to domestic violence) when establishing penalties.

## 5.3.3 Are false accusations punishable for the victim?

Yes, if it is proven that the precautionary measures or restriction order was based on false facts, the petitioner will be responsible for the damages caused, without prejudice to any criminal liability that may arise (Article 81 of the FPL). In addition, anyone who falsely accuses a person of a crime or participation in it will be punished with imprisonment from one to three years (Article 177 of the PC). Repeated slander against the same person will be punished with a prison term of two to four years and a fine of 50 to 100 days of wages.[1] Public slander will be punished with imprisonment for two to four years. If repeated slander is carried out publicly, the penalty will be two to four years and a fine of 100 to 200 days of wages (Article 177 of the PC).

Anyone who accuses a person who is not present in a way that damages their dignity or undermines their fame or their own estimation will be punished with imprisonment from six months to two years. Defamation carried out publicly will be punishable by imprisonment for one to three years. Repeated defamation against the same person will be sanctioned with imprisonment of one to three years and a fine of 50 to 100 days of wages (Article 178 of the PC).

## 5.3.4 How is consent discussed in the law?

The PC discusses consent related to crimes of injury. If the free, spontaneous and express consent of the victim is given, the perpetrator/aggressor will be punished with a prison term only of six months to two years or a fine of 30 to 60 days of wages. The consent given by a minor or an incapacitated person will not be valid and the consent given by their legal representatives will not be valid (this includes injuries and sexual acts) (Articles 147 and 166 of the PC).

## 5.3.5 Is self-defense or insanity a defense?

In criminal cases, self-defense is a complete defense provided that the following requirements are met: (a) the initial aggression was illegitimate; (b) the defense employed to prevent or repel the aggression was reasonably necessary; and (c) the aggression was not sufficiently provoked by the person exercising the defense. In addition, a perpetrator will not be held criminally liable if, when executing the act, he/she is not in a position to understand the illegality of his/her act or omission for any of the following reasons: (a) mental derangement; (b) serious disturbance of consciousness; and/or (c) delayed or incomplete mental development. In these cases, the judge or court may impose the relevant security measures on the perpetrator, but the perpetrator will only be imprisoned when the crime corresponds to a prison sentence (Article 27 of the PC).

## 5.4 Witness status

## 5.4.1 What is a witness's duty to testify honestly and completely?

Neither the LADV nor the FPL states that a witness is obligated to testify. However, the CCP states that any person cited as a witness, regardless of his/her class, jurisdiction, state or condition, is obliged to appear before the judge or court on the day, time and place indicated, and he/she must give his/her testimony by declaration under oath (Articles 299 and 300 of the CCP). For criminal cases, the witness must also give his/her testimony by declaration under oath (Articles 137 and 203 of the CP).

In civil cases, a witness may be punished with imprisonment from two to five years if the witness testifies falsely, or denies or keeps silent about what he/she knows about the facts and circumstances of the case in question (Article 305 of the CCP; Article 305 of the PC). There will be no criminal sanction for false testimony levied when an ascendant, descendant, adopter, adopted person, brother, spouse, partner or person in a similar emotional relationship with the accused testifies in criminal proceedings in favor of the defendant (Article 305 of the CCP).

## 5.4.2 Who may abstain from testifying in certain situations?

Under family law, there are no impediments to testify like in civil or criminal law. Therefore, any relative (except for minors), neighbor or friend can serve as a witness. However, neither the LADV nor the FPL state that a witness is obligated to testify.

 In criminal cases, the alleged perpetrator's spouse, partner, ascendants, descendants, siblings, adoptee and adopter are not required to testify against the accused. However, they may do so if they desire. In addition, more distant relatives of the accused (up to the fourth degree of consanguinity or second degree of affinity, including their guardian or ward) may abstain from testifying against the accused, unless the witness is a complainant or plaintiff, or the act in question was executed against them or a relative of theirs of equal or near degree (Article 204 of the CP).

## 5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

For actions under the LADV, there is no obligation for a witness to testify. For civil or criminal cases, a subpoenaed witness may not refuse to testify, except for church ministers, lawyers, notaries and health professionals per professional obligations of confidentiality, as well as journalists (Articles 205 and 206 of the CP).

## 5.4.4 What is the impact of domestic violence on witnesses who are children?

A judge may issue precautionary measures to protect children in domestic violence or penal cases. Additionally, underage victims may receive special protection when there is a risk of danger because of their involvement in the investigation of a crime or a judicial process, or due to their family relationship with the person involved in them. In the case of underage victims protected by the SLPVW, where the accused is a relative, the judge will prevent the minor from testifying in the presence of the accused to guarantee the probative value of the testimony (Article 29 of the SLPVW).

