Fighting Domestic Violence - Peru

1. Legal provisions

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# 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.

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