Fighting Domestic Violence - Peru

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# 1. Legal provisions

## 1.1 What are the relevant statutes and codes?

The relevant legislation on domestic violence in Peru is as follows:

**General rules**

Political Constitution of Peru

Article 2(1) Right to life, to identity, to moral, psychological and physical integrity and to free development and well-being.

Legislative Resolution No. 26583

Inter-American Convention on the prevention, punishment and eradication of violence against women.

Law No. 27942

Law on the prevention and punishment of sexual harassment.

Law No. 30314

Law to prevent and punish sexual harassment in public spaces.

Law No. 30364

Law to Prevent, Punish and Eradicate Violence against Women and Members of the Family Group.

Supreme Decree No. 009-2016-MIMP

Regulations to Law No. 30364, Law on the prevention, punishment and eradication of violence against women and members of the family group.

Law No. 28983

Law on equal opportunities between women and men.

Legislative Decree No. 1323

Legislative Decree that strengthens the fight against femicide, family violence and gender violence.

Law No. 30926

Law strengthening interoperability in the Specialized National System of Justice for the protection and punishment of violence against women and members of the family group.

Supreme Decree No. 012-2019-MIMP

Protocol Basis for Joint Action in the area of comprehensive care and protection against violence against women and members of the family group.

Supreme Decree No. 014-2019-MIMP

Regulations of Law No. 27942, Law on the prevention and punishment of sexual harassment.

Law No. 27637

Law creating temporary shelter homes for children victims of sexual assault.

Supreme Decree No. 003-2003-MIMDES

Regulations of the law on the creation of temporary shelter homes for children victims of sexual assault.

Ministerial Resolution No. 141-2007-MINSA

Technical guide for comprehensive care of persons affected by gender-based violence.

Ministerial Resolution No. 052-2016-TR

Protocol of action against the violation of the rights of workers who are victims of violence.

Ministerial Resolution No. 174-2016-MIMP

Policy guidelines for the involvement of men in the prevention of violence against women and gender-based violence.

Resolution of the National Prosecutor's Office No. 3963-2016-MP-FN

Guides prepared in accordance with the provisions of the "Law on the prevention, punishment and Eradication of Violence against Women and Members of the Family Group."

Ministerial Resolution No. 070-2017-MINSA

Technical guide for mental health care for women in situations of violence caused by association as a couple or former couple.

Law No. 30815

Law declaring the incorporation of curricular content to prevent violence against women and members of the family group through education to be of national interest.

Resolution of the National Prosecutor's Office No. 002420-2018-MP-FN

Regulation of the single Registry of Victims and Aggressors.

Supreme Decree No. 006-2018-MIMP

Protocol for joint action by the women's emergency centers and the specialized commissariats or commissariats for protection against domestic violence of the National Police of Peru.

Law No. 30920

Law that declares of public interest and national priority the progressive implementation of Gesell cameras in all the provincial criminal, family or mixed prosecutors' offices of the provinces of the fiscal districts and family courts of the judicial districts of the country, in order to guarantee the timely performance of the diligences that serve as suitable means of evidence in the judicial processes and to avoid re-victimization in the cases of sexual and family violence and human trafficking.

Law No. 30925

Law that strengthens the implementation of temporary shelter spaces for victims of human trafficking and sexual exploitation.

Emergency Decree No. 023-2020

Law that creates mechanisms for the prevention of violence against women and members of the family group, based on the knowledge of police.

Supreme Decree No. 003-2020-MIMP

Regulations of Emergency Decree No. 023-2020; Law that creates mechanisms for the prevention of violence against women and members of the family group, based on the knowledge of police.

Emergency Decree No. 005-2020

Law that establishes economic assistance to contribute to the social protection and development of indirect femicide victims.

Supreme Decree No.001-2020-MIMP

Regulations of Emergency Decree No. 005-2020; Law that establishes economic assistance to contribute to the social protection and development of indirect femicide victims.

Legislative Decree No. 1470

Law that establishes measures to guarantee the protection of victims of violence against women and members of the family group during the health emergency declared by COVID-19.

**National plans**

Supreme Decree No. 008-2001-PROMUDEH

Creates the National Plan against Domestic and Sexual Violence.

Supreme Decree No. 003-2009-MIMDES

National Plan to Combat Violence against Women 2009-2015.

Supreme Decree No. 008-2016-MIMP

National Plan Against Gender Violence 2016-2021.

Supreme Decree No. 004-2018-MIMP

Inter-institutional Protocol of Action against Femicide, Attempted Femicide and High-Risk Couple Violence.

Supreme Decree No. 009-2019-MC

Supreme Decree approving the guidelines for incorporating an intercultural approach to prevention, care and protection against sexual violence against indigenous or native children, adolescents and women.

Supreme Decree No. 008-2018-MIMP

Joint action plan to prevent violence against women, as well as to provide protection and care for victims of violence, with emphasis on high-risk cases.

Supreme Decree No. 002-2020-MIMP

Multi sectoral Strategic Plan for Gender Equality from the National Gender Equality Policy (PEMIG).

Emergency Decree No. 005-2020

Emergency decree establishing financial assistance to contribute to the social protection and integral development of indirect victims of femicide.

Emergency Decree No. 023-2020

Emergency decree that creates mechanisms for the prevention of violence against women and family members, based on knowledge of police records.

Legislative Decree No. 1470

Legislative decree establishing measures to guarantee the care and protection of victims of violence against women and family members during the health emergency declared by COVID-19.

**Criminal code**

Legislative Decree No. 635

Parricide/femicide, severe injuries due to violence against women and their family environment.

**Complementary regulations**

Ministerial Resolution No. 439-2011-MIMDES

Creates the Peruvian Women's National Council.

Ministerial Resolution No. 216-99-PROMUDEH

Authorizes the operation of the "Women's Emergency" Family Violence Attention Pilot Module.

Ministerial Resolution No. 273-2012-MIMP

Strategy for Prevention, Care and Protection against Domestic and Sexual Violence in Rural Areas of the National Plan against Domestic and Sexual Violence.

Ministerial Resolution No. 316-2012-MIMP

Approves the Manual of Operations of the National Program against Domestic and Sexual Violence —PNCVFS.

Ombudsman's Resolution No. 0053-2006-DP

Approves the Ombudsman's Report No. 110 "Family Violence: an analysis from criminal law."

Ministerial Resolution No. 338-2014-MIMP

Ethical guidelines for family and sexual violence research.

Defense Resolution No. 004-2020-DP

Regulation that recognizes the "Gender and Intercultural Network of the Ombudsman's Office" and specifies its objectives; and constitutes the "Ombudsman's Commission for the Transversalization of Gender and Intercultural Approaches," within the framework of the "*Red Iguales y Punto*" of the ombudsman's office.

Defense Resolution No. 074-2020-DP

Approves the document called "Guidelines that establish dispositions on Prevention Actions, Denunciation, Investigation and Sanction for conducts of sexual harassment in the Ministry of the Environment."

Defense Resolution No. 093-2020-DP

Approves the operations manual of the National Program for the Prevention and Eradication of Violence against Women and Members of the Family Group —AURORA.

Ministerial Resolution No. 649-2020-MINSA

Technical Health Regulations No. 164-MINSA / 2020 / DGIESP: Technical Health Regulations for Comprehensive Care of Women and Family Members Affected by Sexual Violence.

