

LEGISLATIVE REFORM AND THE STRUGGLE TO ERADICATE VIOLENCE AGAINST WOMEN IN THE DOMINICAN REPUBLIC

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INTRODUCTION

In 1997, the National Congress of the Dominican Republic approved Law 24-97 Against Domestic Violence in a bid to alter the state's response to violence against women.¹ Law 24-97 introduced important changes to the country's Criminal Code, criminalizing violent and discriminatory conduct in an effort to guarantee women equal protection and equal benefit of the law.² The need for state action was urgent. A letter submitted to the Senate in 1996 in support of the draft bill that would later become Law 24-97 noted that murder was the sixth most common cause of death among Dominican women between the ages of fifteen and forty-five, that one in six Dominican homes experienced some type of violence, and that eighty percent of women who sought health care did so as a result of domestic violence.³

Prior to 1997, the Dominican Criminal Code was in dire need of reform. Substantive provisions in the Code dated back to the introduction of the Código de Instrucción Criminal y Código Penal (1826), modeled on the Napoleonic Codes and introduced following the Haitian occupation of

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¹ Ley 24-97 Sobre Violencia Intrafamiliar (4th ed. 2000) (Dom. Rep.) [hereinafter Law 24-97].

² Código Penal, annotated version (M. Minervino ed., 1987) [hereinafter Criminal Code].

³ Letter from the Comisión Honorífica de Mujeres Asesoras del Senado to the Senate (Mar. 11, 1996) (on file in the archives of the Secretaría de Estado de la Mujer, Santo Domingo, Dominican Republic) [hereinafter Letter to the Senate].

1821.⁴ Although the Code was modified after Dominican independence in 1844, for the most part it remained antiquated.⁵ To eliminate remnants of an authoritarian and patrimonial past, legislative reform, especially in the area of criminal law and criminal procedure, was deemed crucial to democratic reform.⁶ As one commentator has noted, criminal law reform signifies “*la muestra de la renovación democrática latinoamericana*,” or “proof of the renewal of Latin American democracy.”⁷

From the perspective of violence against women, domestic and international forces combined to catalyze the radical legislative transformation that culminated in the approval of Law 24-97. Within the Dominican Republic, an organized feminist movement emerged in the late 1970s to mid-1980s, agitating for change within universities, in the courts and the legislature, and through the media.⁸ Civil society organizations specializing in gender issues also appeared at the same time, pressing for change, providing services to women that had not been publicly available, and reaching outside the country for international support.⁹

⁴ Julio G. Campillo Pérez, *Los Códigos Dominicanos: Apuntes para su Historia, in Trabajos Conmemorativos del Primer Centenario de la Adopción de los Códigos Franceses como Leyes Nacionales 181-82 (1985).*

⁵ Roberto Obando Prestol & Helen Azouri, Comisionado de Apoyo a la Reforma y Modernización de la Justicia, Gobierno de la República Dominicana, *Hacia un Nuevo Proceso Penal*, at <http://www.reforma-justicia.gov.do/hacia%20nuevo%20proceso%20penal.htm> (last visited Dec. 14, 2004):

[L]o cierto es que a grandes rasgos nuestro ordenamiento legal es manifiestamente arcaico y obsoleto. En efecto, las principales codificaciones (Código Penal, de Procedimiento Civil y Criminal, y de Comercio) datan de los principios del siglo pasado y estaban destinados a regir una sociedad eminentemente rural y de escaso desarrollo científico y económico.

⁶ For more information on the transition to democracy and what has been termed “neopatrimonialism,” see Jonathan Hartlyn, *The Struggle for Democratic Politics in the Dominican Republic* (1998).

⁷ Prestol & Azouri, *supra* note 5.

⁸ Interview with Gloria Henríquez, member of the Coordinadora de Organizaciones No-Gubernamentales del Área de la Mujer, an umbrella organization comprised of civil society organizations that work with women, in Santo Domingo, Dom. Rep. (Dec. 10, 2001). Henríquez is the former Executive Director of CENSEL and has worked as a public prosecutor.

⁹ Interviews with Lucila Lara Núñez, Executive Director of CENSEL, in Santo Domingo, Dom. Rep. (Dec. 2001, Jan. 2002). These non-governmental organizations, which started to appear in the late 1970s and early 1980s, included five NGOs that provided legal advice and legal representation to women: Centro de Servicios Legales para la Mujer, Inc. (CENSEL) located in Santo Domingo; Núcleo de Apoyo a la Mujer located in Santiago; TUMUJER located in Santo Domingo; Centro Dominicano de Asesoría e Investigaciones Legales (CEDAIL) located in Santo Domingo; and Centro de Protección Legal y Servicios Social del Sur (CEPLES) located in Baní, Peravia Province. Other civil society groups dedicated to women did not provide legal services beyond advice and referrals but worked to raise public awareness and to empower women: Mujeres Dominicano-Haitianas (MUDHA) (immigration, refugee issues); Asociación Dominicana por el Bienestar de la Familia

Several highly publicized cases of violence against women engaged the public conscience when it became shockingly clear that women fleeing their assailants were routinely turned away by police and denied access to judicial institutions for protection and redress, often with deadly results.¹⁰ One case in particular sparked a public debate, questioning the established view that violence against women, especially violence within the family, was a "private affair."¹¹ Press reports told the story of a woman who had repeatedly pleaded with police for protection from her abusive husband but was ignored. Her husband subsequently locked the woman and her two children into a bedroom and set fire to the family home, burning them alive.¹²

There was also growing pressure from abroad. The Dominican Republic ratified several international conventions requiring member states to institute measures combating violence against women. In 1982, the Dominican Republic ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"),¹³ and in 1996 it ratified the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women ("Convention of Belém do Pará").¹⁴ The Preamble to Law 24-97 mentions both of these international human rights instruments.¹⁵

(PROFAMILIA) (gender, family planning, reproduction issues); CEMUJER (credit programs, non-traditional jobs); Centro de Orientación e Investigación Integral (COIN) (prostitution, sexually-transmitted diseases, AIDS and HIV); Centro de Planificación y Acción Ecuéménico (CEPAE) (popular education); Confederación de Mujeres Campesinas (CONAMUCA) (rural issues); COSALUD (preventive medicine); Colectiva Mujer y Salud (women's health issues); and Mujeres en Desarrollo Dominicana, Inc. (MUDE) (credit programs for women living in rural areas), among other institutions. Most of these organizations operated in the National District of Santo Domingo or in other urban centers.

¹⁰ Interview with Mercedes Miguelina Rodríguez, Director of the Legal Department, CENSEL, in Santo Domingo, Dom. Rep. (Nov. 27, 2001). Rodríguez currently works for the Secretaría de Estado de la Mujer (Departamento de Defensoría).

¹¹ *Id.*

¹² *Id.*

¹³ Convention on the Elimination of All Forms of Discrimination Against Women (Dec. 18, 1979), <http://www.ohchr.org/english/law/cedaw.htm> [hereinafter CEDAW].

¹⁴ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (June 9, 1994), <http://www.oas.org/cim/English/Convention%20Violence%20Against%20Women.htm> [hereinafter Convention of Belém do Pará].

¹⁵ Law 24-97, Preamble:

Considerando: Que la República Dominicana es signataria de la «Convención para eliminación de todas las formas de Discriminación contra la Mujer», así como la «Convención Interamericana para prevenir, sancionar y erradicar la violencia contra la Mujer o Convención de Belém do Pará» ambas debidamente ratificadas por el Congreso Nacional, en consecuencia, se hace necesario que todos los instrumentos legales del país, estén acordes con las disposiciones de las referidas Convenciones . . .

With Law 24-97, the Dominican Republic succeeded in criminalizing most forms of violence against women. This was the first, and perhaps easiest, step in the state's battle to eradicate violence against women. However, there remains an urgent need to promote the safety and security of survivors of violence and to foster public confidence in the administration of justice.¹⁶ The Dominican Republic must move beyond the simple codification of a normative regime toward ensuring that regime's realization in practice.

