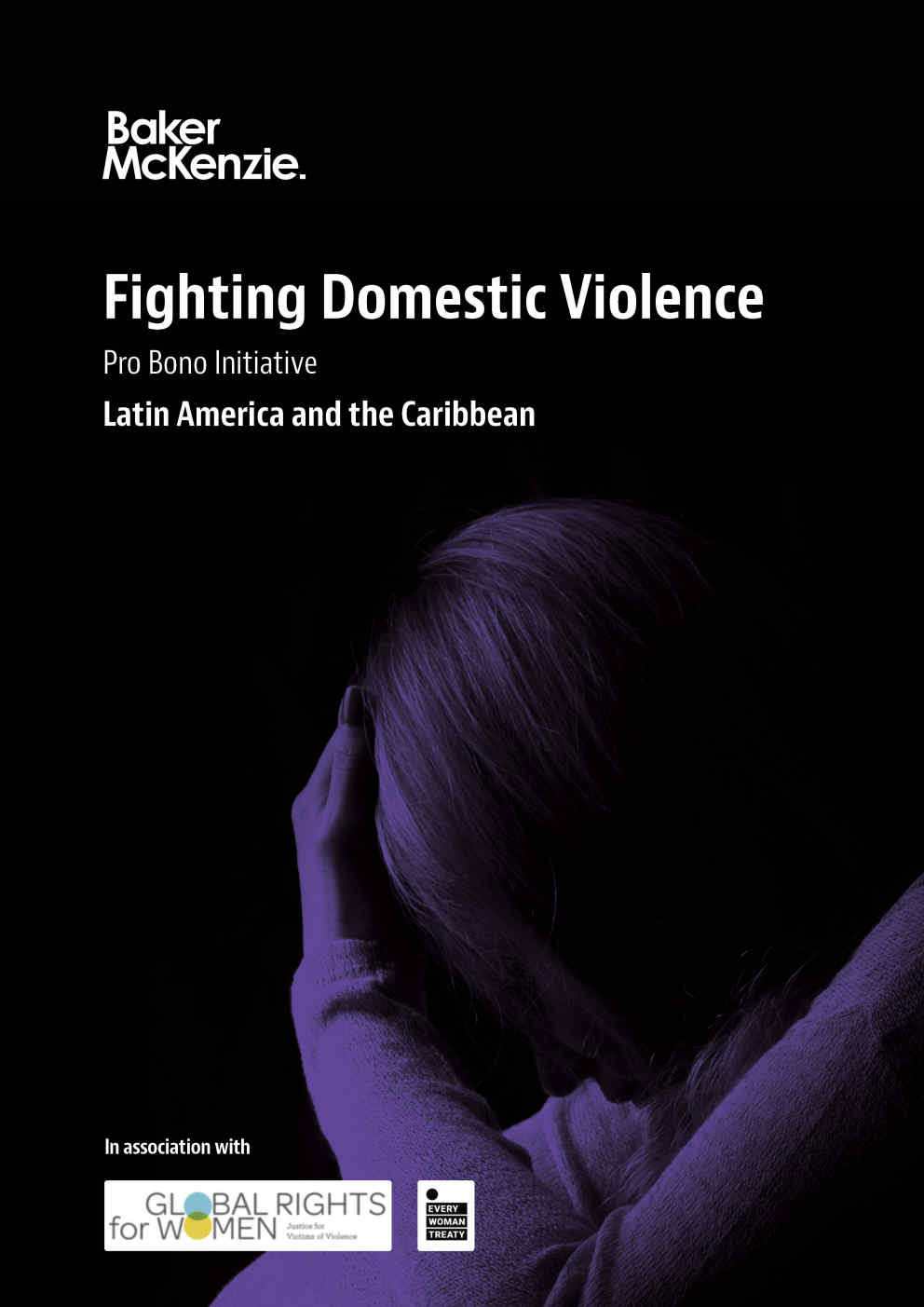
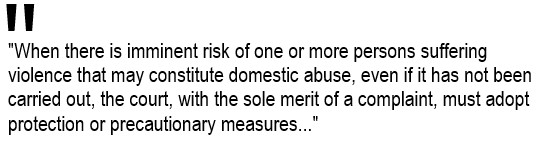
Fighting Domestic Violence - Chile

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**How to use and navigate this report**