In Peru, 63.2% of women have suffered some form of violence from their husband or partner.[1] At the legislative level, and in line with Recommendation 35, important steps have been taken to eliminate violence against women and family members. That is why, in 1993, Law No. 26260, the Law on Protection against Family Violence, was issued. Through this law, the state recognizes the violence that occurs within the family as a violation of fundamental rights.[2]

In November 2015, Law No. 30364, the Law to Prevent, Punish and Eradicate Violence against Women and Members of the Family Group, was issued, and in July 2016, Supreme Decree No. 009-2016-MIMP, containing its regulations, was approved.

Finally, in 2018, Legislative Decree No. 1368 was published, which modified some articles of Law No. 30364, with the aim of strengthening prevention, eradicating and punishing all forms of violence against women, improving the mechanisms of attention, prevention and protection of the victims, especially the framework that regulates the protection measures.

## 1.2 What is the controlling case law?

The most relevant jurisprudence related to the crime of domestic violence in Peru is the following:

**South Zone Transitory Supraprovincial Collegiate Criminal Court of the Superior Court of Justice of Ica**: The court dismissed a rape case because the alleged victim's red underwear suggested the woman was "prepared or willing" to have sex. The ruling claimed women only wear red underpants when intending to have sex. The court stated that the victim was not shy and reserved as she claimed, citing her choice of underwear as evidence and acquitting the defendant.

**District Plenary Jurisdiction in Criminal Matters of the Superior Court of Justice of Cusco**: Failure to comply with the protection measures dictated in family violence proceedings constitutes an aggravating circumstance provided for in paragraph 6 of Article 122-b of the Peruvian Criminal Code.

**RN 2030-2019 Lima — Permanent Criminal Chamber of the Supreme Court of Justice**: For the configuration of injuries due to family violence, it is not enough to have a parental bond; there must be asymmetry in the mutual relations.

**RN 793-2019 Lima Este — Permanent Criminal Chamber of the Supreme Court of Justice**: The logic of family violence is fully accredited with the story of the victim, other witnesses and psychological expertise. The subjective element of the criminal type is accredited, in the absence of a corroborated confession, by means of evidence.

**Cassation**[3] **No. 3287-2017 Piura — Transitional Civil Chamber of the Supreme Court of Justice**: To retract by stating that there was no aggression does not alter the facts that commenced the process on family violence or physical mistreatment attributed to the defendant.

**Cassation No. 4175-2017 Lima Norte — Permanent Civil Chamber of the Supreme Court of Justice of the Republi**c: In cases in which the only means of evidence is the testimonial declaration of the victim, this has the quality of valid proof of the charge, as long as it has sufficient elements of certainty.

**Cassation No. 2215-2017 Del Santa — Transitory Civil Chamber of the Supreme Court of Justice of the Republic**: Family violence in the form of psychological abuse must be accredited with the statement of the alleged victim and the psychological report practiced.

**Cassation No. 157-2017 Tacna — Transitory Civil Chamber of the Supreme Court of Justice of the Republic**: Article 29 of the Law on Protection against Family Violence is analyzed, which establishes that physical and mental health certificates issued by doctors in state health facilities have evidential value of the physical and mental health status in family violence cases.

**Cassation No. 1760-2016 Junín — Transitional Civil Court of the Supreme Court of Justice**: The Law against Family Violence does not require for its configuration that the participants live in the same place, it being sufficient, as the only requirement, that there be a family bond.

**Cassation No. 246-2015 Cusco — Permanent Civil Chamber of the Supreme Court of Justice**: The Law against Family Violence is a form of protection against the abuses that can be perpetrated within the family, but it should not be used to solve all the problems within the marriage, as this would mean the state interfering in private matters that it does not have the right to solve.

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

The special process of family violence is regulated in Law No. 30364, the purpose of which is to Prevent, Punish and Eradicate Violence against Women and Members of the Family Group.

This special process is divided into two stages:

**Guardianship stage**: In this stage the family courts guarantee immediate and timely action by the judicial system in the event of an act or threat of violence through the imposition of protective measures.

**Criminal stage**: In this stage Public Prosecutor's Office and a criminal judge intervene in order to carry out the corresponding investigations by evaluating the evidence provided by the parties.

In this regard, victims of violence may turn to the following entities, including the judicial system:

**mixed family court or local peace court**

**National Police of Peru**

**Public Prosecutor's Office**

**ombudsman's office**

**other channels of care**

Victims of domestic violence may also seek the following support channels:

**Women's Emergency Center (CEM)**: This is a free public service that offers legal advice, judicial defense, psychological counselling and social assistance to victims of violence in vulnerable situations. Complaints can be filed in the CEM, police stations or in hospitals.

**Hotline 100**: This is a free telephone service that provides guidance, counselling and emotional support to persons involved in domestic violence. Emergency calls can be made for immediate police intervention in situations of violence.

**Chat 100**: This is a personalized, real-time internet service that provides information and psychological guidance to people affected by family and sexual violence.

**Urgent Care Service (SAU)**: This is a free and specialized service that seeks to protect the physical, emotional and sexual integrity of victims of family and sexual violence.

**Attorney General's Hotline**: This is a free service that receives criminal complaints by telephone (0800-15259)

Section C of Recommendation 35 suggests the establishment of adequate protection mechanisms accessible to victims of violence. Peruvian law regulates the legal process to be followed in the case of domestic violence, as well as support channels aimed at preventing acts of violence or their continuation.

As mentioned below, in some cases, these mechanisms do not work effectively. Victims have expressed that some of the reasons for not seeking help from an institution are shame, not knowing where to go, fear, negative experiences of denouncing the allegation and lack of action by these entities. Only 28.9% of abused women have gone to an institution to seek help. The majority went to police stations (74.1%) and in second place to the municipal ombudsman's office, the Public Prosecutor's Office and the court.[4]

## 1.4 What are potential causes of action?

Law No. 30364 establishes four forms of family violence:

physical

psychological

sexual

economic or patrimonial

It is possible to prosecute these actions in civil proceedings and/or as felonies in criminal proceedings.

It is worth mentioning that violence against women not only involves physical and psychological violence against partners and ex-partners, but also street harassment, sexual assaults and a long list of situations that mark the lives of most Peruvian women, who fear using public spaces and who recognize danger in many private spaces.

Women and girls are subjected to violence in all spheres of life — at home, at school, in the workplace and in public spaces. Peru has one of the highest rates of violence against women in the region as a result of the continued existence of widespread traditional patriarchal attitudes and values (machismo), which perpetuate a culture of violence against women. A clear example of these types of attitudes are exposed and set out in decisions such as the one issued by the South Zone Transitory Supraprovincial Collegiate Criminal Court of the Superior Court of Justice of Ica.[5]

Item 29(a) of Recommendation 35 suggests that all forms of violence against women that constitute physical, sexual or psychological violence should be criminalized and legal sanctions should be established that are proportional to the gravity of the crime. Subsequently, subparagraph (c) refers to effective reparation.

In this regard, it should be mentioned that Peruvian law establishes civil remedies and criminal penalties for domestic violence. However, these sanctions are not usually proportional to the severity of the harm caused. Reparations are also not comprehensive or effective.

Also, item 20(c) recommends that all legal provisions that discriminate against women and which justify or tolerate gender-based violence be repealed. In particular, reference is made to provisions that criminalize abortion and those that perpetuate harmful traditional practices.

In relation to this point, it is worth mentioning that in Peru, abortion is a crime under Articles 114 to 120 of the Penal Code. There are also some traditional practices that are not included in the regulations but continue to exist in Peru.

# 2. Introduction: framework guiding domestic violence law

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

Yes, there are civil and criminal legal remedies for domestic violence as described below:

**Civil remedies**

Law to Prevent, Punish and Eradicate Violence against Women and Members of the Family Group — Law No. 30364, establishes the following **civil remedies**:

There is a prohibition on dismissal for reasons related to such acts of violence; places of work and working hours may be changed as needed and appropriate; absences may be justified within defined limits; the employment relationship may be suspended for up to five consecutive months.