## 5.4.5 Can children be called upon to testify?

No. Children and adolescents under 14 years old should not testify (Article 294 of the CP). However, under family law, the judge must allow a minor to testify when he/she has reached 12 years old in all the processes and proceedings that affect him/her; before such age, the judge will have contact with the minor and will discuss it with him/her if possible (Article 7(j) of the FPL).

## 5.4.6 What is the effect of a child victim on the charges against the offender?

In criminal cases, penalties for crimes against children are more severe, including longer prison sentences. For example, rape is sanctioned with imprisonment of six to 10 years; however, if the crime is committed against minors, the imprisonment term is from 14 to 20 years. If family members (e.g., ascendants, descendants, siblings and adoptive relatives) commit the crime, the perpetrator will be sanctioned with the corresponding maximum penalty, increased by up to a third (Articles 158, 159 and 162 of the PC).

## 5.5 Penalties and sentencing; penalty enhancements

## 5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

The law does not differentiate between first-time and repeat offenders.

## 5.5.2 Are there criminal penalties?

In domestic violence cases where the facts do not require proof (i.e., the facts asserted by one of the parties are admitted by the other party, or the facts are well known and obvious), the judge may do the following:

Require the aggressor to fulfill the commitments made by him/her at the hearing.

Require the aggressor to pay the victim damages arising from the violent conduct, such as health services, medicine, value of goods and other expenses derived from the domestic violence.

Require the aggressor to procure psychosocial or psychiatric treatment or attend self-help groups specialized in domestic violence using the various programs developed by institutions for the protection of the family.

In the case of acts of domestic violence subject to criminal jurisdiction, penalties will be applied as stated in the PC (Article 28 of the LADV).

Any family member who exercises violence (psychological, physical, sexual or patrimonial violence as indicated in Article 3 of the LADV) will be punished with imprisonment from one to three years (Article 200 of the PC). Anyone who mistreats a minor with physical, moral or psychological damage will be punished with imprisonment for one to three years (if it does not constitute a more serious crime). The same sanction will be applied to any person who causes harm to a minor who is subject to their authority, education, care or surveillance (Article 204 of the PC).

## 5.5.3 What is the result of a violation of an existing order for protection?

Anyone who disobeys a judicial order or precautionary or protective preventive measures issued by a public authority in the application of the LADV will be punished with imprisonment for one to three years (Article 338 of the PC).

## 5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

A victim or the accused/aggressor who fails to appear at a scheduled hearing will incur a fine imposed by the judge without prejudice to the power that they have to make them appear by pressure (Article 35 of the LADV). Additionally, as mentioned above, the aggressor may be obliged to pay the victim damages arising from the violent conduct, such as health services, medicine, value of goods and other expenses derived from the domestic violence (Article 28 of the LADV).

## 5.6 Post-release restrictions

## 5.6.1 Does the law notify the victim of the offender's release from custody?

The victim has the right to be heard in the executive phase of sentencing before the offender has been granted permission for release, conditional release or the conditional suspension of the execution of their sentence (Article 106 of the PC).

# 6. Special issues

## 6.1 Battered woman syndrome

## 6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered Woman Syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

The law does not name battered woman syndrome or domestic violence as an affirmative defense, but it appears possible for a victim of domestic violence to avail himself/herself of the defense of insanity, detailed above (Article 27 of the PC).

## 6.2 Domestic violence in the workplace

## 6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

Yes, protection orders can be imposed to prevent the aggressor from visiting the victim's permanent or temporary place of residence, or their place of work or study (Article 7(j) of the LADV).

## 6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

Yes, absence from work and lack of punctuality to work are justified if motivated by the physical situation or psychological issues derived from any type of violence (Article 24 of the SCVW).

## 6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

N/A

## 6.3 Immigration

## 6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents from using immigration laws to perpetrate domestic violence against their spouse?

N/A

## 6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?

N/A

## 6.3.3 Does domestic violence law discuss asylum accessibility?

N/A

## 6.4 Armed forces

## 6.4.1 Can a victim seek a military protective order if the abuser is in active military?

N/A

## 6.5 Child custody and child/spousal support

## 6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

N/A

## 6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

N/A

## 6.6 Housing rights of domestic violence victims

## 6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

N/A

## 6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

N/A

## 6.6.3 Can an order exclude the abuser from the residence?

Yes, as mentioned above, protection orders can be imposed to prevent the aggressor from visiting the victim's permanent or temporary place of residence, or their place of work or study (Article 7(j) of the LADV).

## 6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

The law grants the exclusive use and management of the home to the victim for a specified period. Family housing/property should be especially safeguarded (Article 7(l) of the LADV).

# 7. Endnotes

[1]           According to Article 51 of the PC, the daily amount to be charged would depend on the financial capacity of the aggressor, the minimum being a quarter of the daily minimum wage and the maximum being five times the daily minimum wage.

©Copyright © 2024 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.