# 1. Legal provisions

## 1.1 What are the relevant statutes and codes?

The relevant statutes and codes on domestic violence in Chile are as follows:

Law 20.066 regarding Domestic Violence (*Ley 20.066 de Violencia Intrafamiliar* (LVI)), which aims to prevent, punish and eradicate domestic violence and grant protection to victims of violence

Criminal Code (*Código Penal* (CP))

Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women ("**Convention**")

Law 19.968, which creates family courts (*Ley 19.968 que Crea los Tribunales de Familia* (LTF))

Criminal Procedure Code (*Código Procesal Penal* (CPP))

## 1.2 What is the controlling case law?

The Chilean judicial system is not jurisprudential, so there are no judicial resolutions that should be applicable in other cases than those in which they were issued (Article 3, paragraph 2 of the Civil Code, "Judicial sentences have no force mandatory but with respect to the causes in which they are currently pronounced").

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

The specific parts of the court system that address domestic violence are as follows:

family courts, if the act sanctioned for domestic violence does not constitute a crime

criminal courts, if the act sanctioned for domestic violence constitutes a crime

Inter-American Commission on Human Rights, if the responsibility of the state is sought for acts or situations that violate the Convention

## 1.4 What are potential causes of action?

The potential causes of action are as follows:

femicide/parricide (Article 390 of the CP)

bodily injury in the context of domestic violence (Article 400 of the CP)

child abuse (Article 403-*bis* of the CP)

rape (Article 361 of the CP)

rape with homicide (Article 372 of the CP)

sexual harassment (Article 161-C of the CP)

kidnapping (Article 141 of the CP)

threat (Article 296 of the CP)

causing an abortion with violence (Article 343 of the CP)

abandonment (Article 352 of the CP)

unauthorized entry to housing (Article 144 of the CP)

domestic violence not constituting a crime

# 2. Introduction: framework guiding domestic violence law

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

According to Article 11 of the LVI, the sentence in a domestic violence procedure will oblige the convicted person to pay the victim disbursements and damages that have been caused because of the acts constituting domestic violence that are the subject of the trial. This includes repaying money, or damaged, destroyed or lost property. The judge will determine damages prudentially.[1]

## 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)?

Yes, it is specifically stated as such in the Convention.

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

Chile is part of the Convention on the Elimination of All Forms of Discrimination Against Women. It ratified this convention in 1989 and signed the Optional Protocol[2] in 1999. The Senate approved the Optional Protocol[3] until December 2019 and the Chilean president ratified it on 20 January 2020.[4]

## 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?

Chile has implemented the following legislative reforms based on the Convention:

Law 20,137 grants permits for the death of a spouse and children.

Law 20,152 simplifies collecting alimony.

Law 20,166 grants every working woman the right to feed her children under 2 years old.

Law 20,239 exempts compensation from income tax economic consequences at the end of the marriage as a result of a divorce.

Law 20,255 is the reason for the social security reform.

Law 20,279 recognizes the right to minimum wage for women workers in private houses.

Law 20,286 adapts the operation of family justice.

Law 20,336 recognizes the right to rest on holidays for workers in private homes.

Law 20,340 provides facilities for either spouse to enter into acts and/or contracts for the purpose of repurchasing housing loans that have been granted with state financing.

Law 20,348, on equal pay for men and women, incorporates this principle into the Labor Code..

Law 20,383 is concerned with the removal of minors from the country.

Law 20,399 extends the right to a nursery to working parents and other workers who care for a child under 2 years old in those companies that were already obligated.

Law 20,418 is concerned with fertility regulation rights.

Law 20,066 introduces the following updates in the field of domestic violence: (i) it defines the concept of domestic violence; (ii) it determines who the subjects of protection are; (iii) it typifies the crime of habitual abuse; (iv) it introduces modifications to the CP; (v) it establishes protection measures in favor of the victim; (vi) it anticipates risk situations; and (vii) it grants greater police powers in flagrant cases of domestic violence.

Law 20,480 expands the crime of parricide, including former spouses or former partners; if the victim is a woman or girl, it is called femicide.

Law 20,820 creates the Ministry of Women and Gender Equality, which establishes in the Chilean legal system a specific rule that regulates affirmative actions that can be used as a tool to accelerate the achievement of substantive equality between men and women in all areas of the Convention.

Law 20,545 modifies the rules on maternity protection and incorporates postnatal parental leave into Article 197-*bis* of the Labor Code. This is an important advance toward co-responsibility in the care of children.