The place and time of studies may be changed; absences and tardiness may be justified within defined limits; specialized attention may be provided.

Services for the promotion, prevention and recovery of victims of violence (creation and management of temporary shelters, programs for men to prevent violent behavior and other protection services for victims) will be the responsibility of local and regional governments.

Temporary Shelter Homes have been implemented and registered (it is the permanent policy of the state to create temporary refuge homes).

Intervention is possible by indigenous or aboriginal peoples to access justice in rural areas. In localities where there is no family court or legal peace court with delegated jurisdiction, acts of violence against women and members of the family group fall within the jurisdiction of the peace court, and the provisions of Law No. 29824, the Justice of the Peace Act, and its regulations must be observed.

Specific considerations of the intervention treatment of service must be characterized by recognition of needs, respect for rights and dignified treatment for the following types of persons: girls, boys and teenagers; elderly people; persons with disabilities; migrants and LGBTI persons.

If the harasser is an employer, management personnel, trustworthy personnel, owner, associate, director or shareholder, the victim may choose between ceasing the hostility, paying the indemnity or terminating the employment contract, in accordance with Article 35 of the Consolidated Text of Legislative Decree No. 728, Law of Productivity and Labor Competitiveness, approved by Supreme Decree No. 003-97-Decree No. 728, Law of Productivity and Labor Competitiveness. In this case, communication to the employer is not required. The victim has the right to sue for damages suffered as result of an act of sexual harassment. Remedies described above do not preclude the victim from having recourse to the competent labor inspectorate. If the harasser is a private employee, they may be punished, depending on the seriousness of facts, be reprimanded, suspended or dismissed.

Dismissal or nonrenewal of fixed-term employment contracts is null and void for reasons linked to the filing of a complaint.

The victim can go to the competent judge, who, either *ex officio* or at request of the party, can order that the judicial procedure be reserved.

Harassed persons have the right to resort to civil summary proceedings to demand the payment of corresponding compensation.

Indemnity-harassed persons have the right to demand, in civil proceedings or in summary proceedings, payment of compensation for damage suffered.

**Criminal remedies**

Law to Prevent, Punish and Eradicate Violence against Women and Members of the Family Group — Law No. 30364, establishes the following criminal remedies:

**Access to information**

Victims of violence and their family members have the right to receive full information and counseling through the Peruvian State and its agencies.

The Peruvian National Police, Public Prosecutor's Office, the judiciary and all justice officials are required to provide the victim with a description of their rights and information about the process to file a complaint in their native language.

**Legal aid and public defense**

Victims of violence are entitled to immediate, free, specialized legal assistance in the victim's native language and public defense services from the Peruvian state.

**Health promotion, prevention and care**

Victims of violence and members of their family group are entitled to receive free medical care in any Peruvian state health establishment, including psychological and psychiatric treatment, and any other treatment necessary to restore the victim's health.

**Social care**

Victims and members of their family group are entitled to participate in social programs with assistance from the Peruvian state.

**Protection measures**

removal of the aggressor from the victim's home and prohibition on returning to the victim's home

requirement that the aggressor stay a "suitable distance" away from the victim to guarantee their safety and integrity including: at the victim's home, work center, study center or any place they conduct their daily activities

prohibition on communication between the aggressor and the victim via all forms of communication, including: by letter, telephone, electronics, social networks, internet communications and any other form of communication

confiscation of aggressor's weapons and prohibition on possessing

inventory of goods

emergency allocation of funds to the victim to cover basic (indispensable) needs

prohibition on the disposal, alienation or pledge of the mortgage for any common real or personal property

prohibition on the aggressor removing children, adolescents or other vulnerable persons from the care of the family group

psychological treatment for the emotional recovery of the victim

shelter of the victim in an establishment that guarantees their safety

any other protective measure required for the integrity and life of the victim or their family

prohibition on confrontation and conciliation between the victim and the aggressor while involved in investigative proceedings

As can be seen, Peruvian law provides various protective measures as recommended by Recommendation 35 in Section C.

In particular, item 31(a)(ii) states that, in order to avoid further acts of violence, mechanisms for immediate risk assessment and protection should be established, which should include the issuance and monitoring of eviction, protection, removal or emergency security orders against the alleged perpetrator, as well as the appropriate sanctions if violated.

A review of various judicial pronouncements has been carried out and it is noted that the sanctions for noncompliance with protective measures (fines and the crime of contempt for authority) are rarely dissuasive or punitive.

According to a report by the National Penitentiary Institute, as of December 2018, the total number of persons deprived of their liberty for the crime of violence against women and members of the family group had reached 321. Furthermore, the average time of detention is usually less than a year.

Item 31(a)(iii) also recommends access to free or low-cost financial assistance, high-quality legal and financial assistance, medical, psychosocial and counseling services, educational services, housing, childcare, and training and employment opportunities for women victims, survivors and their families. While some of these services are offered to victims of violence, the number of public employees is insufficient and the quality of these services is often poor. Usually, these services do not meet the objectives as set out by Recommendation 35.

However, as of March 2020, 396 Women's Emergency Centers (CEM) have been implemented nationwide. In 2016, 100% of the attention was covered in the province and in five CEMs the opening hours were extended to 24 hours a day, seven days a week. Between 2017 and 2019, 150 MECs have been implemented in police stations nationwide.

The Ministry of Justice and Human Rights provides the public defense service and offers free legal assistance in criminal, family, civil and labor matters. In 2018, the total number of sponsorships reached 10,576.[6]

## 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)?

Law No. 30364 establishes in Article 9 that women and family members have the right to a life free of violence, to be valued and educated, to be free from all forms of discrimination, stigmatization and stereotyped patterns of behavior, social and cultural practices based on concepts of inferiority and subordination. This law is in accordance with Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (*Convención de Belém Do Pará*), which recognizes protection from domestic violence as a human right.

## 2.3 Has your country signed and ratified the conventions?

Yes, Peru signed the Convention on the Elimination of all Forms of Discrimination against Women: 1981 (signature: 1981, ratification: 1982) and the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women: 2000 (signature: 2000, ratification: 2001).

## 2.4 If it has ratified the Maputo Protocol, how has it been implemented into national law (African Union member states only)?

N/A

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

In accordance with item 24.2(b) of Recommendation 35, the states must take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. In this context, the Peruvian legislation has implemented many measures detailed in item 1 of Recommendation 35.

Likewise, item 30(a) of Recommendation 35 recommends to implement effective legislation to address the underlying causes of gender-based violence against women, including patriarchal attitudes and stereotypes, inequality in the family and the neglect or denial of women's civil, political, economic, social and cultural rights, and to promote the empowerment, agency and voices of women.

Unfortunately, as a result of the Peruvian chauvinist culture that tends to justify the facts or "understands" the aggressor in many circumstances, these types of situations are not reported, mainly because of shame from the victims at the imminent social stigmatization, fear of possible reprisals, or simply skepticism regarding the effectiveness and reliability of the justice system.

In addition, there are no mechanisms that include immediate risk assessments and protection to assist woman complainants. Thus, the lack of an immediate protection network that allows women and children to avoid being direct and indirect victims of violence laws results in victims withdrawing their complaints for fear of losing economic sustenance and even their homes.

It is under this context that Recommendation 35 suggests a need for comprehensive, multi-sectoral, long-term collaboration between governments and civil society.[7] Therefore, the following strategies are in progress or have not been implemented yet in Peru:

Organize media and advocacy campaigns to raise awareness about existing legislation.