For example, in Canada, the spousal homicide rate for women decreased by more than half between 1974 and 2002, dropping from 16.5 victims per million married women in 1974 to 8.1 victims per million married women in 2002.¹⁷ The decrease has been credited in part to increased gender equality, more sophisticated police and court policies addressing violence against women, effective implementation of spousal abuse charging and prosecution policies, resort to treatment programs for abusive spouses, and increased access to specialized services, such as domestic violence courts and emergency shelters for abused women.¹⁸

The Dominican Republic faces additional cultural challenges. The State will need to foster a massive shift in the perception of women and violence against women through public education campaigns.¹⁹ The mere codification of laws will not, on its own, change cultural values. There is also an urgent need to train law enforcement professionals and judges, as well as lawyers, about the changes introduced by Law 24-97, and a further need to coordinate efforts across different public sectors, especially the health care sector and the law enforcement sector.²⁰ Finally, the state's ability to respond to violence against women is linked to the broader need for continued reform of judicial and political institutions and for reform initiatives designed to uproot economic inequities.

¹⁶ Dep't of Justice Canada, *Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation* 15-16 (Apr. 2003), at http://canada.justice.gc.ca/en/ps/fm/reports/spousal_e.pdf [hereinafter *Spousal Abuse Policies and Legislation*]. "The Working Group identified three key objectives of the criminal justice system's response to spousal abuse: criminalizing spousal abuse; promoting the safety and security of the victim; and maintaining confidence in the administration of justice." *Id.*

¹⁷ Canadian Centre for Justice Statistics, *Family Violence in Canada: A Statistical Profile 2004* 36 (July 2004), <http://www.statcan.ca/english/freepub/85-224-XIE/85-224-XIE2004000.pdf> [hereinafter *Family Violence in Canada*].

¹⁸ *Id.*; see also *Spousal Abuse Policies and Legislation*, *supra* note 16, at 9.

¹⁹ Interview with Núñez, *supra* note 9.

²⁰ *Id.*

OBJECTIVES AND METHODOLOGY

The present study analyzes the impact of Law 24-97 on the Dominican state's qualitative response to violence against women. Part I critiques laws and procedures available to combat violence against women before 1997. Part II explains the legislative changes implemented through the enactment of Law 24-97 in 1997. Part III details the impact of Law 24-97 and outlines recommendations for change.

This study was hampered by a lack of research and data documenting incidents of violence against women. Until the 1980s, systematic studies on women and gender were virtually non-existent in the Dominican Republic.²¹ One reason for this academic and statistical neglect was the predominance of a patriarchal and sexist discourse in academia which tended to dictate topics of inquiry. This problem was exacerbated by the dearth of female academics and a prevailing assumption that gender issues (if they existed at all) did not comprise a serious enough topic for academic research.²²

In the 1980s, non-governmental organizations began to fill the statistical gap with exploratory studies.²³ For example, in 1982, the Centro de Investigación para la Acción Femenina ("CIPAF") conducted one of the first studies regarding the frequency with which cases of rape were reported to police.²⁴ Comprehensive studies, however, do not exist.²⁵ Even today, as will be discussed in Part III below, reliable statistics and research are difficult to find.

The deficiency in data is not surprising and is characteristic of other countries as well. It was not until 1980 that the Canadian Advisory Council

²¹ Amparo Arango Echeverri, *La Investigación sobre el tema mujer en República Dominicana, in La Investigación Sobre la Mujer en América Latina: Estudios de Género y Desafíos de Sociedad* 58-59 (Claudia Serrano ed., 1993).

²² *Id.* According to Echeverri, the scarcity of serious academic research into the problem of violence against women can be attributed to several additional factors. First, there had generally existed a very weak tradition of academic research in the Dominican Republic. Second, the extended duration of the Trujillo dictatorship meant the comparatively late appearance of social science faculties within national universities. Third, serious social science research began to emerge at a time of great social and political instability. These social and political processes helped shape the focus of that research, primarily a concern with economic development and the transition to democracy, to the exclusion of other topics of inquiry. *Id.*

²³ Clara Báez, *Estadísticas para la Planificación Social con Perspectiva de Género: Fortalecimiento de la Capacidad Nacional para la Ejecución de la Plataforma de Beijing* 113-14 (2000).

²⁴ Centro de Servicios Legales para la Mujer (CENSEL), *Incriminación a la Violencia contra la Mujer* 62 (1991) [hereinafter CENSEL].

²⁵ Báez, *supra* note 23, at 114.

on the Status of Women provided the first national estimates of the rate of spousal abuse in Canada, revealing that one in ten Canadian women who were married or in a common-law relationship were battered by their partners.²⁶

Widespread underreporting of cases by women, their families, and friends also obscures a violent reality. Studies conducted in several Latin American countries reveal that only an estimated fifteen to twenty percent of cases of family violence against adult women are reported to police.²⁷ The true dimensions of the problem of violence against women, especially violence occurring within the family, tend to remain inaccessible for several reasons. These include the belief that family violence is a "private matter" comprised of isolated, deviant acts and the belief that acts of violence within the family are part of the normal dynamic of family life.²⁸ Popular attitudes are telling. There is a common Dominican expression that is often used to explain away domestic violence: "*Esos son pleitos entre marido y mujer*,"²⁹ or, "Those are disputes between husband and wife."

In addition, victims often blame themselves for provoking the violence that they endure, an attitude that is reinforced by cultural and societal perceptions.³⁰ Finally, many victims believe that there are no legal or social services available to them, or that existing services are inadequate and perhaps even detrimental to their interests.³¹

The present study relies on an analysis of pre-1997 Criminal Code provisions, changes introduced by Law 24-97, and information gathered by non-governmental organizations and international organizations. This analysis has been supplemented with personal interviews conducted with past and present lawyers and staff at the Centro de Servicios Legales para la Mujer, Inc. ("CENSEL"), a Dominican non-profit, non-governmental organization that has been working on behalf of victims of violence since 1987. In addition, a survey was conducted with police officers and hospital emergency room physicians, residents, and nurses in the cities of Santo Domingo and Baní over the course of three months—November 2001 to January 2002.³² The survey was designed to test the knowledge of these

²⁶ *Spousal Abuse Policies and Legislation*, *supra* note 16, at 3 (quoting Linda MacLeod, *Wife Battering in Canada: The Vicious Circle* 14-16 (1980)).

²⁷ Elizabeth Shrader & Monserrat Sagot, *Domestic Violence: Women's Way Out* 6 (2000), <http://www.paho.org/English/HDP/HDW/womenswayout.pdf>.

²⁸ *Id.*

²⁹ The implication is that these are "normal" and "private" family problems in which no one, especially the state, should interfere.

³⁰ Shrader & Sagot, *supra* note 27, at 6.

³¹ *Id.*

³² Thirteen police detachments were visited in the cities of Santo Domingo and Baní and a total of twenty-seven police officers agreed to participate in the survey

professionals with respect to the substantive criminal provisions introduced by Law 24-97. The survey was also designed to reveal the extent to which gender-related myths and stereotypes continue to impede a just application of Law 24-97.

I. VIOLENCE AGAINST WOMEN: LAW AND PRACTICE PRIOR TO 1997

A. Lack of Constitutionally Guaranteed Equality Rights

The ideal of equal application of the law, regardless of personal characteristics such as gender, was not expressly included in the 1994 Constitución Política de la República Dominicana,³³ despite the requirement in CEDAW that all signatory countries must include “the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.”³⁴ Equality rights, specifically related to gender, are also absent from the 2002 Constitución.³⁵

Article 8(15)(d) of the 2002 Constitución, like the 1994 version, protects the civil capacity and property rights of married women but does not provide a more general, comprehensive guarantee of legal equality based on gender or any other enumerated ground.³⁶ Article 8(5) of the 2002 Constitución, like the 1994 version, states that everyone will receive equal

[hereinafter Police Interviews]. In Santo Domingo, I visited the following police detachments: Dest. Luperón, Dest. Gualay, Dest. de Gazcue (Av. Bolívar), Dest. Palo de la Garza (Gualay), Dest. Zona Colonial, Dest. Honduras, Dest. #2 (Zonal Norte – María Auxiliadora), Dest. de Guachupita, Dest. Sánchez Luperón (El Capotillo), and Dest. La Caleta. In Baní, I visited Dest. Palacio de Justicia (La Preventiva), Dest. Cuartel General Central (La Fortaleza), and Dest. El Fundo. I visited six hospitals in the cities of Santo Domingo and Baní and interviewed six physicians, nine nurses, and six medical residents. In Santo Domingo, emergency room professionals were surveyed in the following hospitals: Hospital de la Maternidad Nuestra Señora de la Altagracia, Hospital Dr. Francisco Moscoso Puello (El Capotillo), Hospital de la Mujer Dominicana, Hospital Padre Billini, and Hospital Docente Universitario Dr. Dario Contreras. In Baní, I visited the Hospital Nuestra Señora de Regla.