Law 20,891 perfects postnatal parental leave and the exercise of the right to a nursery for civil servants.[5]

Law 20,840 replaces the binominal electoral system with one of an inclusive and proportional nature, strengthens the representativeness of the National Congress and establishes that no sex may be represented by more than 60%.

## 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

This is any form of abuse that affects the life or physical or psychological integrity of anyone who is/has been married to the offender or is/has been in a romantic relationship that implies living with him/her in "permanent" terms. It also includes relatives by consanguinity or affinity in the whole straight line or in the collateral line up to the third degree even of the offender, as well as those of who are or have been his/her spouse or of his/her current cohabiting partner. There will also be domestic violence when the aforementioned behavior occurs between parents of a common child, or affects a minor, elderly or disabled person who is under the care or dependence of any member of the family group (Article 5 of the LVI).

## 3.2 Stalking

N/A

## 3.3 Harassment

Sexual harassment is prohibited in public spaces, typified as capturing, recording, filming or photographing images, videos or any kind of audiovisual recording of someone's genitals or another intimate body part for the purposes of sexual significance and without their consent, by any means, in public places or with free access to the public.

## 3.4 Victim

A victim is the one offended by the crime. In crimes where the result is the death of the offended person or the offended person is unable to exercise their rights granted by criminal law, the victim will be considered to be: (i) their spouse or legal cohabitant and their children; (ii) their ascendants; (iii) their cohabitant; (iv) their siblings; or (v) their adopted children or adopter (Article 108 of the CPP).

## 3.5 Abuser

N/A

## 3.6 Civil protection order

A civil protection order is a measure imposed by the court to guarantee the success of the investigation proceedings or the security of society, to protect the offended party or to ensure the attendance of the accused in the proceedings or the execution of the sentence after the investigation has been formalized.

## 3.7 Causes of action

N/A

## 3.8 Marital rape

N/A

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

N/A

# 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. Protection measures can be dictated as "precautionary measures" from the complaint or demand and throughout the procedure, or as "accessory measures" in the final judgment of the domestic violence procedure. Family courts can issue them when they know of facts constituting domestic violence that are not crimes or criminal courts can issue them when they know of crimes that also constitute domestic violence.

When there is imminent risk of one or more persons suffering violence that may constitute domestic abuse, even if it has not been carried out, the court, with the sole merit of a complaint, must adopt protection or precautionary measures (Article 7 of the LVI). The court will presume imminent risk in the following circumstances:

The offender has intimidated the potential victim with damages.

There are circumstances or a background such as drug addiction, alcoholism, or one or more prior complaints of domestic violence.

There is a prior conviction for domestic violence, pending proceedings or previous convictions for crimes against people.

A psychiatric or psychological background denotes characteristics of a violent personality.

The defendant violently opposes or refuses to accept the end of an emotional relationship he/she has recently had with the victim.

Procedures for domestic violence can be initiated by demand or by complaint. Once the demand or complaint is received by the court, the court may order precautionary measures. In the event that the *Carabineros* (police) are called for a case of domestic violence, the police report will serve as a complaint.

## 4.1.2 Who can petition for civil protection orders?

Anyone can file a complaint for themselves or for minors and senior citizens under their care. Third parties who witness acts of domestic violence or instances of imminent danger of domestic violence may file the corresponding complaint. In such instances, the judge, if the petition is credible, must issue the precautionary order *ex officio*.

There are people who are forced to report acts of domestic violence (Article 175 of the CPP in relation to Article 84 of the LTF) as follows:

members of the police and gendarmerie regarding all acts of domestic violence they witness or have knowledge of

members of the armed forces regarding the facts of which they become aware in the exercise of their functions

prosecutors and other public employees regarding the facts of which they become aware in the exercise of their functions

heads of ports and airports or of train or bus stations, ship captains or commercial aircraft and drivers of trains and any other means of transport regarding the facts taking place during the trip or in the enclosure, station or edge of their ship or aircraft

heads of hospital establishments or private clinics and, in general, all professionals in medicine, dentistry, chemistry, pharmacy and other fields related to the conservation or recovery of health and those who exercise auxiliary benefits of them who notice in a person or on their body signs of domestic violence

Once those indicated above file a complaint, the judge may issue a precautionary measure *ex officio*.