Build coalitions of government and civil society institutions.

Build the evidence base for advocacy and awareness.

Transform whole institutions in every sector, using a gender perspective; in particular, integrate attention to violence against women into sexual and reproductive health services.

Use behavioral change communications to achieve social change.

Promote social and economic empowerment of women and girls.

Build comprehensive and effective service responses to violence victims and survivors in communities.

Design life-skills and school-based programs.

Engage men and boys to promote nonviolence and gender equality.

Provide early intervention services to at-risk families.

## 2.6 If the conventions have not been ratified or signed, is it envisaged that your country will do so?

N/A

# 3. Similarities and differences in terminology

## 3.1 Domestic violence

The category of violence against a woman or member of a domestic unit where an interpersonal relationship exists. Includes but is not limited to[8]:

rape

physical or psychological mistreatment[9]

sexual abuse

economic abuse

Recommendation 35 emphasizes that violence is gender-based and focuses on the causes and effects of this social problem. In Peru, domestic violence is also defined as a category of violence against women but does not exclude other members of the domestic unit.

Also, in accordance with Recommendation 35, gender-based violence against women occurs in all spaces and spheres of human interaction, including contemporary forms of violence occurring online and in other digital environments. Unfortunately, current law does not regulate violence against women occurring online and in other digital environments.

Note that due to COVID-19, by means of Legislative Decree No. 1470, measures to guarantee the protection of victims of violence against women were established. However, none of these measures established parameters related to violence online and/or in other digital environments.

It is important to mention that the victim has "rights" that must be supported by the governing body and the law, such as the rights to:

a life free from violence

assistance and protection

legal aid and defense

health promotion, prevention and care

employment protection

education on the issue

## 3.2 Stalking

We did not find a definition for this category.

## 3.3 Harassment

This crime occurs where anyone repeatedly, continuously or regularly, and by any means, monitors, pursues, harasses, besieges or seeks to establish contact or closeness with a person without their consent, so that they alter the normal development of their daily life, even if the conduct is not repeated, continuous or habitual.[10]

## 3.4 Victim

A victim is anyone who has suffered violence, which is defined as "any action or conduct that, on the basis of gender, causes death, physical, sexual, or psychological harm or suffering to women, whether in the public sphere or in private." Additionally, a victim is also considered any member of a domestic unit where an interpersonal relationship is present, who suffers any type of violence as described in the above paragraph. Men and transgender women are also included.[11]

## 3.5 Abuser

A person who takes "any action or conduct that, on the basis of gender, causes death, physical, sexual, or psychological harm or suffering to women, whether in the public sphere or in private."[12]

## 3.6 Civil protection order

Protection measures to neutralize harmful effects of violence and to allow a victim to carry out daily activities in order to ensure physical, psychological and sexual integrity and to safeguard property.[13]

Among the protective measures that may be taken are the following:

removal of the aggressor from the victim's home

prohibition on the aggressor approaching or being close to the victim in any way

prohibition on communication with the victim via letters

prohibition on the aggressor's right to possess and carry of weapons

inventory of goods

emergency economic allocation

prohibition on the disposal of real or personal property

prohibition on the accused person removing children, etc. from care of the family group

re-educative or therapeutic treatment for the accuser

psychological treatment for the emotional recovery of the victim

shelter of the victim

any other measure of protection required

## 3.7 Causes of action

**(a) Law No. 30364 (Domestic Violence specific)**[14]

(i) Forms of domestic violence abuse

physical (including neglect)

psychological

sexual

economic

(ii) Governing body for complaint

Peruvian National Police

Criminal Family Prosecutors Office

family court

local peace court

(iii) Only cause of action requirement is to present the facts:

These may be written or verbal.

No attorney engagement is required.

Evidence may be presented by the victim, a designated spokesperson, or any health or education professional who becomes aware of an issue.

It is not required to present physical or psychological exam results, or show visible signs of violence, though these may be presented as evidence if available.

The aforementioned is in accordance with the provisions of Recommendation 35, which only requires a recount of the facts by the victim and attempts to avoid imposing excessive financial or bureaucratic obligations. However, in practice, at the police and judicial levels, the initiation of these procedures can be tedious and, on some occasions, officials do not have the necessary training.

**(b) Law No. 27942**

(i) Article 4 defines cause of action more broadly across all categories of abuse and harassment against women (not just domestic violence):

unwanted sexual advances or of a sexist nature

intimidating, hostile, humiliating environment

affects ability to work, teach, train or otherwise conduct life/business

(ii) Article 6 further qualifies the causes of action in abuse/harassment situations:

implicit or express quid pro quo

unwanted sexual demands

written or verbal use of terms that are sexual in nature, unbearable, hostile, humiliating or offensive to the victim

corporal offenses (touching, physical contact of a sexual nature)

## 3.8 Marital rape

We did not find a definition for this category.

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

Sexual harassment

This crime punishes anyone who, in any way, monitors, pursues, harasses, besieges or seeks to establish contact or closeness with a person, without their consent, to carry out acts of a sexual nature.

# 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, there are civil protection orders, which are listed in Article 22 of Law No. 30364.

## 4.1.2 Who can petition for civil protection orders?

The victim, the prosecutor and/or police.

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

Yes.

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

Yes.

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

Peruvian law does not distinguish between emergency, preventive or civil protection orders. These are all compiled in Article 22 of Law No. 30364.

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

Yes, they can be requested by direct or indirect victims or legal representatives in children's cases.

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

Yes, please see above.

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

All types of orders are permitted without the aggressor being present. It is mandatory that the judiciary notify the victim of the order.

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

The family court can extend protection orders to dependents in a situation of vulnerability borne by the victim. Also, in cases of femicide or attempted femicide, the court can take into account the indirect victims of crime.

## 4.1.10 How long do the orders last?

The protection orders issued by the family court are valid as long as the victim's risk conditions persist, regardless of the resolution that puts an end to the investigation, or to the criminal process or any faults.

These measures may be substituted, extended or left without effect by the family court when the periodic reports sent by the entities in charge of their execution demonstrate a difference in the potential risk to the victim.

The family court may also substitute, extend or invalidate the measures when it becomes aware of a judgment or file disposition of the investigation, or criminal proceedings or offenses that originated with the protection measures.

The family court, immediately and by any means, communicates its decision to replace, extend or render the measures in charge of the entities responsible for their execution.

Section C of Recommendation 35 refers to the protective measures to be applied during and after legal proceedings. In this regard, it should be noted that Peruvian law provides for adequate protective measures. However, the implementation of these measures is not effective because the perpetrators do not receive adequate sanctions if the measures are violated.

## 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.

N/A

## 4.2 Steps for receiving a protective order

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

No express documentation appears to be needed but the court issues protective orders based on risk to the victim, the urgency and need for protection, and the danger of delay in entering a protective order.

Enforcement of protection measures, names and locations of all victims with protective measures, should be permanently available to all police personnel in the jurisdiction in which the victim resides, in order to respond in a timely manner to emergencies.

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

There is no express requirement for the victim to attend a hearing.

## 4.2.3 Can you request remedies?

The following remedies are available:

1. Removal of the aggressor from the victim's home, as well as a prohibition on returning to the victim's home

Police may enter the home for execution.

2. Impediment of the aggressor approaching or being close to the victim

The aggressor must remain at a suitable distance to guarantee the victim's safety and integrity.

3. Prohibition on the aggressor communicating with the victim via networks or other forms of communication

None.