³³ See Constitución Política de la República Dominicana (1994), <http://www.georgetown.edu/pdba/Constitutions/DomRep/domrep94.html>.

³⁴ CEDAW, *supra* note 13, at art. 2(a).

³⁵ See Constitución Política de la República Dominicana (2002), <http://www.georgetown.edu/pdba/Constitutions/DomRep/domrep02.html>.

³⁶ See *id.* art. 8(15)(d), which provides, “La mujer casada disfrutará de plena capacidad civil. La ley establecerá los medios necesarios para proteger los derechos patrimoniales de la mujer casada, bajo cualquier regimen.”

treatment under the laws of the country.³⁷ However, this Article does not enumerate grounds for discrimination. The scope and purpose of the provision are also narrowed by the second phrase, which limits the ability of the government to legislate only what is considered just and useful for the community and to prohibit no more than what is harmful for the community.

Article 100 of the 2002 Constitución, like the 1994 version, appears at first glance to provide a constitutional basis for the principle of legal equality. This provision condemns all privileges that undermine the principle of equality among Dominicans and notes that the only differences to be acknowledged are those resulting from the “talents and virtues” of the individual.³⁸ However, this provision is followed by a clause that limits its application to preventing class-based legal distinctions—“therefore, titles of nobility or heredity distinctions cannot be awarded.”³⁹ As a result, the provision simply prohibits hierarchical class distinctions awarded or recognized as inheritable by any branch of the government.

In the absence of a constitutional guarantee of legal equality, it is not surprising that prior to the 1997 Criminal Code amendments there was a complete lack of substantive criminal law provisions and procedures designed to combat violence against women. Existing laws reflected and legitimized a social-cultural power imbalance that left women without legal protection or equal benefit of the law. Women could not appeal to the supremacy of the Constitution to challenge the discriminatory nature of the criminal laws that affected them or to demand legal protection from the state.

B. Statistics

In 1982, a study conducted by CIPAF found that, according to data collected by the Statistics Office of the National Police, there were 477 reports of rape and 338 reports of attempted rape between 1975 and 1980.⁴⁰ The authors of the study noted that these figures were conservative given the source and that there had been no systematic attempt to break down the

³⁷ *Id.* art. 8(5), which provides, “La ley es igual para todos: no puede ordenar más de lo que es justo y útil para la comunidad ni puede prohibir más que lo que le perjudica.”

³⁸ *Id.* art. 100, which provides:

La República condena todo privilegio y toda situación que tienda a quebrantar la igualdad de todos los dominicanos, entre los cuales no deben contar otras diferencias que las que resulten de los talentos o de las virtudes y *en consecuencia*, ninguna entidad de la República podrá conceder títulos de nobleza ni distinciones hereditarias (emphasis added).

³⁹ *Id.*

⁴⁰ CENSEL, *supra* note 24, at 62.

numbers according to the sex and age of the victims.⁴¹ A comprehensive analysis of press reports found that only nineteen percent of rapes and thirteen percent of attempted rapes were reported by the radio and written press and that almost all of the cases that were reported were ones in which the victim was a minor or had been murdered.⁴²

Statistics provided by the Department of Statistics and Cartography of the National Police reveal that during the years between 1983 and 1988 there were 1083 reports of rape and 669 reports of attempted rape; approximately two-thirds of the victims were minors and approximately one-third were adult women.⁴³ It remains unclear whether the increase in the number of reports from 1975-1980 to 1983-1988 indicates an increase in the actual number of rapes and attempted rapes, a growing willingness on the part of victims to report crimes to police, better record-keeping practices, or a combination of all three factors. An analysis of all reports of violence against women entered at the Office of the Public Prosecutor, Santo Domingo, reveals that between January 12, 1988 and October 27, 1988, eighty percent were cases of sexual assault.⁴⁴ Another study conducted by CENSEL in 1986 and 1987 found that of all cases of violence against women pending in the courts of Santo Domingo, in ninety-two percent the assailant was someone known to the victim (e.g., relative, spouse, ex-spouse, employee, employer).⁴⁵ An analysis of those cases revealed that 28.18 percent of incidents of violence against women occurred in the home, 6.82 percent in private places, 13.84 percent in public places and, unfortunately, in 51.17 percent of the cases, the location was not indicated in the records.⁴⁶ According to statistics gathered by the Secretary of State for the Interior and Police, there were 7,394 charges registered for rape between 1991 and 1995.⁴⁷ These numbers were not broken down according to the sex or age of the victims.⁴⁸

The true frequency of rapes, attempted rapes, and other forms of sexual and physical assaults remained unknown given the fact that many victims refused to report these crimes to the police.⁴⁹ Victimization surveys are generally acknowledged to be more accurate than police-reported

⁴¹ *Id.*

⁴² *Id.*

⁴³ Centro de Apoyo Aquelellar (CEAPA), La Violencia Contra las Mujeres en la República Dominicana 17 (1996) [hereinafter CEAPA].

⁴⁴ CENSEL, *supra* note 24, at 104.

⁴⁵ *Id.* at 86-87.

⁴⁶ *Id.*

⁴⁷ Báez, *supra* note 23, at 128.

⁴⁸ *Id.*

⁴⁹ *Id.* at 114.

incident-based surveys.⁵⁰ The Instituto de Investigación y Asesorías en Salud conducted a study in 1992 in the barrio of San Carlos, Santo Domingo with women between the ages of fifteen and fifty-nine.⁵¹ Of those surveyed, ninety-five percent admitted that they had experienced some form of violence at home, approximately fifty-two percent had suffered physical assaults, approximately forty-three percent had been forced to engage in sexual activities against their will, and less than three percent had reported incidents of violence to the police.⁵²

In 1995, the courts of Santo Domingo (Palacio de Justicia) registered the following criminal cases (not broken down by gender): eleven cases of death threats, sixty-seven cases of crimes against the honesty of the person, thirteen attempted crimes (unspecified), two homicides, and six cases of physical assaults.⁵³ At the time, the courts did not have an accurate registry system,⁵⁴ a problem that persists today.⁵⁵ Nevertheless, a marked discrepancy existed between cases registered in the courts and cases reported to police. In that same year, the National Police had registered 10,810 reports of death threats, 1,097 reports of rapes of minors, 673 reports of attempted rapes of minors, and 1,007 homicides.⁵⁶

C. Crimes of Sexual Violence: Rape, Sexual Assault, and Child Abuse

1. Under-reporting by Victims

Prior to 1997, the frequency with which rapes and sexual assaults were reported to the police and carried through to trial appears to have been very low. A 1986 newspaper article estimated that, in the Dominican Republic, one in three adult women was forced to engage in sexual acts against her will, and that one in four girls was sexually assaulted before reaching the age of sixteen.⁵⁷ A study conducted by CENSEL found that there were 216 police reports of crimes of sexual violence in the city of

⁵⁰ *Spousal Abuse Policies and Legislation*, *supra* note 16, at 3 ("Victimization surveys are considered more complete since they interview samples of the population directly about their experiences and do not depend on victims' willingness to report crimes to police . . .").

⁵¹ CEAPA, *supra* note 43, at 21.

⁵² *Id.*

⁵³ *Id.* at 20.

⁵⁴ *Id.*

⁵⁵ Báez, *supra* note 23, at 114.

⁵⁶ *Id.*

⁵⁷ CENSEL, *supra* note 24, at 62.

Santo Domingo in 1988, 254 in 1989, and 316 in 1990.⁵⁸ Given a population of approximately 8.8 million,⁵⁹ a huge discrepancy is evident between the estimate of the actual number of sexual assaults and the number that were reported to the police. In contrast, in 2002, the Santo Domingo District Attorney's office received 2,000 complaints of sexual assault,⁶⁰ perhaps reflecting a growing trend to report this crime.

It is not surprising that many women chose not to report incidents of sexual violence to the police. In the Dominican Republic, a strong negative stigma is attached to a woman or girl who has been raped.⁶¹ The victim, not the assailant, is stigmatized. What is important is whether or not a woman or girl has an intact hymen and the way in which that hymen has been broken.⁶² In addition, women or girls who are raped are often regarded with distrust and suspicion. Family and neighbors invariably wonder whether she in fact provoked the attack or gave consent.⁶³ As a result, women tend not to report the incident to police, and families go to great lengths to cover up the assault.