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

The provisional alimony or child support, as applicable, is expressly contemplated within the precautionary measures that the judge can issue following the demand or complaint and during the procedure for domestic violence.

Likewise, according to Article 9 of the LVI, in the final judgment, the judge will determine definitive alimony and/or child support to be paid, and the personal care and a system to ensure the direct and regular relationship of the children, if any, and any other family matter submitted for their knowledge by the parties.

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

Yes, it is specifically contemplated within the precautionary measures that the judge may order.

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

Yes, according to Article 22 of the LTF, during or before the procedure begins, the judge *ex officio* or at the request of a party may order precautionary measures. In doing so, the judge will take into account the likelihood of the right invoked and the danger of the delay.

Article 15 of the LVI states that at any stage of the investigation of crimes constituting domestic violence and even before the formalization of the accused, the court with criminal jurisdiction may order precautionary measures required to defend the victim effectively and on time.

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

According to Article 82 of the LTF, demands or complaints in relation to acts of domestic violence may be filed by the victim, his/her ascendants, descendants, guardians or persons taking care of him/her. In addition, they can be filed by anyone who has direct knowledge of the facts. However, if the victim themselves files the complaint, they will be granted the status of a party in the process.

Once a process is initiated, the judge must adopt all necessary measures to carry it out as quickly as possible. This principle must especially be taken into account regarding measures aimed at the protection of minors and victims of domestic violence (Article 13 of the LTF).

According to Article 9 of the LVI, in the judgment issued by the court for domestic violence, the judge must apply one or more of the following protective measures:

obligating the offender to leave the home he/she shares with the victim

prohibiting approaching the victim or his/her home, place of work or study, as well as any other place he/she regularly attends or visits; if both work or study in the same place, the employer or director of the establishment of studies will be expected to adopt the necessary protective measures

prohibiting bearing or possessing weapons and, when appropriate, confiscating the firearms held by the offender

compulsory attendance of therapeutic or family counseling programs

obligating regularly attending the police unit determined by the judge

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

Yes. According to Article 92 of the LTF, the family judge must provide protection to the victim and family group. In connection with this, one or more of the following precautionary measures may be taken:

prohibiting the offender from approaching the victim and forbidding or restricting the presence of the offender in the common household, place of study or work of the victim, as well as any other place where the victim remains, attends or visits habitually; if both the victim and the offender work or study in the same place, the employer or director of the establishment will be expected to adopt the necessary protective measures

ensuring the material delivery of the victim's personal effects when he/she chooses not to return to the common home

granting provisional alimony and child support

establishing a provisional regime for the personal care of children and teenagers and the way to maintain a direct and regular relationship between parents and their children

decreeing the prohibition of celebrating acts and contracts

forbidding carrying and possessing firearms, ammunition and cartridges, arranging their retention and forbidding their acquisition or storage

decreeing the confidentiality of a third complainant's identity

establishing protective measures for older or disabled persons

Likewise, the judge may decree the measures contemplated in Article 71 of the LTF to protect children and teenagers, as follows:

immediately delivering them to parents or caregivers

entrusting them to the care of a person or family in urgent cases

providing access to a family program or diagnostic center

providing the access of the child or teenager, their parents or persons who are caring for them to programs or actions of support, reparation or orientation, to face and overcome the crises in which they could find themselves

suspending the right of one or more persons determined to maintain direct or regular relations with the child or teenager

forbidding or restraining the presence of the offender in the common home

forbidding or restraining the presence of the offender to the place of study of the child or teenager, as well as any other place where he/she remains, visits or regularly attends; should the child or teenager and offender attend the same educational center, the judge will dictate the specific measures to ensure their rights

ordering hospitalization in a hospital, psychiatric or specialized treatment center

In accordance with Article 9 of the LVI, in the judgment issued by the court for domestic violence, the judge must apply one or more of the following protective measures:

obligating the offender to leave the home he/she shares with the victim

prohibiting approaching the victim or his/her home, place of work or study, as well as any other place to which he/she regularly attends or visit; if both work or study in the same place, the employer or director of the establishment of studies will be expected to adopt the necessary protective measures

prohibiting bearing or possessing weapons and, when appropriate, confiscating the firearms held by the offender

compulsory attendance of therapeutic or family counseling programs

obligating regularly attending the police unit determined by the judge

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

Yes. Once the claim, complaint or requirement for processing is admitted, the judge will proceed *ex officio* or at the request of the party to decree the appropriate precautionary measures, including granting provisional alimony or child support when appropriate. After that, they will summon the parties to the corresponding audience.