4. Prohibition on the aggressor's right of possession and carrying of weapons

Superintendence of Control must be notified; in the case of members of the armed forces and National Police of Peru, the court officiates to armed or police institution.

5. Inventory of goods.

No express requirement.

6. Emergency economic allocation

Sufficient to prevent the victim from being kept or placed in a situation of risk; payment of allowance is made through judicial deposit or bank agency.

7. Prohibition on the aggressor disposing of common real or personal property

None.

8. Prohibition on the accused person removing children, adolescents or other vulnerable persons from the care of the family group

None.

9. Re-educative or therapeutic treatment for the aggressor

Among the protection measures that may be issued by a judge are re-educative or therapeutic treatment for the aggressor.

10. Psychological treatment for the emotional recovery of the victim

Law 30364 establishes that the Ministry of Health is in charge of the free provision of health services for the comprehensive recovery of the physical and mental health of the victims.

11. Shelter of the victim in an establishment that guarantees their safety, after coordination

Among the protection measures that may be issued by a judge are: (i) shelter for the victim in an establishment where their safety is guaranteed, coordinated with the institution in charge of it; (ii) psychological treatment for the emotional recovery of the victim; and (iii) any other protection measure required to protect the integrity and life of the victim and their family.

12. Any other protection measures required for the protection of the integrity and life of the victim or her family

Registry of Victims and Aggressors (RUVA) is an administrative registry in charge of providing an updated database with information that allows the authorities to identify and profile victims and their aggressors. This is an adequate knowledge instrument that helps to avoid and investigative violence against women.[15]

By means of Supreme Decree No. 005-2020 and its regulations, the government grants economic assistance to indirect femicide victims (i.e., child victims or people with moderate or severe disabilities who were economically dependent and under the care of the victim of femicide).[16]

Emergency Decree No.023-2020 determines mechanisms for the prevention of violence against women and members of the family group. For example, knowledge of the aggressor's police background by means of the AURORA National Program. In accordance with the situation of the victim, a safety plan could be prepared to reduce the risks of violence against the victim.

On its own or at the request of the victim, the family court at oral hearing can decide on precautionary measures. The family court informs the victim of their right to initiate proceedings on matters and, at the victim's request, informs the Ministry of Justice and Human Rights to act in accordance with its powers.

## 4.2.4 Are there time limits?

There are no express time limits for victims. For the Peruvian National Police or other entities in charge of executing protection measures, they must submit their report of execution to the family court within 15 days from the date on which they receive notice of the recommendation. In cases of severe risk, the report must be submitted within five days.

Every six months, or in cases of slight or moderate risk, and every three months in cases of severe risk, entities must submit a report on their compliance to the family court.

Public and private entities that become aware of noncompliance with protection orders must inform the family court within 24 hours.

## 4.2.5 Are there different rules in emergencies?

Enforcement of the protection measures, names and locations of all victims with protective measures should be permanently available to all police personnel in the jurisdiction in which the victim resides, in order to respond in a timely manner to emergencies.

## 4.3 Judicial discretion

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

The judiciary will always have judicial discretion when issuing its decisions, within the parameters allowed by law. In any case, the judge may apply a protection measure provided that it does not conflict with any fundamental right or an express prohibition set forth in another rule.

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

There are no age limits for obtaining orders. It should be noted that, in practice, although Peruvian law provides for victims' access to the courts and tribunals as indicated in item 32 of the Recommendation, there is a need to capacitate justice officials in the area of violence against women.

## 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 expenses:

The expenses are made up of the judicial fees, the fees of the judicial assistance bodies and the other judicial expenses incurred in the process.

Costs are the attorney's fees of the winning party, plus 5% to the respective bar association of the judicial district for its mutual fund and to cover the attorneys' fees in cases of judicial assistance.

Restitution needs to be requested through a civil process of compensation.

## 4.4.2 Can they recover wages and profits lost?

Yes, victims can recover wages and profit lost through a civil process of compensation.

## 4.4.3 Is a separate civil process required?

No, there is no need to initiate a different civil process. In the same process the judge can require the offender to pay the victim's costs and expenses.

Item 33 of the Recommendation mentions the issue of effective remedies. The latest pronouncements related to domestic violence against women have been reviewed and it has not been found that effective, adequate or proportional reparations are provided for the severity of the harm suffered. Nor do these reparations include sufficient measures to ensure full reparation for the victim and nonrepetition.

 **Can the offender be required to surrender weapons?**

Yes, the authorities can require the offender to surrender weapons.

# 5. Prosecutorial considerations

## 5.1 Police procedures

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

Where Specialized Police Commissions on Protection against Family Violence exist, they are the policing body to engage. Where they are not present, it is the local police station that steps in. Primary policing functions include:

maintaining order and protection for the victim

reporting investigation outcomes to prosecutorial authorities

In the event of flagrant offenses, the police will take the following action:

Assess the scene.

Arrest/restrain the aggressor.

Determine if the victim needs medical attention and arrange for transport to hospital.

Arrange for Women's Emergency Center (CEM) personnel to accompany the victim to care for the physical, emotional or legal needs of the victim.

Escort the aggressor and victim to the Specialized Police Commissions on Protection against Family Violence or a police station to file a report, and if appropriate, charge and arrest the aggressor.

Law No. 30364, the Law to Prevent, Punish and Eradicate Violence against Women and Members of the Family Group, defines police personnel responsibility to include:

registering of the complaint

assessing the risk to the victim and taking action

forwarding the police report to the competent authority within the statutory period

It should be mentioned that even the women who report complaints suffer significant levels of victimization due to the abandonment of the government as a result of their evident vulnerable situation and also because of the presence of narratives that tend to justify the facts or "understand" the aggressor (chauvinist culture).[17] There are many situations in which police officers do not act effectively due to corruption or as a result of patriarchal attitudes and/or values.

Also, the problem is not only related to the lack of training and qualifications of many police officers or police procedures, but also the absence of a recognized institutional policy, learned and disseminated appropriately.

Note that we have not identified gaps within Law No. 30364 that would mean the protection of women is not ensured. However, in contrast with item 30(a) of Recommendation 35, the Peruvian legislation addressing gender-based violence against women is not very effective. This explains the increasing numbers of domestic violence cases in Peru:

According to ENDES 2019 (Demographic and Family Health Survey),[18] in the last 12 months, 2.5% of women between 15 and 49 years old have suffered sexual violence from their partners or former partners. According to ENARES 2015 (National Survey on Social Relationships),[19] 34.6% of adolescents between 12 and 17 years old have suffered sexual violence at some point during their lives.

In addition, in 2019, the Women's Emergency Centers (CEM) of the Ministry of Women, reported that of the 55,565 reported cases of violence against children and adolescents from 0 to 17 years old, 12,364 cases were due to sexual violence and 42% were connected to rape. [20] Among the 18 to 59 age group, out of 115,246 reported cases of violence, 5,523 cases were related to sexual violence and 48% connected to rape.

It is important to note that these statistics do not include the additional cases of violations that are never reported.

## 5.1.2 What circumstances effect law firm involvement?

In general, there are no circumstances that could affect the participation of law firms in police investigations. Victims have the right to appoint their defense attorney of choice to participate in all proceedings and have full access to the investigation.

However, the situation of vulnerability and mistreatment suffered by women who dare to file a complaint is enormous. For instance, filing a complaint is a long, bureaucratic and indolent process in most cases, which must be faced by a vulnerable and terrified family group that has no alternative but to sleep in the police station, in the street or to return to where only more violence awaits them.

