

Key Components of Laws and Policies on Domestic Violence

Violence against women is a violation of human rights regardless of where it occurs. Most countries of the world have recognized this definition and have translated its understanding into national and international agreements to respect, protect, and guarantee the right of every woman to a life free from violence.

The sections to follow propose key components of laws and public policies that incorporate the contents, institutional mechanisms, and sectoral responsibilities needed to address and eradicate violence against women.

DEFINITION AND TYPES OF VIOLENCE AGAINST WOMEN

The definitions and types of violence against women that are incorporated into laws and other policies should include basic internationally recognized concepts. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará, 1994) established the contexts in which such violence occurs.

Violence against women shall be understood to include physical, sexual, and psychological violence that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse; that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and that is perpetrated or condoned by the state or its agents regardless of where it occurs.

Types of violence include the following:

- **Physical violence:** Physical violence is defined as intentional harm inflicted on another person through the use of physical strength or some type of weapon, and it may or may not cause internal injuries, external injuries, or both. Non-severe repeated punishment is also considered physical violence.¹
- **Psychological violence:** This type of violence refers to any behavior that inflicts emotional harm on victims, diminishes their self-esteem, or damages

or disturbs their healthy development or that of their family members. Examples include behaviors engaged in to dishonor, discredit, or devalue personal worth; humiliating treatment; constant surveillance; repeated insults; blackmail; degradation; ridicule; manipulation; exploitation; and deprivation of economic means. In some countries, legislation in this area includes limitations in or impediments to victims' freedom of transit.²

- **Sexual violence:** The World Health Organization (2002) has defined sexual violence as any unwanted sexual act or attempt to consummate an unwanted sexual act, unwanted sexual insinuations, and actions intended to market or use in any other way the sexuality of a person through coercion by another person, regardless of the relation of this person to the victim and in any area, including the home and the workplace. This definition includes violations by strangers, violations during armed conflicts, and violations of individuals with disabilities and/or children, as well as forced marriage, sexual harassment, refusal of and/or withholding of contraception and protection, forced abortion, and/or forced prostitution.³

- **Patrimonial or economic violence:** This type of violence is defined as actions or omissions on the part of the abuser that affect the economic life—and sometimes the survival—of family members. Examples include withholding of housing to the detriment of family members and failure to pay food quotas. Laws in some countries describe patrimonial/economic violence as actions or omissions that involve harm, loss, transformation, subtraction, destruction, retention, or diversion of objects, personal documents, goods, values, rights, or economic resources. This form of violence encompasses damages caused to common property or personal property of the victim as well.

Brazilian legislation also includes moral violence, defined as "any behavior that causes calumny, defamation, or insult to a woman."

KEY COMPONENTS OF LAWS AND PUBLIC POLICIES

Key components of laws and public policies on domestic violence should include analyses of relationships between victims and assailants, protective measures, care for victims, sanctions and/or rehabilitation for assailants, and defined roles for public agencies.

RELATIONSHIPS BETWEEN VICTIMS AND ABUSERS

Laws and policies should address the broad range of possible relationships between victims and their abusers, taking into consideration family models and the different areas in which domestic violence is triggered, given that it can occur inside or outside the home, between cohabiting partners or former partners, and so forth.

Aggression may result from imbalances of power within a family, and such imbalances can involve all household members. Some legislation includes people who have not been adopted formally and children from other relationships who live in the household. Relationships between fiancés and those not formally linked should be considered as well. The abuser, in this context, can be any individual who takes advantage of the condition of being coupled or of any modality of parenthood or relationship.

PROTECTIVE MEASURES

Protective measures are intended to preserve the lives of victims, prevent injuries, and protect property. The primary goals of such measures must be to protect women, protect children or other household members, and protect goods.

• **Protecting women:** Laws usually impose urgent, preventive, or corrective measures that must be ordered by the judge and that seek to guarantee immediate and effective protection to the victim and to children who are found to be at imminent risk. These measures should be ruled in accordance with

- (1) court statements,
- (2) the nature of the alleged violence, and
- (3) examinations assessing the emotional state of the victim, the physical or psychological injuries she suffered, and the probability of repetition of violence.

Mediation or compulsory conciliation is not recommended since experience has demonstrated that this type of measure increases the physical and emotional danger for the woman and that the abuser usually does not comply with the agreement signed.

• **Protecting children and other members of the household:** In terms of protecting children, the judge will determine custody arrangements and the type of contact the abuser will have with the children, taking into account the level of risk for present or future violence. Ultimately, visits from the abuser may be suspended on a provisional basis in accordance with the nature of the violent act and its possible consequences.

• **Protecting goods:** Measures aimed at preserving inheritance and common property include, among others, provisional allocation of housing in favor of the victim, orders to replenish expenses and compensate the victim for damages, and temporary prohibition of contracts transferring ownership. Expenditure replenishment orders do not exclude compensation actions designed to make good on inferable damages through other legal processes.