Precautionary measures may be carried out even before the person against whom they are issued is notified, provided that there are serious reasons for this and the court expressly orders it. The judge may also extend the term for well-founded reasons (Article 22 of the LTF).

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

Yes, the judge must protect both the victim and their family group, and the measures can be granted when there has been an act of domestic violence and when there is an imminent risk.

## 4.1.10 How long do the orders last?

The precautionary measures, issued before or during the judicial process, may be ordered for a period not exceeding 180 business days. The measures can be renewed for a further period of 180 business days and may be extended, limited, modified, replaced or terminated, *ex officio* or at the request of a party, at any time during the trial (Article 92 of the LTF).

The restraint measures that are applied in the sentence that determines the existence of domestic violence will have the duration that the judge prudentially fixes, which may not be less than six months or more than two years, taking into account the circumstances that justify them. They may be extended at the request of the victim if the facts that justified them are maintained.

## 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?

According to Article 82 of the LTF, the procedure can be initiated by demand or complaint. The complaint must set out the court before which it is filed; it must identify the plaintiff, the victim and the persons that make up the family group; and it must set out the facts and identify who committed or who could have committed the wrongful act, if this is known (Article 86 of the LTF).

The complaint will always contain a narration of the facts (Article 87 of the LTF). As for the means of proof, in accordance with Article 28 of the LTF, all facts that are relevant for an adequate family resolution may be proven by any means produced in accordance with the law. The parties may offer all the means of evidence available to them and may request that the judge order additional evidence held by public bodies, services or third parties to be gathered.

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

Where a third party initiates a complaint or demand, before the preparatory hearing is completed, the judge may inform the victim of the complaint by the most suitable, direct and safe means. The judge may collect the testimony of the complainant before the preparatory hearing.

Once the judge has received the claim or complaint, the judge will summon a preparatory hearing, which must be held within 10 days.

The procedure is essentially oral, so the victim must attend the hearings; however, the judge can dictate the precautionary measures before the preparatory hearing.

The judge must notify the victim of the decreed measures in the most expeditious manner and may decree the help of a public force to ensure compliance with the decreed measures.

## 4.2.3 Can you request remedies?

In accordance with Article 11 of the LVI, the judge will determine damages in domestic violence cases prudentially. In more detail, the judge will issue a sentence that will establish the obligation of the convicted person to pay the victim disbursements and damages. These damages may include replacing in money damaged, destroyed or lost property.

In accordance with Article 24 of the CP, any conviction in criminal matters involves the obligation to pay the costs, damages and losses of the parties, accomplices, cover-ups and other legally responsible persons.

## 4.2.4 Are there time limits?

As well as other precautionary measures, protection orders may be decreed for a period not exceeding 180 business days, which are only renewable once for the same period and may be extended, limited, modified, replaced or terminated, *ex officio* or at the request of a party, at any time during the trial (Article 92 of the LTF).

## 4.2.5 Are there different rules in emergencies?

Yes, the protection of precautionary measures can be requested when there is an imminent risk without the need to verify an act of domestic violence.

Where domestic violence is currently being committed, where there are calls for help from people inside a closed place or other obvious signs that indicate that domestic violence is being committed, the police or police officials must enter the place where the events are occurring. The relevant official must then detain the aggressor, if appropriate, and seize the weapons or objects that could be used to attack the victim. They must also oversee the immediate help of the victim (Article 83 of the LTF). The detainee will be presented immediately or the next business day to the competent court.

## 4.3 Judicial discretion

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

Family judges must act under the principle of an *ex officio* action in terms of protection measures and in giving progressive progress to the procedure.

The judges will appreciate the test according to the rules of sound criticism, not being able to contradict the principles of logic, the maxims of experience and scientifically entrenched knowledge.

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

No, the judge must provide protection to the victim and the family group, as well as protecting their economic subsistence and economic integrity (Article 92 of the LTF) without any limitation regarding the age of the victim.

## 4.4 Restitution and remedies available to victims

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

In accordance with Article 11 of the LVI, the judge will determine damages in domestic violence cases prudentially. In more detail, the judge will issue a sentence that will establish the obligation of the convicted person to pay the victim disbursements and damages. These damages may include replacing in money damaged, destroyed or lost property.