This situation is also a consequence of the nonexistence of an immediate protection network that allows women and children to avoid ending up being direct and indirect victims of violence, or that prevents women from having to withdraw their complaints for fear of losing economic sustenance and even their home. Unlike what is stated in item 31 (a) (ii) of Recommendation 35, there are no mechanisms that include immediate risk assessments and protection to assist woman complainants and witnesses (e.g., wide range of effective measures and, where appropriate, the issuance and monitoring of eviction, protection, restraining or emergency barring orders against alleged perpetrators, including adequate sanctions for noncompliance).

## 5.2 Standard of proof

## 5.2.1 Is proof required by any legal means?

Proof is required in:

criminal cases: beyond reasonable doubt

civil cases: fair preponderance of the evidence

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

The Peruvian legal system is governed by the principle of freedom of proof, e.g., there is no closed list of evidence. On the contrary, the parties can offer the necessary means of proof to support their position. The only limitation is that the evidence must not be obtained in violation of fundamental rights (prohibited evidence).

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

Yes, in criminal cases.

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

No, it is the same as described above.

## 5.3 Affirmative defenses

## 5.3.1 Are affirmative defenses available to the accused?

Yes, according to Article 20 of the Peruvian Criminal Code.

## 5.3.2 Is willful intent required?

The law provides sanctions for both negligence and willful misconduct. Indeed, according to Article 441 of the Peruvian Criminal Code, the one who, in any way, causes another person a painful injury that requires up to 10 days of assistance or rest, according to optional prescription, will be sentenced to community service for 40 to 60 days provided that circumstances do not concur that give seriousness to the event to the point that it will be considered a crime. It is considered an aggravating circumstance and the provision of community service will be increased to 80 days when the victim is under 14 years old or the injury occurs as a result of an act of family violence, or the agent is the child's parent/guardian. When the injury is intentional and causes up to 15 days of disability, the penalty will be 60 to 125 days of community service.

## 5.3.3 Are false accusations punishable for the victim?

Yes, according to Article 402 of the Peruvian Criminal Code, anyone who falsely attributes a punishable act to another will be punished with imprisonment for no more than three years and 180 to 365 days of community service.

## 5.3.4 How is consent discussed in the law?

Regulations to Law No. 30364 only mention consent in Article 61, which pertains to sexual violence, and provides guidelines according to the following:

61.1.    Consent cannot be inferred from any word or conduct of the victim when force, threat of force, coercion or exploitation of a coercive environment they have diminished their ability to give voluntary and free consent.

61.2.    Consent cannot be inferred from any word or conduct of the victim when they are unable to give free consent.

61.3.    Consent cannot be inferred from the silence or lack of resistance of the victim to the alleged rape.

61.4.    The credibility, honorability or sexual availability of the victim or a witness cannot be inferred from the sexual nature of the previous or subsequent behavior of the victim or a witness.

However, there are no additional definitions of consent under other gender-based violence situations.

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

Yes, according to Article 20 of the Peruvian Criminal Code.

## 5.4 Witness status

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

According to Article 163 of the Peruvian Criminal Procedure Code, a witness is compelled to truthfully answer the questions that are asked; otherwise, they will be punished with no less than two but no more than four years in prison according to Article 409 of the Peruvian Criminal Code. The witness also has a duty to appear and a duty to testify; otherwise, Article 371 of the Criminal Code will apply, which provides sanctions for those who abstain from testifying.

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

According to Article 165 of the Peruvian Criminal Procedure Code, the cases in which persons may refrain from testifying are as follows:

1. The spouse of the accused, relatives within the fourth degree of consanguinity or second of affinity, and anyone who had a relationship with him may refrain from giving testimony. This power is extended, to the same extent, to relatives by adoption, and to spouses or those cohabiting even when the marital bond has ceased. All of them will be warned of the right that allows them to refuse to give testimony in whole or in part.

2. Those who must keep professional or state secrets according to the law must refrain from declaring details that will be described,:

(a) Those bound by professional secrecy may not be bound to testify about what they know because of their profession, except in cases in which they have an obligation to report it to the judicial authority. Among them are lawyers, ministers of religious services, notaries, doctors and health personnel, journalists or other professionals provided by express law. Nevertheless, these persons, with the exception of ministers of religious cults, may not deny their testimony when they are released by the interested party of the duty to keep the secret.

(b) If the information requested from the witness is not found, taking into account the exceptions provided in the law on the matter, the continuation of the declaration will be provided. If the information has been classified as secret or reserved and the judge considers the information essential, they will — ex officio or at the request of a party — require the information in writing and may even summon the public official to correspond on the witness initially placed for clarifications.

3. If Public officials and servants know of a state secret, that is, information classified as secret or reserved, they have an obligation to communicate it to the authority that cited them. In these cases, the diligence will be suspended and information will be requested from the minister of the sector, within a period of 15 days, specifying whether the required information is within the scope of the exceptions established in the law on the matter.

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

According to Article 162 of the Criminal Procedure Code, persons who are unable to work for natural reasons or who are prevented by law are excused. Disqualification for natural reasons may be determined by physical or mental impairments that impede or limit the conditions of perception, or that prevent the transmission of perceptions in an intelligible manner and in the manner provided by law.[21] Legal impediments are functional or procedural in nature, depending on whether they affect judicial officials, prosecutors, secretaries, technical, administrative and auxiliary personnel who are familiar with the same process.[22] Judges may not be witnesses if they have previously intervened as judges in a case that they are called upon to resolve, in accordance with Article 53 of the Criminal Procedure Code. Witnesses may abstain from testifying in cases involving family members within the fourth degree of consanguinity or second degree of affinity under Article 165 of the Criminal Procedure Code.

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

Article 19 of the Law No. 30364 mentions that when the victim is a girl, boy, adolescent or woman, their statement must be made under the same conditions as the pre-designed test.

## 5.4.5 Can children be called upon to testify?

Yes, Article 171(3) of the Criminal Procedure Code mentions that when you receive testimony from minors and people who have been victims of events that have affected them psychologically, they can arrange to give testimony in private. If the testimony was not given under the rules of the advanced test, the judge will adopt the measures necessary to guarantee the emotional integrity of the witness and will arrange for the attendance of a psychologist, who will carry out the interrogation proposed by the parties. It will also allow for the attendance of a relative of the witness.

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

According to Article 121(B) of the Criminal Code, when the victim is a minor, over 65, or suffers from a physical or mental disability and the agent takes advantage of this condition, a prison sentence of no less than six and no more than 12 years is applicable.

## 5.5 Penalties and sentencing; penalty enhancements

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

The Peruvian Criminal Code establishes penalties for anyone who commits crimes related to family violence; however, it does not establish specific penalties for first-time domestic violence offenses.

On the other hand, item 29(b) of Recommendation 35 states that states should protect victims/survivors of gender-based violence and ensure that they have access to justice and to an effective remedy in line with the guidance provided in General Recommendation No 33.

As indicated in item 5.1, the Peruvian legislation ensures the protection of women and children who suffer from domestic violence.[23] However, this is implemented poorly as most of the procedures are never completed. This explains the increasing cases of domestic violence in Peru.

## 5.5.2 Are there criminal penalties?

Yes, the Peruvian Criminal Code provides for the following penalties:

**Peruvian Criminal Code — Article 108-B (Femicide)**

Prison term of no less than 20 years for killing a woman as a result of any of the following:

family violence

coercion, harassment or sexual harassment

abuse of power, trust or any other position or relationship that confers authority of the aggressor over the victim

any form of discrimination against women, regardless of whether there is a martial relationship or cohabitation

Prison term of not less than 30 years if the following aggravating circumstances are present:

The victim was a minor or an older adult.