Reporting rape is traumatic because of the accompanying social stigma and because the victim is re-victimized by the reporting process. According to a lawyer who accompanied an older woman to a police station to report a rape, women had to face police and prosecutors who were indifferent or assumed that they were lying.⁶⁴ Upon seeing the woman, the police laughed, refused to accept the report, and stated, "*Eso fue un favor que le hizo ese hombre*,"⁶⁵ or, "That a man did her a favor."

Women were interrogated about their sexual history and asked what they had been wearing at the material time, whether they had consumed alcohol, whether they had taken off their own clothes, and why they had been in a certain place at a certain time.⁶⁶ Questioning was especially severe if the woman had no bruises on her body, was not a virgin, was married,

⁵⁸ *Id.* at 105.

⁵⁹ U.S. Dep't of State, Dominican Republic, in Country Reports on Human Rights Practices—2003 (Feb. 25, 2004), <http://www.state.gov/g/drl/rls/hrrpt/2003/27895.htm> [hereinafter Dominican Republic 2003].

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Interview with Noris Mercedes Mena, former CENSEL lawyer now in private practice, in Santo Domingo, Dom. Rep. (Nov. 26, 2001).

⁶³ Interview with Gladys Jacqueline Piñeyro, former CENSEL lawyer who worked in the area of gender-based violence for ten years, in Santo Domingo, Dom. Rep. (Nov. 20, 2001); see also *id.*

⁶⁴ Interview with Mena, *supra* note 62.

⁶⁵ *Id.*

⁶⁶ Interview with Henriquez, *supra* note 8; see also *id.*

was over the age of eighteen, or was known to have had several sexual partners.⁶⁷ This line of questioning insinuated that she provoked the attack and legitimized the idea that a woman could be held responsible for the act of violence to which she has been subjected. A woman also had to endure the invasive vaginal examinations of the *médico legista*.

In the end, the police might decide not to charge the attacker, or they might decide to take the information and charge the aggressor without issuing an arrest warrant. There were no protective orders available, leaving a woman vulnerable to reprisals from an angry assailant who faced a charge but was not subject to a custodial order or conditions of release.⁶⁸ Prosecutors might eventually stay the charge, or a judge would grant the assailant bail. In other words, women were well aware that legal protection was not readily available despite the ordeal they were expected to withstand. Public prosecutors and judges would conduct questioning along the same lines. It should be noted that children were never questioned in private but rather had to re-live the experience in open court.⁶⁹

2. *The Crimes of Rape and Sexual Assault*

The rape provision prior to the 1997 amendments was codified in Article 332 of the Criminal Code, under Title II, Section 4, entitled "Crimes against the honesty of a person."⁷⁰ This heading revealed the underlying sexist rationale to legislative and cultural understandings of sexual violence. For years civil society groups had demanded that the heading be changed to "Crimes against the physical and psychological integrity of persons."⁷¹ The title "Crimes against the honesty of a person" provided too narrow of a legal construction to the reality of sexual violence. "Honesty" had always been equated, juridically and culturally, with virginity, and more specifically, with female virginity. The legal effect of this construction was that rape and other forms of sexual violence could only be committed against "honest" (in other words, "virgin") women and children. The implication was that non-virgin women, especially married women, had no right to withhold their consent to sexual relations.

The first paragraph of Article 332 provided a definition of sexual assault that focused exclusively on the more narrow offense of rape and excluded other types of sexual assaults that did not result in penetration but that were nevertheless inflicted without the victim's consent.⁷² Article 332

⁶⁷ Interview with Mena, *supra* note 62.

⁶⁸ *Id.*

⁶⁹ Interview with Piñeyro, *supra* note 63.

⁷⁰ Criminal Code, Tit. II, Section 4.

⁷¹ See, e.g., Letter to the Senate, *supra* note 3.

⁷² Criminal Code, art. 332:

also established a sentencing scheme upon conviction that corresponded to the age of the victim.⁷³ The rape had to be "normal" and "illicit" and had to be committed against a female person. It is evident that this legal definition of rape and the discriminatory nature of the sentencing scheme are narrow.

The definition of rape was not gender-neutral. Article 332 only contemplated the rape of a woman or female child by a man. It therefore excluded the possibility of rape of males or rape occurring between members of the same sex. In addition, the word "normal" was understood to refer to vaginal penetration to the exclusion of non-consensual anal intercourse and cases in which the aggressor had used objects to assault his victim.⁷⁴ As a result, the only act criminalized by the first paragraph of Article 332 was vaginal penetration without the consent of the female victim. One of the lawyers interviewed for this study worked on a case where an eleven year-old girl's hymen had been broken by the man's finger. The crime was classified by the public prosecutor under the lesser charge of "insults against modesty" and "offenses against modesty" in Articles 330 and 331⁷⁵ because the penetration had not been "normal" (vaginal penetration by a penis) as required by Article 332.⁷⁶

The word "illicit" rendered the use of physical force an element of the offence of rape; in other words, a woman had to prove that she had attempted to physically resist her assailant.⁷⁷ A woman would find it difficult to prove that she had resisted unless her body provided direct evidence of physical assault in the form of bruises or broken limbs.⁷⁸ Article 332, as applied in practice, required physical evidence of non-consensual sexual activities. A study conducted by CENSEL during 1986 and 1987 found that the vast majority of all rape cases pending before the courts also included allegations of physical assault.⁷⁹

El estupro o ayuntamiento carnal normal e ilícito de un individuo con una persona de sexo femenino y sin la participación de la voluntad de esta, será castigado con la pena de 6 a 10 años de trabajos públicos, si la víctima es menor de once años; con 3 a 5 años de la misma pena, si la víctima tiene 11 ó más años de edad, pero menos de 18; y con la pena de 3 a 6 años de detención, si la víctima es de 18 ó más años de edad.

It should be noted that in 1984 Ley 224 abolished the criminal penalty of "*trabajos públicos*" (public works) and replaced it with "*reclusión*" (imprisonment).

⁷³ *Id.*

⁷⁴ Interview with Mena, *supra* note 62.

⁷⁵ See *infra* notes 103-113 and accompanying text.

⁷⁶ Interview with Piñeyro, *supra* note 63.

⁷⁷ Interview with Mena, *supra* note 62.

⁷⁸ *Id.*; see also Interview with Piñeyro, *supra* note 63.

⁷⁹ CENSEL, *supra* note 24, at 101.

Another problem was that, in practice, Article 332 was not applied to married women or women living in common-law relationships.⁸⁰ Marriage or the agreement to live with a partner provided the consensual basis for sexual relationships, without further inquiry into whether a woman had actually consented or not. Married women, or women living with men, could not withhold consent to sexual activities.

A man who was found guilty of rape would be sentenced according to the age of his victim—the younger the victim, the harsher the sentence.⁸¹ Although the age of the victim is often considered an aggravating factor for sentencing purposes in other countries,⁸² it is usually only one of several factors guiding sentencing principles. Sentencing should be proportionate to the gravity of the offense, irrespective of age, and to the degree of moral culpability of the offender.⁸³ In practice, the effect of the sentencing scheme in Article 332 was to exclude women over the age of eighteen from its ambit, especially if they were married or no longer virgins, without regard to the physical or psychological trauma suffered by the woman.⁸⁴ Article 332 also ignored the fact that when an offender sexually assaults his spouse, the conduct constitutes a breach of a position of trust and should be considered an aggravating factor.⁸⁵

If the woman or girl in question was not a virgin, regardless of her age, it was virtually impossible to secure a rape conviction. Whether a child had the legal capacity to provide consent to sexual activities was not an issue.⁸⁶ The accused might be found guilty of a lesser charge, such as “seduction and extraction of minors” under Articles 355 and 356⁸⁷ or “insults to modesty.”⁸⁸ These offenses were correctional in nature rather than criminal, so sentences ranged between three months and two years’ imprisonment and could also include a fine; bail was mandatory.⁸⁹ In

⁸⁰ Interview with Piñeyro, *supra* note 63.

⁸¹ Criminal Code, art. 332.

⁸² See, e.g., Criminal Code (Can.), R.S.C. 1985, c. C-46, section 718.2.

⁸³ *Id.* sections 718.1, 718.2.

⁸⁴ Interview with Mena, *supra* note 62; see also Interview with Piñeyro, *supra* note 63.

⁸⁵ Criminal Code (Can.), section 718.2(ii).