## 4.4.2 Can they recover wages and profits lost?

Yes. See the previous answer.

## 4.4.3 Is a separate civil process required?

No. Compensation may be requested within the same procedure.

## 4.4.4 Can the offender be required to surrender weapons?

When being called for a case of domestic violence, police officers must remove the weapons found in the home to which they have attended.

The prohibition of carrying or having weapons is one of the precautionary measures that the court has at its disposal throughout the procedure of domestic violence complaints.

The sentence that determines the existence of domestic violence may include the prohibition of the aggressor from carrying and having weapons and their confiscation.

# 5. Prosecutorial considerations

## 5.1 Police procedures

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

The police must intervene upon receiving an emergency call or if they notice an act of domestic violence. Police officers are required to report any act of intrafamilial violence witnessed/attended (as well as members of the armed forces and other public officials). Finally, the police must act as requested to do so by a judge.

## 5.1.2 What circumstances effect law firm involvement?

An authorized lawyer must represent both the plaintiff and the defendant, unless specifically exempted by the court. However, both can be represented by the public defender's office.

## 5.2 Standard of proof

## 5.2.1 Is proof required by any legal means?

Yes. In criminal procedures, it is the prosecutor's responsibility to gather all means of proof necessary to make the accusation and, later, during the oral trial, to reach the judge's conviction beyond all reasonable doubt(Article 340 of the CPP). Once the prosecutor has made the accusation, all means of proof must be produced in the trial itself. The judge will not be able to order any kind of investigatory diligence.

On the other hand, when the procedure takes place in a family court, parties are allowed to offer all means of proof and the judge, *ex officio*, will be able to ask for any further proof considered necessary to resolve the case.

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

Both family and criminal procedure work within a "freedom of proof system," which means that the parties can use all types of proof acceptable by law. However, regarding criminal procedure, once the oral trial is taking place, all proof must be presented orally during the trial and reading written documents or records will not be admitted.

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

Yes (Article 340 of the CPP).

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

No.

## 5.3 Affirmative defenses

## 5.3.1 Are affirmative defenses available to the accused?

Yes.

## 5.3.2 Is willful intent required?

It is required for domestic violence constituting a crime.

## 5.3.3 Are false accusations punishable for the victim?

Yes, since they can later be accused of the crimes of a false criminal complaint (Article 211 of the CP) or defamation (Article 412 of the CP), or they can be sued in a civil procedure claiming damages.

## 5.3.4 How is consent discussed in the law?

There is no legal definition of "consent" in Chile and it has only been discussed with regard to sexual crimes, for example, children under 14 years old can never consent in sexual relationships.

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

In Chile, both insanity and self-defense constitute defenses. The application of both exemptions in accordance with Article 10 of the CP is set out below. Where these apply, they act to exempt a person from criminal responsibility:

an insane person, unless they have acted in a lucid interval, and any person that — in any cause independent of their will — is totally deprived of reason

a person who works in defense of their person or rights, provided that the following circumstances concur:

illegitimate aggression

rational need of the means used to prevent or repel it

lack of sufficient provocation by the person defending themselves

a person who works in defense of the person or the rights of their spouse, civil partner, blood relatives in the whole straight line or the collateral line until the second degree, relatives in the whole straight line and in the collateral line until the second degree, or their parents or children, provided that the first and second circumstances described above concur, and that in case of having preceded provocation on the part of the subject, the defender had no part in it

a person who works in defense of the person and rights of a stranger, provided that the circumstances indicated in the previous point concur and that the defender is not driven by revenge, resentment or another illegitimate motive

extenuating circumstances include:

exempting circumstances that do not meet any of the requirements for their application as exemptions

having immediately preceded part of the offender, provocation or threat provided to the crime

that the previous conduct of the offender has been beyond reproach

## 5.4 Witness status

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

Article 298 of the CPP and Article 33 of the LTF order witnesses to testify honestly and completely.

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

The following may abstain from testifying:

the president, former presidents and government ministers; representatives of the National Congress; Supreme Court members and Constitutional Court of Chile members; and the comptroller general and the national prosecutor

the commander-in-chief of the Chilean Armed Forces, the general director of the Chilean Police and the general director of the Investigations Police

Chileans or foreigners with diplomatic immunity according to international treaties

those affected by serious disease or another impediment qualified by the court

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

The witness may refuse to answer questions when the answer puts him/her in danger of being prosecuted for a crime, and the same applies to answers that put/place his/her spouse, cohabitant, ascendants, descendants or family in the collateral line until the second degree, pupil or tutor in danger of being prosecuted.

