Fighting Domestic Violence - Peru

2. Introduction: framework guiding domestic violence law

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# 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

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