⁸⁶ Interview with Henriquez, *supra* note 8. In Canada, the consent of a complainant under the age of 14 is not a defense to sexual assault offences. See Criminal Code (Can.), section 150.1.

⁸⁷ See *infra* notes 114-125 and accompanying text.

⁸⁸ See *infra* notes 103-113 and accompanying text; see also Interview with Henriquez, *supra* note 8.

⁸⁹ Interview with Henriquez, *supra* note 8; see also CENSEL, *supra* note 24, at 118.

practice, accused persons who were awarded bail rarely faced an actual trial. This continues to be true today. According to a United States Department of State report, “the granting of bail serves as the *de facto* criminal justice system” in the Dominican Republic.⁹⁰

In the absence of a more general sexual assault provision, cases of attempted rape were almost impossible to prosecute even though Article 2 of the Criminal Code provided judicial discretion in determining whether to treat the attempt as if the actual crime had been committed.⁹¹ In practice, cases of attempted rape were routinely thrown out by judges or reduced to a lesser charge.⁹² For example, CENSEL represented a young girl in 1987 who had been the victim of sexual assault. The man had not succeeded in actually raping her (there was no vaginal penetration) because the young girl’s screams had alerted neighbors. At trial, the judge concluded that there had been no violation of Article 332 because there had been no penetration. The man was released.⁹³

3. *The Role of the Médico Legista in Crimes of Sexual Violence*

In the Dominican Republic, the *médico legista* (medical examiner) is a physician who aids the judicial process by certifying the existence and extent of physical injuries suffered by a victim of violence. In practice, however, the *médico legista* was, and still is, granted too much power in determining both the culpability of an accused and the truthfulness of a victim’s allegations. These physicians are permitted to make *de facto* findings of guilt, findings that are usually made in a court of law where all elements of an offense must be proved beyond a reasonable doubt by the state and all evidence must be weighed before a final determination can be made in the case.⁹⁴

In practice, criminal procedure before 1997 required that the declaration of a woman or a minor alleging rape had to be certified (or, in

⁹⁰ Dominican Republic 2003, *supra* note 59.

⁹¹ Criminal Code, art. 2:

Toda tentativa de crimen podrá ser considerada como el mismo crimen, cuando se manifieste con un principio de ejecución, o cuando el culpable, a pesar de haber hecho cuanto estaba de su parte para consumarlo, no logra su propósito *por causas independientes de su voluntad*, quedando estas circunstancias sujetas a la apreciación de los jueces (emphasis added).

⁹² Interview with Piñeyro, *supra* note 63.

⁹³ *Id.*

⁹⁴ Interview with Piñeyro, *supra* note 63; see also Susi Pola, Certificación Médico Legal en la Violencia, A Primera Plana, at <http://www.aprimeraplana.org/www/No.2/susi.html> (last visited Nov. 8, 2004).

other words, corroborated) by a *médico legista*.⁹⁵ A *médico legista* certification that there were no signs of physical violence on the woman's body and that the woman's hymen had been broken on an earlier occasion was sufficient to bar a rape conviction.⁹⁶ In these circumstances, the public prosecutor might consider a charge under one of the lesser sexual assault provisions, such as Articles 330 or 331.⁹⁷

This approach was clearly problematic. A "recent rupture of the hymen" was not even an element of the criminal offense created by the first paragraph of Article 332. The *actus reus*⁹⁸ of the offense was simply an act of vaginal penetration while the *mens rea*⁹⁹ required only that the man intended to rape knowing that he did not have the consent of the victim. Even if the *médico legista* validated that the victim's hymen had been recently broken but also indicated that there were no signs of physical violence on the woman's body, officials would often assume that the victim had consented.¹⁰⁰

When conducting the examination, the *médico legista* concentrated almost exclusively on the condition of the hymen, ignoring other signs of sexual assault, such as the woman's emotional and psychological state and other signs of physical violence on the woman's body—such as bruises and bite marks—that might, in the absence of virginity, indicate rape.¹⁰¹ This approach reinforced the dominant patriarchal belief that only a virgin could be raped and that married women or women living in common-law relationships could not withhold consent to sexual activities. Furthermore, the role played by the *médico legista* in cases of rape and sexual assault made it extremely difficult for women to convince officials that they had experienced sexual violence unless they reported the assault immediately; waiting weeks or months meant that the "evidence" required would have disappeared. It should also be noted that the process of medical certification

⁹⁵ E-mail from Lucila Lara Núñez, Executive Director of CENSEL, to Mercedes Perez, associate, Swadron Associates (Oct. 12, 2004) (on file with author). This requirement was not codified in law but was, and continues to be, the generally accepted practice.

⁹⁶ Interview with Piñeyro, *supra* note 63.

⁹⁷ See *infra* notes 103-113 and accompanying text.

⁹⁸ *Actus reus* is defined as a "wrongful deed that comprises the physical components of a crime and that generally must be coupled with *mens rea* to establish criminal liability." *Black's Law Dictionary* 37 (7th ed. 1999).

⁹⁹ *Mens rea* is defined as criminal intent or recklessness or a "state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime." *Id.* at 999. "*Mens rea* is the second of two essential elements of every crime at common law, the other being the *actus reus*." *Id.*

¹⁰⁰ Interview with Henriquez, *supra* note 8; see also Interview with Mena, *supra* note 62; see also Interview with Piñeyro, *supra* note 63.

¹⁰¹ Interview with Mena, *supra* note 62; see also Interview with Piñeyro, *supra* note 63.

was open to the corruption that plagued, and continues to plague, government institutions in the Dominican Republic. *Médicos legistas* could be bribed.¹⁰²

4. "Insults to Modesty" and "Offenses Against Modesty"

"Insults to modesty" and "offenses against modesty" were criminal offenses defined in Articles 330, 331, and 332 of the Criminal Code.¹⁰³ These offenses were listed under the same section of the Criminal Code as the rape provision, "*Delitos contra la honestidad*," or "Crimes against the honesty of a person."¹⁰⁴ Except for the crime defined in the second paragraph of Article 332, "Violent offenses against a person's sense of modesty," these crimes were considered lesser charges and were classified as correctional in nature, rather than criminal. As previously mentioned,¹⁰⁵ correctional crimes carried softer penalties and bail was mandatory. Often, those charged under one of these Articles would never see trial, especially once bail was posted.

These Articles created several vaguely defined criminal offenses. Article 330 made it a criminal offense to publicly insult another person's modesty.¹⁰⁶ The first paragraph of Article 331 defined non-violent offenses, or "outrages," against the modesty of a child of either sex under the age of eleven.¹⁰⁷ The second paragraph of Article 331 stipulated that a non-violent offense against the modesty of a child of either sex older than eleven would result in the same criminal penalties as those imposed for a child under the

¹⁰² Interview with Mena, *supra* note 62.

¹⁰³ Criminal Code, arts. 330, 331, 332:

Art. 330.—El que públicamente cometiere un ultraje al pudor, será castigado, según la gravedad del caso, con prisión correccional de tres meses a dos años, y multa de cinco a cincuenta pesos.

Art. 331.—El atentado al pudor, consumado o intentado sin violencia en la persona de un niño de uno u otro sexo, menor de once años de edad se castigará con la pena de reclusión.

Párrafo.—Con igual pena se castigará al ascendiente que cometerse el atentado al pudor sin violencia en la persona de un menor, de uno u otro sexo, cuando éste fuere de once o más años de edad y siempre que no estuviese ya emancipado por el matrimonio.

Art. 332.— . . . El atentado al pudor, consumado o intentado con violencia en la persona de un niño, de uno u otro sexo, menor de 11 años, será castigado con la pena de 3 a 5 años de trabajos públicos; cuando la víctima fuere de 11 o más años de edad, pero menor de 18, se aplicará la pena de 3 a 6 años de detención; y por ultimo, se impondrá la pena de reclusión, si la edad de la víctima fuere de 18 o más años.

¹⁰⁴ *See id.*

¹⁰⁵ *See infra* note 140 and accompanying text.

¹⁰⁶ Criminal Code, art. 330.

¹⁰⁷ *Id.* art. 331, para. 1.

age of eleven, as long as the older child had not yet been emancipated by marriage.¹⁰⁸ The second paragraph of Article 332 criminalized violent offenses against the modesty of a child of either sex and imposed penalties that varied according to the age of the child.¹⁰⁹

All of these provisions were vague, as they did not define the acts that constitute "insults" or "offenses" to a person's "modesty." In practice, a person was considered "modest" if he or she was still a virgin. Implicit in these provisions was the legislative and cultural assumption that non-virgins could not suffer sexual violence. The only certainty was that an "insult" or "offense" to a person's modesty was sexual in nature. In practice, sexual assaults that did not involve vaginal penetration might be prosecuted under one of these provisions.