The victim was pregnant.

The victim was under the care or responsibility of the aggressor.

The victim was previously subjected to rape or mutilation.

The victim was disabled.

The victim was subjected to human trafficking or human exploitation.

The act of violence occurred in the presence of a child or adolescent.

The act of violence occurred while the aggressor was intoxicated (over the blood alcohol level of 0.25) or under the effects of toxic drugs, narcotics, psychotropic or synthetic substances.

Life sentences in prison are applicable if two or more aggravating circumstances are present.

**Peruvian Criminal Code — Article 441 (Intentional injury and negligent injury)**

Community service of 40-60 days if an aggressor causes injuries that require up to 10 days of assistance or rest or a small level of psychological damage

Community service of 80 working days if an aggressor causes injury to a person under the age of 14, or the aggressor is the injured person's guardian, guard, or person responsible for the victim

If the injury is caused by fault and causes up to 5 days of incapacity, the penalty is 60-120 days

**Peruvian Criminal Code — Article 442 (Mistreatment)**

Community service of 50-80 days is applicable for physical or psychological mistreatment, humiliation, denigration or disparagement that does not cause injury or psychological damage. Community service of 80-100 working days is applicable under the following circumstances:

The victim is a minor or older adult, has a disability or is pregnant.

The victim is a spouse, ex-spouse, cohabitant or some other type of familial relationship, or is the person with whom the victim has children (regardless of whether they are living together at the time of the violent acts).

The victim has a professional services contract or employment relationship (including as a domestic worker) with the aggressor, or the victim is dependent on the aggressor (either due to confinement or another type of dependence), or the victim is under the aggressor's care and responsibility.

The victim is a member of the Peruvian National Police, the Armed Forces, a magistrate of the Judicial Branch or the Public Ministry, a magistrate of the Constitutional Court, or an elected authority and the injury occurred during the exercise of those duties or because of those duties.

The victim is a woman, and is injured as a result of family violence, coercion, harassment, sexual harassment, abuse of power or trust, or any other form of discrimination.

A child or adolescent was present during the act of violence.

The act of violence occurred while the aggressor was intoxicated (over the blood alcohol level of 0.25) or under the effect of toxic drugs, narcotics, psychotropic or synthetic substances.

**Peruvian Criminal Code — Article 121-B (Serious injuries due to violence against women and members of the family group)**

A prison sentence of no less than six years and no more than 12 years may be imposed for a serious injury under the following circumstances:

The victim is a woman, who is injured as a result of:

family violence

coercion, harassment or sexual harassment

abuse of power, trust or any other position or relationship that confers authority of the aggressor over the victim

any form of discrimination against women, regardless of whether there is a martial relationship or cohabitation

The victim is pregnant.

The victim is a spouse, ex-spouse, cohabitant or has some other type of familial relationship with the aggressor, or has children with the aggressor (regardless of whether they are living together at the time of the violent act).

The victim is any type of dependent or subordinate of the aggressor (such as employment, economic or care) and the aggressor took advantage of the situation.

The aggressor used a weapon, sharp object or instrument to commit the violence.

The victim was a child or adolescent and suffered psychological damage due to family violence or rape.

The act of violence occurred while the aggressor was intoxicated (over the blood alcohol level of 0.25) or under the effect of toxic drugs, narcotics, psychotropic or synthetic substances.

A prison sentence of no less than 12 years and no more than 15 years may be imposed if two or more of the above circumstances are present. A prison sentence of no less than 15 years and no more than 20 years may be imposed if the victim dies as a result of the above circumstances and the aggressor was able to foresee the outcome.

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

Article 24 of the Law to Prevent, Punish and Eradicate Violence against Women and Members of the Family Group Law No. 30364 provides that anyone who disobeys, fails to comply with or resists a protective measure issued in a proceeding arising from acts of violence against women or members of the family group commits the offense of resisting or disobeying the authority provided for in the Criminal Code.

Article 368 of the Peruvian Criminal Code provides that the disobedience of a protective order arising from an act constituting violence against women or members of the family group is punishable by a prison term of no less than five years and no more than eight years.

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

The Law to Prevent, Punish and Eradicate Violence against Women and Members of the Family Group Law No. 30364 provides the following:

**Title II, Chapter 11, Article 22. Object and types of protective measures**

removal of the aggressor from the victim's home

impediment of the aggressor approaching or being within a suitable distance from the victim in any way (including home, work center, study center or another place where the victim carries out their daily activities)

prohibition of the aggressor communicating with the victim (including via letter, telephone, electronics, chat, social network, institutional network, intranet and other forms of communication)

prohibition of the aggressor possessing and carrying weapons, and revocation of the license to possess and use weapons

prohibition on the accused person removing children, adolescents or other vulnerable persons from the care of the family group

**Title II, Chapter I, Article 20. Sentence**

In the case of a conviction or a reservation of conviction, this is in addition to the provisions of Article 394 of the Code of Criminal Procedure, promulgated by Legislative Decree No. 957, and where applicable, contains the following:

restrictions provided for in Article 288 of the Code of Criminal Procedure, as well as other analogous rules

registration of the sentence in the National Conviction Registry and in the Single Registry of Victims and Aggressors

any other measure in favor of the victims or their relatives

**Title III, Chapter II, Article 31. Prison treatment for the social reintegration of aggressors deprived of their liberty**

This provides for re-education treatment for the granting of prison benefits, pardons and commutations of sentences.

**Title III, Chapter II, Article 32. Treatment of aggressors in a free environment**

For crimes related to acts of violence against women and members of the family group, the judge may require the aggressor to participate in psychosocial, psychiatric or self-help treatment specialized in violence against women and members of the family group.

Law No. 30364 establishes many measures that are aligned with item 32 of Recommendation 35.

## 5.6 Post-release restrictions

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

No, but the victim, being part of the process, has the right to know all the procedural acts.

# 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.)

Yes, they can present full evidence in any matter in order to support the case.[24]

## 6.2 Domestic violence in the workplace

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

Supreme Decree No. 009-2016-MIMP Chapter II, Article 84.2. In the event of the refusal of an employer to grant a change of workplace to protect against further acts of domestic violence, the alleged victim may apply to the competent court for a change in the place or time of work as a protective measure.

Supreme Decree No. 009-2016-MIMP Chapter II, Article 86.1. In conjunction with the protective measures provided for in Article 16 of the Law, the family court or its equivalent will order the Ministry of Labor and Employment Promotion (MTPE) to provide relevant services to the victim.

Law No. 30364, Article 11(d). The judge in charge of the proceedings may, at the request of the victim and depending on the seriousness of the situation, grant up to a maximum of five consecutive months of suspension of the employment relationship without remuneration.

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

Law No. 30364, Article 11(b). A worker who is a victim of violence has the right to change their place of work as far as possible and without prejudice to their remuneration and category rights. The same applies to working hours, if appropriate. The worker must return to their workplace under the same conditions that existed at the time of suspension of the employment relationship.

Supreme Decree No. 009-2016-MIMP Chapter II, Article 83.1. The Ministry of Labor and Employment Promotion is responsible for issuing specific measures to ensure that no worker is dismissed for reasons related to acts of violence regulated by law.

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

Peruvian laws and regulations do not contemplate the role or rights of family members of the victim.

Note that under Peruvian legislation, there are many legal mechanisms that fight against domestic violence in the workplace. These rules include situations of sexual and workplace harassment. However, in the vast majority of cases, these situations are not reported by the victim and if they are, the responses are minimal or null. This lack of effectiveness in the process is mainly due to the following reasons:

There has been a lack of education and empowerment of women since childhood. At the beginning, it is difficult for the victim to identify that they are in a violent workplace situation (e.g., sexual harassment).