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

During the trial, only the judge can interrogate a child or teenager. The involved parties must present their questions through the judge.

The new Law No. 21.057 (which will gradually take effect) regulates recorded interviews and other protective measures for minor victims of sexual crimes. This new law can be applied regarding victims of homicide, parricide, castration and gross injuries, all of which are included in the concept of domestic violence. We note that in crimes resulting in the death of the victim or where the victim is not able to exercise their rights, the ascendants, descendants, siblings or adopter of the victim may be considered a victim.

Referred law allows children to make their declaration through recorded interviews, which will be led by an interviewer designated by the prosecutor in charge of the investigation. The interview will take place in a place specially conditioned for this purpose and promptly after the complaint is filed, unless the child or teenager is not under conditions to do so, which will be evaluated by a professional worker of the Unit of Attention for Victims and Witnesses.

In the interview, only the child or teenager and the interviewer will be present, unless the prosecutor authorizes the presence of a translator or another professional specialist when required. These requirements also apply for the deposition of the child or teenager in the trial itself.

Furthermore, witnesses in the oral trial will not be able to refer to the content of the investigation interview, unless the respective witness is an expert.

During the trial, the judge may allow the interview to be exhibited, but only in the cases specified by Law No. 21.057.

The content of the interview will only be available to the involved parties in the process, the police during their investigation, family, judges and experts, who must necessarily have access for their enquiries.

Media present at the trial cannot take photographs, recorded or exhibit any part of the deposition or interview. In addition, media present cannot exhibit any images, make public any data or quote the deposition in any way that may identify the person making the deposition or their family. However, the media is allowed to report on the facts of the case as presented to the court.

## 5.4.5 Can children be called upon to testify?

Yes, but there are special regulations to protect children.

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

Special precautionary measures can be taken regarding the child.

## 5.5 Penalties and sentencing; penalty enhancements

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

Article 8 of the LVI punishes abuse constituting domestic violence, given its criticalness, with a fine of one-half to 15 *unidad tributaria mensual* (UTM) for the benefit of the regional government of the domicile of the complainant or plaintiff to be given to the care centers of domestic violence victims.

## 5.5.2 Are there criminal penalties?

If the act of domestic violence does not constitute a crime, a fine will be applied.

According to Article 14 of the LVI, the recurrent exercise of physical or psychological domestic violence is considered a crime of continuous abuse punishable with a minor prison sentence in a minimum to medium degree (20 days to 541 days). This is unless the violence constitutes a more serious crime, in which case only the penalty assigned by law will be applied to the most serious crime.

According to Article 14-*bis* of the LVI, for crimes constituting domestic violence, the judge will consider the entries recorded in the record kept regarding acts of domestic violence to evaluate the previous conduct of the accused.

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

According to Article 10 of the LVI, in cases of noncompliance with precautionary or accessory measures, the judge will inform the public prosecutor of the background of a breach of a court order.

Notwithstanding the above, the judge may order the arrest of the offender for up to 15 days as a measure of urgency.

The police must detain anyone caught flagrantly violating the measures indicated.

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

From one-half UTM to 15 UTM (approximately USD 35 to USD 1,020).

## 5.6 Post-release restrictions

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

No.

# 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.

## 6.2 Domestic violence in the workplace

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

In the event that the victim and the offender work in the same place, and where the offender has been prohibited from approaching the victim, the employer must adopt the necessary protective measures.

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

Employers cannot interfere in the family lives of their employees; therefore, acts of domestic violence for which a worker is being prosecuted or convicted do not constitute grounds for a justified dismissal.

If the court prohibits the offender from approaching the victim and both the victim and the offender work in the same place, the employer must take measures to ensure that the order is enforced, but this does not constitute grounds for a justified dismissal.

Notwithstanding the preceding information, the employment contract may be terminated with grounds in cases of sexual harassment, physical abuse against another worker and workplace harassment. In such cases, the act of domestic violence can be classified in one of these categories and, consequently, the employer could terminate the aggressor's contract (Article 160, No. 1 of the Labor Code).