Despite its vague wording, Article 330 was inexplicably narrowed in its application by the requirement that the crime in question be one that had occurred in public. In 1936, the Supreme Court of Justice had interpreted the word "public" to require that the act occur in a "public place," whether witnessed by third parties or not, or that it occur in a "private place" but witnessed by third parties.¹¹⁰ On the facts of the particular case before them, the judges ruled that the act in question had not been "public" because it had taken place within the confines of a private home and the witness, alerted by the victim's screams, had run to the house only in time to see the accused escaping through a back door but had not actually witnessed the sexual assault.¹¹¹

There were additional problems with these provisions. Article 331, for example, only applied to nonviolent injuries to a person's modesty. This element of the offense was grounded in an illogical contradiction, since it is generally understood that sexual assault is a form of violence. Furthermore, Article 331(2) applied only to those minors who had not yet been emancipated through marriage. The assumption, as with the rape provisions, was that someone who was married either always consented to sexual activities or only suffered negligible injuries.

Articles 330 and 331 and the second paragraph of Article 332 also suffered from some of the same procedural problems that made it difficult to secure a conviction for rape under the first paragraph of Article 332. The

¹⁰⁸ *Id.* art. 331, para. 2.

¹⁰⁹ *Id.* art. 332, para. 2.

¹¹⁰ *Id.* art. 334. The Supreme Court of Justice, in a decision rendered December 21, 1936, held

... que el ultraje al pudor es público, por el sólo hecho de la publicidad inherente al lugar en que se ha realizado, aunque no hubiere sido visto por ningún testigo, y presenta asimismo este carácter, cuando realizado en un lugar privado, ha sido percibido por terceros, en ausencia de precauciones suficientes, de parte de sus autores, para mantenerlo en secreto.

¹¹¹ *Id.*

certificate issued by the *médico legista* essentially determined the guilt of the accused. Victims had to endure traumatic interrogations at the hands of police officers, prosecutors, and judges. Minors could not be interviewed or give evidence in private. Finally, if charges were made, there were no legal mechanisms in place to protect the victim pending a resolution of the case.¹¹² Many critics argued that these provisions, especially the second paragraph of Article 332, should be relied upon as more general sexual assault provisions that would cover all nonconsensual sexual activity that did not involve vaginal penetration.¹¹³ Unfortunately, however, this was not the case in practice.

5. Corruption of Minors and the Luring of Minors from their Homes

Two criminal offenses were defined in Articles 355 and 356 of the Criminal Code, in a section entitled "Abduction of minors from their homes."¹¹⁴ The first paragraph of Article 355 made it a criminal offense (correctional in nature) to lure a young female from the family home.¹¹⁵ One of the obvious deficiencies with the first paragraph of Article 355 was that it was not gender-neutral. Only a young girl under the age of eighteen was covered. In addition, like the rape provision in Article 332, the age of the victim determined the severity of the sentence that would be imposed on the guilty party.

The second paragraph of Article 355 was correctional in nature and made it an offense for a man to nonviolently cause the pregnancy of a minor.¹¹⁶ The Article exclusively applied to victims who had a reputation for "honesty." In other words, it applied only to virgins. Proof of "honesty"

¹¹² Interview with Mena, *supra* note 62; see also Interview with Piñeyro, *supra* note 63.

¹¹³ Criminal Code, arts. 355, 356.

¹¹⁴ *Id.* art. 355. This section of the Criminal Code was titled "*Sustracción de menores*," or "Extraction of minors":

Article 355.—Todo individuo que extrajere de la casa paterna o de sus mayores, tutores o curadores a una joven menor de dieciséis años...incurrirá en la pena de uno a dos años de prisión y multa de doscientos a quinientos pesos. Si la joven fuera mayor de dieciséis años y menor de dieciocho, la pena será de seis meses a un año de prisión y multa de cien a trescientos pesos. El individuo que, sin ejercer violencia, hubiese hecho grávida a una joven menor de edad reputada hasta entonces como honesta, incurrirá en las mismas penas anteriormente expresadas, para la aplicación de las cuales se tendrá en cuenta la relación de edad que este mismo artículo establece.

According to Article 256, "En el caso de que el seductor se case con la agraviada, quedará libre de toda persecución y de las penas anteriormente señaladas."

¹¹⁵ *Id.* art. 355, para. 1.

¹¹⁶ *Id.* art. 355, para. 2.

was usually found in the community.¹¹⁷ Neighbors and family members had to provide character evidence, attesting to the fact that the girl did not have a reputation for going out at night, consuming alcohol, and engaging with men.¹¹⁸ If her reputation was tarnished by this type of behavior, the assumption would be that she had provoked the man or consented.¹¹⁹ In any event, many of these cases never went to court but rather were “resolved” between the parties, usually through marriage.¹²⁰ Sometimes a priest or a public prosecutor mediated between the parties, which occasionally led to marriage or an offer of consensual union and payment of a predetermined sum of money.¹²¹

Interestingly, the second paragraph of Article 355 characterized the pregnancy, rather than the sexual assault, as the injury. It also contemplated that the pregnancy itself was the result of a non-violent act. The sexual violence behind the pregnancy was ignored and instead the pregnancy itself was criminalized. There was no mention of the age at which a minor could legally consent to sexual relations. In those cases where perhaps a girl over a certain age had legally consented, this provision was premised on the discriminatory assumption that pregnancy always results from the exclusive action and will of the man; the woman or girl appeared only as a passive subject, a recipient.¹²²

Article 356 provided that if a man facing criminal charges under the second paragraph of Article 355 married the minor girl in question, he would face no criminal penalties.¹²³ A simple contract of marriage was sufficient and necessary to avoid criminal sanction and, as far as the law was concerned, to erase any injury to the girl’s physical, emotional, and psychological well-being. Marriage also permitted the man to escape the moral disapprobation of society.¹²⁴ The girl did not appear to have much of

¹¹⁷ Interview with Mena, *supra* note 62. Mena stated that the type of evidence required was “que ella no andaba en la calle, que no andaba en fiestas, porque si ella andaba en fiestas, entonces eso significaba que ella lo había seducido a él,” or “that she doesn’t walk in the street, that she doesn’t go to parties, because if she goes to parties, it signifies that she was seducing him.”

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*; see also Interview with Henriquez, *supra* note 8.

¹²¹ *Id.*

¹²² Instituto de la Mujer, Ministerio de Asuntos Sociales de España, Facultad Latinoamericana de Ciencias Sociales (FLACSO), and UNICEF (Dominican Republic), Mujeres Latinoamericanas en Cifras: República Dominicana, <http://www.eurosur.org/FLACSO/mujeres/rdominicana/> (last visited Nov. 8, 2004) [hereinafter Mujeres Latinoamericanas en Cifras: República Dominicana].

¹²³ Criminal Code, art. 356.

¹²⁴ Interview with Henriquez, *supra* note 8; see also Interview with Mena, *supra* note 62.

a say; usually her family decided for her as a way of "resolving" the potential problems of an unwed teenage mother and an illegitimate child.¹²⁵

D. Crimes of Physical Violence: Assault

1. Physical Assault

Physical assault, excluding sexual assault, was criminalized under Title II, Section 2, of the Criminal Code, entitled "*De las heridas y golpes voluntarios no calificados homicidio, y de otros crímenes y delitos voluntarios,*" or "Intentional physical injuries and blows not classified as homicide, and other intentional crimes and offenses."¹²⁶ Article 309 classified physical assaults into three categories: assaults that resulted in an injury or illness that prevented the victim from working for more than twenty days; assaults that resulted in mutilation, amputation, loss of the use of a limb, loss of an eye, or other illnesses; and assaults resulting in death.¹²⁷ The sentencing scheme varied with the gravity of the injury suffered by a victim.¹²⁸ Article 310 criminalized premeditated assaults or assaults occasioned through deception.¹²⁹

Article 311 criminalized physical assaults resulting in injuries or illnesses to the victim that lasted ten to twenty days, those that lasted under ten days, and those that caused no physical incapacity at all; premeditation or deception was listed as an aggravating factor.¹³⁰ Article 312 provided that

¹²⁵ Interview with Mena, *supra* note 62.