An illustrative and unrestricted list of protective measures would include the following:

1. **Exclusion of the abuser from the common residence:** Once the judge has received the declaration, invoked the facts in the denunciation, and verified the risks, he or she should rule on protective measures *inaudita parte*. Exclusion of the abuser from the common residence should be granted in cases in which there is a risk for the integrity of the affected woman or that of the family, regardless of the type of violence involved. The safety, health, and life of the victim will prevail over the abuser's right to occupy the residence.

2. **Guarantee of a safe residence for the victim:** In cases in which the affected woman has been forced to leave her residence, a safe residence should be guaranteed until the judge rules and makes effective the measure to exclude the abuser from the common residence.

3. **Return of the victim to the common residence:** The victim will be reintegrated into the residence she was forced to abandon, and the personal goods that had been in the home will be restored to her.

4. **Protection order:** The judge will report to the national, state, or local police the measures taken so that immediate protection can be given to the woman in the event that she requests it.

5. **Prohibition of harassment or intimidation of the victim or any member of the family:** The judge, to preserve the integrity of the affected person and/or the family, can prohibit the perpetrator's access to the place where the accuser and the family live. This prohibition should include restriction of contact and communication with the victim and her family members and friends. If this measure is implemented, the judge must order the abuser to abstain from harassing, pursuing, intimidating, threatening, or carrying out other forms of abuse against the victim or any other member of the family, whether they share the same residence or not. Thus, the abuser should be prohibited from the proximity of the family residence, the victim's workplace, and other sites frequented by the victim. The prohibition can be expanded to include school areas if children are also considered victims.

6. **Prohibition and seizure of weapons in the home:** In cases in which the victim reports that weapons are present in the home and are a source of threat, these weapons should be confiscated in order to preserve the safety of those affected.

7. **Provisional food requirement and subsistence expenditures:** The judge should provisionally decree food expenditures as well as expenditures for education, clothing, and children's recreation. In setting the food quota, the judge will take into account both the needs of the beneficiaries and the income of the abuser.

8. **Reporting:** Once protective measures are imposed, the court will notify the abuser.⁴

9. **Noncompliance with protective measures:** In cases of noncompliance, the judge can order the forcible execution of measures and send the official file to the office of penal justice to enforce the pertinent penalties.

Legislation in Honduras establishes precautionary measures complementary to cautionary and safety measures, such as the training of staff in charge of the issue, coordination mechanisms for case monitoring, and the obligation for employers to grant work permits to employees who must comply with these measures.⁵

Principles for Applying Protection Orders

- **Protection for victims of violence and their families:** Victims should be protected regardless of whether the infraction is of a correctional or criminal nature.
- **Dispatch:** Measures should be applied urgently since the issues involved are vital to the individuals affected.
- **Comprehensive nature and access:** Measures should meet all of the requirements necessary to protect those affected and should ensure access to the resources needed to guarantee due protection.
- **Process utility:** Protection orders should include recording and monitoring of cases to sustain the judicial process..

LEGAL PROCEDURES AND PRESENTATION OF EVIDENCE

The essential component of judicial protection for victims of domestic violence is the quality and availability of evidence. It is essential that legislation stipulate that victims be informed of the importance of evidence in the judicial process. Also, laws should establish broad criteria for receipt and assessment of evidence without avoiding judges' obligation to rationally establish the foundation for all procedures.

Types of Evidence, Procedures, and Diagnosis of Risk

The primary types of evidence are expert accounts, testimonials, and documentary evidence.

- **Expert accounts:** Expert witnesses can be requested by either the complainant or the judge. It is important to determine all physical and psychological evidence of the violent acts in question since this evidence is a key element in rulings for indemnity of damages. The judge can take into account the professional opinions of experts from recognized public or private institutions.

- **Testimonial evidence:** Testimony from family members, neighbors, and friends can be crucial in resolving a case and should be considered by the judge. Witnesses can be summoned to court, or, as an urgent preventive measure, their statements can accompany the denunciation; subsequently, they will sign their statements in court. This allows immediate rulings to be made. Avoiding confrontations between victim and abuser in a public audience is recommended if the victim is a minor, especially in cases of sexual abuse.

- **Documentary evidence:** The judge will take into account contributed documents, such as the clinical file of a victim and her children, existing precautionary measures, and information on property and belongings, to confirm the status of common property or earnings, bank accounts, and credit cards so as to help determine the income of the alleged abuser and ensure an adequate food quota.

Expedient Transaction

It is important to expedite the procedure of investigating and ruling on cases of domestic violence; the transaction should extend no longer than 15 days, taking into account both administration and the trial (in either family or criminal court). This will ensure that the cycle of violence does not result in steps toward reconciliation and the risk of violent acts becoming chronic.

DIAGNOSING RISK

Assessments of risk—as determined by an interdisciplinary team of physicians, social workers, and psychologists, among others—should be sufficient to order protective measures for the victim and her children. Such assessments need to incorporate several criteria, including the following:

- Judicial personnel should be trained in, and sensitized to, domestic violence. This should be a criterion for contracting judicial personnel, as well as for psychologists and social workers assigned to manage justice agencies.

- Forensic services should be available 24 hours per day, every day, for the collection of physical evidence, particularly in cases of sexual crimes. Health workers, especially those employed in remote or rural areas, should be trained in collecting and preserving physical evidence.