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

Generally, no. In some cases, family members have the right to a leave period to take care of a sick family member (minors).

## 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. There are regulations that prohibit trafficking migrants for sexual exploitation. Article 411-*quater* of the CP prohibits coercion, deceit, abuse of power or the exploitation of the vulnerability or dependence of the victim for sexual exploitation, forced labor, servitude, slavery or similar practices, but it does not refer specifically to domestic violence.

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

There are no specific rules for migrants. The same rights apply to migrants as to Chileans. With regard to illegal migrants, Chile is currently in the process of regularization, the impact of which will make it easy to regularize the legal situation of a migrant in Chile. It is enough not to have a criminal record in their country of origin.

A special visa requires the holder to have a link with a Chilean national or resident. The loss of the link could mean the loss of the visa. However, there is a period of 30 days to change the visa status, during which time the holder may apply for a different type of visa (e.g., an employment visa).

## 6.3.3 Does domestic violence law discuss asylum accessibility?

No.

## 6.4 Armed forces

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

Generally, every member of the military has the obligation to report any act of domestic violence of which they become aware; but in cases of domestic violence, general criminal rules will apply.

## 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?

During the procedure, the judge must determine a regime of visits or prohibit the access of the offender to minors, as the judge deems appropriate. In the sentence that determines the existence of domestic violence, the judge will determine the definitive foods, the personal care regime and the direct and regular relationship of the children, if any, and any other family matter submitted to their knowledge by the parties (Article 9 of the LVI).

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

Yes.

## 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?

No.

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

No.

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

Yes, if the court orders this as a protection 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, the judge must give protection to the victim and the family group, protecting both their economic subsistence and patrimonial integrity. For such purposes, the prohibition of celebrating acts and contracts is specifically established as a precautionary measure, such as the sale or mortgage of the property in which the family lives.

On the other hand, in the event that the victim is the spouse of the offender, even in the absence of domestic violence, they can request that the family home be declared family property, in which case the offender may not reside in it.

Additionally, real estate property purchased during the marriage cannot be sold or encumbered without the written consent of the female spouse.

## 6.7 Possession of guns

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

At the beginning of or during the procedure, a judge may order that the aggressor be prohibited from carrying or possessing firearms. Furthermore, if the judge convicts the aggressor, the judge can commission the weapons owned by the aggressor.

## 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. The police must remove weapons from the home to which they have been called for cases of domestic violence. During the procedure, the judge may issue a preventive order prohibiting possessing and carrying weapons and, in their sentence and among other matters, they must decide whether to confiscate or prohibit possessing and carrying weapons.

# 7. Endnotes

[1]    "Domestic Violence: A Guide to Civil Remedies and Criminal Sanctions" — a guide to civil and criminal sanctions created in 2003 and updated in 2007.

[2]    Which recognizes the competence of the Committee on the Elimination of Discrimination Against Women to receive complaints from or on behalf of individuals or groups of individuals subject to the jurisdiction of the state party claiming to be victims of a violation of any of the rights set forth in the Convention.

[3]    [https://www.cnnchile.com/pais/protocolo-convencion-eliminacion-de-todas-las-formas-de-discriminacion-contra-la-mujer\_20191203/#:~:text=La%20CEDAW%2C%20por%20sus%20siglas,los%20derechos%20de%20la%20mujer.&text=La%20convenci%C3%B3n%20fue%20ratificada%20por,21%20de%20agosto%20de%202001](https://www.cnnchile.com/pais/protocolo-convencion-eliminacion-de-todas-las-formas-de-discriminacion-contra-la-mujer_20191203/%23:~:text=La%20CEDAW%2C%20por%20sus%20siglas,los%20derechos%20de%20la%20mujer.&amp;text=La%20convenci%C3%B3n%20fue%20ratificada%20por,21%20de%20agosto%20de%202001).

[4]    [https://chile.gob.cl/onu/en/noticias/chile-deposita-ratificacion-del-protocolo-facultativo-de-la-convencion#:~:text=El%20instrumento%20fue%20recibido%20por,el%2020%20de%20enero%20pasado](https://chile.gob.cl/onu/en/noticias/chile-deposita-ratificacion-del-protocolo-facultativo-de-la-convencion%23:~:text=El%20instrumento%20fue%20recibido%20por,el%2020%20de%20enero%20pasado).

[5]  [https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1157&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1157&amp;Lang=en).

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