¹²⁶ Criminal Code, Tit. II.

¹²⁷ *Id.* art. 309:

Art. 309.—El que voluntariamente inflige heridas, diere golpes, cometiere actos de violencia o vías de hecho, si de ellos resultare al agraviado una enfermedad o imposibilidad de dedicarse al trabajo durante más de veinte días, será castigado con la pena de prisión de seis meses a dos años, y multa de diez a cien pesos. Podrá además condenársele a la privación de los derechos mencionados en el artículo 42, durante un año a lo menos, y cinco a lo más. Cuando las violencias arriba expresadas hayan producido mutilación, amputación o privación del uso de un miembro, pérdida de la vista, de un ojo u otras enfermedades, se impondrá al culpable la pena de reclusión. Si las heridas o los golpes inferidos voluntariamente han ocasionado la muerte del agraviado, la pena será de trabajos públicos, aún cuando la intención del ofensor no haya sido causar la muerte de aquel.

¹²⁸ *Id.*

¹²⁹ *Id.* art. 310 (providing that "[s]i en el hecho concurren las circunstancias de premeditación o asechanza, la pena será de diez a veinte años de trabajos públicos, cuando se siga la muerte del ofendido; y si ésta no resultare, se impondrá al culpable la de tres a diez años de trabajos públicos.").

¹³⁰ *Id.* art. 311:

Art. 311.—Cuando una persona agraviada en la forma que se expresa en el Artículo 309, resultare enferma o imposibilitada para dedicarse a su trabajo personal, durante no menos de diez días ni más de veinte, a consecuencia de los golpes, heridas, violencia o vías de hecho,

assaulting a relative, such as a parent or child, would be considered an aggravating factor for sentencing purposes.¹³¹

This criminal scheme, as written, was similar in spirit to assault provisions available in other countries.¹³² In practice, these provisions could have been quite useful in combating violence against women, and in particular, domestic violence. The reality, unfortunately, was remarkably different. Battered women fleeing a violent relationship were more often than not turned away by police who rationalized that “*esos eran problemas de pareja*,”¹³³ or “these are couples’ problems.” In one case, for example, CENSEL had provided police with evidence that an abusive spouse carried an illegal firearm and had been terrorizing his victim for months, threatening to kill her.¹³⁴ Nevertheless, the woman’s successive pleas to police were ignored. The physical abuse and death threats intensified and, because the police offered no assistance, the woman left her spouse and moved in with her parents. Her spouse went to the house, telling witnesses that he meant to kill her; when told that she was not at home, he killed her mother instead.¹³⁵ The state was often unwilling to intervene in cases of domestic violence on the assumption that these were “private matters.”¹³⁶

el culpable sufrirá pena de prisión correccional de sesenta días a un año y multa de seis a cien pesos.

Párrafo I.—Si la enfermedad o imposibilidad durare menos de diez días o si las heridas, golpes, violencia o vías de hechos no hubiesen causado ninguna enfermedad o incapacidad para el trabajo al ofendido, la pena será de seis a sesenta días de prisión correccional y multa de cinco a sesenta pesos o una de estas dos penas solamente. . . .

Párrafo II.—Si concurriese la circunstancia de la premeditación o de la asechanza en los hechos enunciados, la pena será de seis meses a dos años de prisión correccional y la multa de diez a doscientos pesos.

¹³¹ *Id.* art. 312:

Art. 312.—Si los golpes o las heridas de que tratan los tres artículos anteriores han sido inferidos por el agresor a sus padres legítimos, naturales o adoptivos, o a sus ascendientes legítimos, se le impondrán las penas siguientes: si el delito cometido trae la pena de prisión y multa, el culpable sufrirá la de reclusión; si trae señalada la de reclusión, el delincuente será condenado a la detención, y si la pena que pronuncie la ley es la de detención, el culpable sufrirá la de los trabajos públicos.

¹³² Criminal Code (Can.), sections 265, 266, 237, 268, 269.

¹³³ Interview with Rodríguez, *supra* note 10; *see also* Interview with Mena, *supra* note 62.

¹³⁴ Letter from CENSEL regarding the case of Julio Antonio Tejeda (Jan. 9, 1994) (on file with CENSEL) (asking the court to deny the defendant bail pending commencement of his trial because police failure to respond to previous complaints by the victim about the defendant’s possession of a gun directly resulted in the alleged murder).

¹³⁵ *Id.*

¹³⁶ Interview with Mena, *supra* note 6; *see also* Spousal Abuse Policies and Legislation, *supra* note 16, at 5 (noting that in “over half of all spousal homicide cases [in Canada] . . . police noted a history of domestic violence in the family”); *see also* Family

Unfortunately, this ignored the fact that in many cases, physical assault escalates to murder.

Cases that were accepted by police and/or public prosecutors were usually those that were considered serious—in other words, cases in which the woman had suffered a permanent injury, such as loss of an eye or loss of a limb.¹³⁷ When women suffered temporary injuries, it was the *médico legista* who determined the sentence imposed upon conviction, assuming, of course, that police and prosecutors chose to even intervene.¹³⁸ The certificate issued by the *médico legista* would stipulate the type of injury and would classify the injury as permanent or temporary. If the injury was classified as temporary, the certificate would indicate the number of days required for the injury to heal. Sentences imposed upon conviction would often reflect the conclusions drawn by the *médico legista*—for example, if the injury was classified as temporary and curable in ten days, then the accused might get ten days imprisonment and/or a fine.¹³⁹

The criminal offenses created by Articles 309 to 311 were correctional in nature, so bail was mandatory unless the assault resulted in permanent injury or death. This created the very real risk that when women did choose to report spousal abuse to the police, and the police agreed to charge the abusive spouse, the accused would post bail, go home, and inflict a more damaging beating or kill the woman.¹⁴⁰ Furthermore, if police did choose to lay a charge, they would often simply schedule a hearing date with a magistrate; it was up to the woman to inform the aggressor that he had to appear before a magistrate on a certain date.¹⁴¹ In the absence of protective measures such as restraining orders or conditions being placed upon release, battered women were left in a precarious position pending trial. There were no shelters available to women seeking to escape an abusive relationship.¹⁴² There were few services available to women, except those provided by the small number of civil society groups that began to appear in the 1980s.¹⁴³ Even when charges were brought, public prosecutors

Violence in Canada, *supra* note 17, at 39 (indicating that, in Canada “[b]etween 1993 and 2002, most spousal homicides involved a reported history of domestic violence: 68% of male victims and 60% of female victims Police were aware of previous domestic violence in about 70% of homicides involving estranged female spouses.”)

¹³⁷ Interview with Henriquez, *supra* note 8.

¹³⁸ *Id.*; see also Interview with Piñeyro, *supra* note 63.

¹³⁹ Interview with Piñeyro, *supra* note 63.

¹⁴⁰ Interview with Mena, *supra* note 62; see also Interview with Piñeyro, *supra* note 63.

¹⁴¹ Interview with Mena, *supra* note 62.

¹⁴² Interview with Henriquez, *supra* note 8; see also *id.*; see also Interview with Núñez, *supra* note 9; see also Interview with Piñeyro, *supra* note 63.

¹⁴³ Interview with Núñez, *supra* note 9.

would often decline to follow up, and unless the woman was fortunate enough to enlist the assistance of lawyers working for civil society organizations, her case would be left unresolved.¹⁴⁴

Many cases that were classified by the police or public prosecutors under Articles 309 to 311 as intentional assaults were in fact cases of attempted murder.¹⁴⁵ Nevertheless, it was uncommon for the accused to be charged with attempted murder even when the attack was vicious and the intent to kill was clear. For example, Piñeyro, one of the lawyers interviewed for this study, recalled the case of a woman who had been stabbed fifteen times by her spouse.¹⁴⁶ The judge, however, decided that this was not an attempted murder.¹⁴⁷

2. *Murder*

Police records from 1987 to 1990 indicate that 140 women were murdered in the city of Santo Domingo alone.¹⁴⁸ In the majority of these cases, police files did not indicate a motive for the murder but in thirty-five percent of the cases, the motive was listed as “*celos*,”¹⁴⁹ or “jealousy.” In other words, these were examples of “crimes of passion.”¹⁵⁰ Police records also failed to document consistently what relationship, if any, existed between the victim and her killer. Thirty-seven percent indicated that the man was a spouse or ex-spouse, and forty-nine percent of the files that did not indicate the relationship between the killer and the victim nevertheless contained hints that the man was someone known to the woman, because these murders occurred in hotels, bars, and in the victims’ own homes.¹⁵¹