- The testimony of minors should be treated as expert testimony instead of merely eyewitness testimony. The 1989 Convention on the Rights of the Child establishes the right of children to have their declarations valued, and they are a source of valuable information since they are also victims. Their testimony should be gathered by specialists with training that appropriately respects and considers children's age and status.

COMPREHENSIVE CARE FOR VICTIMS

Victims of violence have a right to government-supported health services, psychological guidance, police attention, legal assistance, and access to justice and education, including the following characteristics:

- Victims of domestic violence should receive care and assistance free of charge, whether judicial services or social services such as health care.

- Workers in the health and legal systems should be sensitized to and trained in issues of human rights and inequality of power in relationships between the sexes. These individuals need specific skills so that they can provide compassionate, timely, efficient, and high-quality care to victims of domestic violence.⁶

- Appropriate standards and protocols, which can guide care providers, facilitate monitoring of services, and ensure delivery of high-quality care, should be applied.

- The institutions involved should have a data system in place to record the cases of violence against women they attend to, respecting women's identities and their right to privacy. Such data will provide evidence of the problem so that authorities can make decisions based on reality, analyze the characteristics of the problem, and improve quality of care. Institutions can also create registries of abusers, which in some cases seem to function as an inhibiting factor given that abusers fear their names will be registered as such.

- Since domestic violence is a problem arising from multiple causes, it is important that those charged with addressing it coordinate their interactions, forming networks of care to ensure the necessary data collection, support, and comprehensive care.

- Personnel working in the field of domestic violence should have available self-care programs that include professional and social support networks, teamwork, satisfactory labor conditions and structures, continuing education, psychological care, and preventive vacations.

- Programs focusing on women's empowerment should be implemented so that victims can regain their autonomy and self-esteem.

SANCTIONS AND REHABILITATION FOR ABUSERS

According to legislation in many countries, those responsible for committing acts of domestic violence face legal sanctions and/or the possibility or obligation of participating in rehabilitation programs. The most common sanctions are fines, community work, indemnity for damages, and restrictions of freedom. Topics typically addressed in rehabilitation programs include masculinity, interpersonal relationships, conflict resolution, anger management, criminal sanctions, alcohol and drug abuse, traumas, sexual health, community structure, and violence.⁷

JUDICIAL AND EXECUTIVE BRANCHES AND THE POLICE

At the national level, a cabinet-level position in the executive branch can ensure the permanence of a national system against domestic violence, complemented by an autonomous judicial branch wherein sufficient human resources are sensitized to the problem. Police can offer guidance to abuse victims and apply the law.

Administration of Justice

The law is the essential reference for executive and judicial branch policies. The effectiveness of the law depends largely on the presence of an autonomous judicial branch with solid material and professional resources; training needs include the following:

- Law school courses on international human rights treaties, especially on domestic violence and equality and gender equity. Lawyers and judges need to be sensitized to domestic violence problems.

- Law schools with training programs focusing on domestic violence.
- Establishment of a profile of judges, secretaries, assistants, other staff members, and managers concerned with the issue of violence against women. The profile should define the need for professional and technical skills in areas such as gender analysis of legal and normative texts, detection of gender bias in all contexts, teamwork, ethics, and an integrated focus on domestic violence.
- Establishment of mechanisms in the judicial branch to dismiss staff members and judges who are perpetrators of domestic violence and to register such behavior in the aforementioned profile. The authorities in the case should inform the judicial branch that such a denunciation may be cause for sanction and/or termination.
- Formation of interdisciplinary teams, including psychologists and social workers, to collaborate with judicial officials in diagnosing risk, working in family courts to the extent possible so as to avoid transfer of victims and subsequent delays.
- Inclusion of referral and counterreferral systems in all programs with anti-violence agendas to strengthen comprehensive care delivery and long-term data collection.

Executive Branch

The permanence, organic structure, and monitoring of a national system to combat domestic violence can be ensured through establishment of an interbranch regulatory and interinstitutional entity at the executive branch level. This would help strengthen interagency coordination at the state level, particularly in terms of procurement of justice, and help create standard procedures of action for the teams involved.

Police

The police play a key role in providing guidance to victims and in applying the law since they must carry out the measures ordered by the judge in cases in which abusers resist. Control mechanisms and police monitoring are needed to ensure compliance with the orders issued. Implementation of the following measures is recommended:

- Training and sensitization on the importance of police work in violence against women and the specific protocols for this work.
- Improvements in quality of care delivered in terms of availability, accessibility, and the integrated nature of the response.
- Compulsory completion of reports on acts of violence aimed at preserving evidence and training on the importance of creating and preserving evidence.
- Anti-corruption mechanisms to prevent police force members from soliciting or accepting gifts for fulfilling (or not fulfilling) their work.
- Programs for detecting and attending to police force members with a history of family violence and disqualification of police abusers from cases of domestic violence.
- Creation of permanent structures, such as groups specializing in the prevention of domestic violence, in an effort to ensure the effectiveness and continuity of training processes.
- Establishment of specialized units within police delegations and evaluation of the lessons learned from these units.
- Establishment of and training in specific skills for preventive and investigatory policing.

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