There are educational programs that fight against violence and promote gender equality and there are many initiatives that aim to influence knowledge, attitudes and behaviors of young people through life-skills programs. However, more effective measures must be taken.

Victims feel shame and fear of imminent social stigmatization and possible reprisals. In many cases, the aggressor is an individual that has a higher position than the victim. Thus, fear and the stability of the victim's mental health end up discouraging them from making a complaint.

There are often ineffective response mechanisms in work centers. It is very common for victims of sexual harassment not to feel supported by their workplace. Therefore, since their environment does not guarantee them security to report their aggressor, it is very unlikely that they will do so (little trust in the system).

## 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?

No, the law does not include any specific regulation on this matter.

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

No, the law does not include any specific regulation on this matter.

## 6.3.3 Does domestic violence law discuss asylum accessibility?

No, the law does not include any specific regulation on this matter.

Note that item 29(c)(iii) of Recommendation 35 repeals restrictive immigration laws that discourage women, including migrant domestic workers, from reporting violence against women.[25] Under Peruvian legislation, there are no specific immigration laws that protect immigrant women from violence.

## 6.4 Armed forces

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

Under Article 45 of Law No. 30364, the Ministry of Defense is responsible for enforcing compliance with the prohibition of possession of weapons ordered through protective measures, regarding their civil and military personnel.

## 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?

Judges will always consider the issue of domestic violence when determining custody or visitation rights.

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

Yes, the judge will consider the testimonies of the spouse and children.

## 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?

The law does not include any barriers to prevent landlords from forcing a tenant to move out, but under Section 1 of Article 22 of Chapter II (Object and types of protective measures), in Law No. 30364, the law allows for the removal of the aggressor from the victim's home, as well as the prohibition of the aggressor returning to the victim's home. The Peruvian National Police may enter the victim's home for execution of the protective measure.

Additionally, under Section 7 of Article 22 of Chapter II of Law No. 30364, the law allows for "Prohibition to dispose of, alienate or pledge or mortgage common real or personal property." This law could arguably be used to prevent landlords from forcing a tenant to move out because they are victims of domestic violence when they try to remove the victim from their real property.

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

Under Section 12 of Article 22 of Chapter II of Law No. 30364, the law allows for "Any other measure of protection required for the protection of the integrity and life of the victim or their family." Accordingly, this law could be used to argue that the tenant's termination of their lease is required as a measure to protect the victim's family.

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

Yes, under Section 1 of Article 22 of Chapter II (Object and types of protective measures, in Law No. 30364) the law allows for the removal of the aggressor from the victim's home, as well as the prohibition on the aggressor returning to the victim's home. The Peruvian National Police may enter the victim's home for the execution of this protective measure.

## 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?

Yes, under Article 22-B of Chapter II of Law No. 30364:

On its own initiative or at the request of the victim, the family court, at the oral hearing pronounces on precautionary measures that safeguard claims for…disposition of property and other related aspects that are necessary to guarantee the well-being of victims, dependent persons or persons in a situation of vulnerability under the care of the victim.

Additionally, under Section 7 of Article 22 of Chapter II of Law No. 30364, the law allows for "prohibition to dispose of, alienate or pledge or mortgage common real or personal property."

## 6.7 Possession of guns

## 6.7.1 Does a domestic violence conviction prevent an abuser from owning guns?

Subsection 6 of Article 36 of the Criminal Code establishes a suspension penalty enforcing i) the suspension or cancellation of the authorization to possess or use guns, or ii) the definitive inability to renew or obtain a license or certification from the competent authority to possess or use guns in the case of a sentence for a criminal offense or an offense committed under the influence of alcohol or drugs. This means that a domestic violence conviction prevents an abuser from owing guns.

## 6.7.2 When a protection order is issued by a judge as a result of domestic violence, does the law require that the authority secures and stores any firearms owned by the aggressor?

Yes, subsection 4 of Article 22 of Law No. 30364 establishes that the Superintendence of Control of security services must seize the firearms of people subject of the protection order.

# 7. Endnotes

[1]    Instituto Nacional de Estadística e Informática — INEI. Perú: Indicadores de Violencia Familiar y Sexual 2012-2019, Lima, page 17.

[2]    Instituto Nacional de Estadística e Informática — INEI. Perú: Indicadores de Violencia Familiar y Sexual 2012-2019, Lima, page 7.

[3]    The purpose of the cassation is the adequate application of the objective right to the concrete case and the uniformity of the national jurisprudence by the Supreme Court of Justice.

[4]    Instituto Nacional de Estadística e Informática — INEI. Perú: Indicadores de Violencia Familiar y Sexual 2012-2019, Lima, page 31.

[5]    This controversial ruling threw out a rape case because the alleged victim's red underwear suggested the woman was "prepared or willing" to have sex.

[6]    Instituto Nacional de Estadística e Informática — INEI. Perú: Indicadores de Violencia Familiar y Sexual 2012-2019, Lima, page 70.

[7]    WHO Domestic Violence Figures. Understanding and addressing violence against women, page 7.

[8]    See Articles 5, 6, 7 and 9 from Law No. 30364.

[9]    The definition of psychological mistreatment included in Law No. 30364 does not specify the different types of psychological mistreatment. For example, under the definition of emotional (psychological) abuse, the following should be included: intimidation (e.g., destroying things), threats of harm, and threats to take away children, among others.

It is worth mentioning that Law No. 30364 includes controlling behaviors within the definition of psychological mistreatment. Nevertheless, such definitions do not have a detailed description of the concept and only indicate that it involves the isolation of the victim against their will. A good definition of the term would involve the isolation of the victim from family and friends; monitoring of their movements; or restriction to employment access, education or medical care.

[10]    See article 8 of Law No. 30364.

[11]    See article 151- A of the Criminal Code.

[12]    See Law No. 30364.

[13]    See Article 22 of Law No. 30364.

[14]    See Law No. 30364 and Law No. 27942.

[15]    Unfortunately the webpage to access the RUVA is unavailable at the moment and the information filed on it is not up to date.

[16]    This is a new measure that entered into force in 2020. This measure agrees with item 33(a) of Recommendation 35.

[17]    For example, in the case of violence against a partner, widely held beliefs about gender roles and violence justify such actions: (i) A man has a right to assert power over a woman and is considered socially superior; (ii) A man has a right to physically discipline a woman for 'incorrect' behavior; (iii) Physical violence is an acceptable way to resolve conflict in a relationship; (iv) Sexual intercourse is a man's right in marriage; (v) A woman should tolerate violence in order to keep her family together; (vi) There are times when a woman deserves to be beaten.

[18]    Technical Health Regulations No. 164-MINSA / 2020 / DGIESP: Technical Health Regulations for Comprehensive Care of Women and Family Members Affected by Sexual Violence (page 6).

[19]    *Op. Cit.*

[20]    *Op. Cit.*

[21]    ORÉ GUARDIA, Arsenio. Manual de Derecho Procesal Penal, 2nd ed., 1999, Editora Alternativas, page 457.

[22]    ORÉ GUARDIA, Arsenio. Manual de Derecho Procesal Penal, 2nd ed., 1999, Editora Alternativas, page 457.

[23]    Mechanisms established in Law No. 30364.

[24]    In Recommendation 28 and Recommendation 33, the committee confirmed that discrimination against women was inextricably linked to other factors that affected their lives.

[25]   In addition, General Recommendation No. 26 on women migrant workers stated that migrant women should not be discriminated against in any sphere of their life.

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