The “crime of passion” label carries with it the insinuation of provocation. Prior to 1997, in the Dominican Republic, the allegation that a man had killed a woman out of jealousy was considered a mitigating factor for sentencing purposes. Article 324 of the Criminal Code, for example,

¹⁴⁴ *Id.*

¹⁴⁵ Interview with Piñeyro, *supra* note 63.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ CENSEL, *supra* note 24, at 108-09.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 109-10 (noting that women are often murdered by someone they know). For a comparative perspective, see generally *Spousal Abuse Policies and Legislation*, *supra* note 16. In Canada, “[i]n the ten-year period of 1991-2000, homicides involving intimate partners accounted for 27 percent of all homicides. During that period, intimate partners killed 1,056 persons. Of the 846 women killed (80 percent of the total), 481 were killed by a current spouse, 185 by an estranged spouse, 177 by a boyfriend and three by a same-sex partner.” *Id.* at 5.

provided that an accused who caught his or her partner in the act of committing adultery within the family home and then killed him or her could receive a lesser sentence.¹⁵²

Although gender-neutral, this provision was almost exclusively applied in cases where a man murdered his wife or partner and then alleged that he had caught her in bed with her lover.¹⁵³ When the facts of a particular murder case did not quite fit with the elements of the legal defense created in Article 324, provocation of some sort could still be raised as a defense under Article 321.¹⁵⁴ This Article provided that provocation, threats, and violence could be raised as defenses to murder.¹⁵⁵ According to one lawyer, the provocation defense contained in Article 321 was one of the most invoked Articles of the Criminal Code.¹⁵⁶ Both Articles 321 and 324 allowed sentences to be considerably reduced. Many men charged with murdering their partner would allege that an adulterous affair had provoked the killing but could not necessarily prove the truth of that allegation.¹⁵⁷ Nevertheless, the allegation was usually sufficient to reduce a sentence or even to convince the judge to hand down a verdict of not guilty.¹⁵⁸

3. Criminal Harassment

The offense of criminal harassment is often used to sanction stalking and other forms of threatening behavior.¹⁵⁹ Often, breaching the conditions of a court order or recognizance by engaging in criminal harassment will constitute an aggravating factor for sentencing purposes.¹⁶⁰ Prior to 1997, there were no Criminal Code provisions available to women

¹⁵² Criminal Code, art. 324:

El homicidio cometido por un cónyuge en la persona del otro cónyuge no es excusable, si la vida del cónyuge que ha cometido el homicidio no estaba en peligro en el momento en que se cometió el delito. Es excusable el homicidio del cónyuge que, sorprendiendo en adulterio al otro esposo en la casa conanteriores se han cometido en la persona de uno de los ascendientes del culpable, la pena en el primer caso será la de reclusión y, en el segundo, la de trabajos públicos.

¹⁵³ Interview with Rodríguez, *supra* note 10.

¹⁵⁴ Criminal Code, art. 321 (providing that “[e]l homicidio, las heridas y los golpes son excusables, si de parte del ofendido han precedido inmediatamente provocación, amenaza o violencias graves”).

¹⁵⁵ *Id.*

¹⁵⁶ Interview with Mena, *supra* note 62.

¹⁵⁷ Interview with Henriquez, *supra* note 8; *see also* Interview with Rodríguez, *supra* note 10.

¹⁵⁸ *Id.*

¹⁵⁹ Criminal Code (Can.), art. 264.

¹⁶⁰ *Id.* art. 264(4).

in the Dominican Republic who were being stalked or suffering other types of psychological and/or sexual harassment. Women simply had to suffer in silence or attempt to distance themselves from the man who was tormenting them. In effect, women had to wait until they had been physically beaten, raped, or even killed before police and the state would intervene. Unfortunately, the state was ignoring the fact that physical abuse is often preceded by verbal and psychological abuse.¹⁶¹

II. LAW 24-97: THE STATE'S LEGISLATIVE RESPONSE TO VIOLENCE AGAINST WOMEN

The approval of Law 24-97 in 1997 by the National Congress was an important first step in the struggle to eradicate violence against women in the Dominican Republic. Given the archaic and discriminatory nature of Criminal Code provisions available prior to 1997, change was clearly required. Law 24-97 repealed certain provisions discussed above, modified others, and created several new criminal offenses. The law represents the state's legislative response to the problem of violence against women. Substantive provisions address most forms of violence against women. For the most part, Law 24-97 reflects the state's concern with denunciation, retribution, and both individual and general deterrence. It reflects less of a concern with rehabilitation, notions of restorative justice, and proportionality in sentencing.

Law 24-97 creates specific offenses criminalizing "violence against women" and "domestic violence."¹⁶² These provisions may seem redundant in light of other provisions criminalizing assault. Their inclusion appears to reflect a clear attempt by the state to publicly denounce violence against women and all forms of violence occurring within the family home.

¹⁶¹ Interview with Mena, *supra* note 62.

¹⁶² Criminal Code, art. 309:

Art. 309-1—Constituye violencia contra la mujer toda acción o conducta, pública o privada en razón de su género que cause daño o sufrimiento físico, sexual o psicológico a la mujer, mediante el empleo de fuerza física o violencia psicológica, verbal, intimidación o persecución.

Art. 309-2—Constituye violencia doméstica o intrafamiliar todo patrón de conducta mediante el empleo de fuerza física, o violencia psicológica, verbal, intimidación o persecución, contra uno o varios miembros de la familia o contra cualquier persona que mantenga una relación de convivencia, contra el cónyuge, ex-cónyuge, conviviente o ex-conviviente o pareja consensual, o contra la persona con quien haya procreado un hijo o una hija para causarle daño físico o psicológico a su persona o daño a sus bienes, realizando por el padre, la madre, el tutor, guardián, cónyuge, ex-cónyuge, conviviente, ex-conviviente o pareja consensual o persona bajo cuya autoridad, protección o cuidado se encuentra la familia.

Los culpables de los delitos previsto en los dos artículos que preceden serán castigados con la pena de un año de prisión por lo menos y cinco a lo más y multa de quinientos a cinco mil pesos y la restitución de los bienes destruidos, dañados y ocultados si fuere el caso.

The definition of the "violence against women" offense is taken almost verbatim from Article 1 of the Convention of Belém do Pará¹⁶³ and covers physical, sexual, and psychological forms of violence. Domestic violence is very broadly construed, is gender-neutral, and covers all forms of violence, including psychological and verbal abuse, as well as intimidation or persecution.¹⁶⁴ The criminal offense of "domestic violence" can be used not only to prosecute aggressors who assault their spouses, but also those aggressors who assault other family members as well. Therefore, the provision can be resorted to in cases of elder abuse and child abuse. "Violence against women" and "domestic violence" are punishable by one to five years' imprisonment and a fine, as well as restitution of property in cases where property has been damaged or destroyed by the aggressor.¹⁶⁵

In addition to the changes noted above, Law 24-97 criminalizes discrimination on the basis of enumerated grounds that include age, sex, marital status, disability, political affiliation, membership in a trade or labor union, ethnicity, nationality, race, or religion.¹⁶⁶ It protects privacy rights,¹⁶⁷ and criminalizes the solicitation of sexual activity (excluding prostitution),¹⁶⁸ as well as acts of torture committed by the state or by private individuals.¹⁶⁹ It also addresses issues relating to the abandonment of children and the family,¹⁷⁰ and the kidnapping and illegal transfer of children.¹⁷¹

A. Reforms of Sex-Related Crimes

1. *Sexual Assault, Rape, and Child Abuse*

Law 24-97 creates the new offense of sexual assault, codifying a broader approach to sexual violence that is not limited to acts of vaginal

¹⁶³ Convention of Belém do Pará, *supra* note 14, at art. 1 ("For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.").

¹⁶⁴ Law 24-97, art. 309-2.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* arts. 9, 336, 336-1.

¹⁶⁷ *Id.* arts. 337, 337-1, 338, 338-1.

¹⁶⁸ *Id.* art. 334.

¹⁶⁹ *Id.* art. 303.

¹⁷⁰ *Id.* arts. 347, 348, 349, 350, 351, 352, 353.

¹⁷¹ *Id.* art. 354.

penetration.¹⁷² The provision is gender-neutral and provides that consent can be vitiated not only through violence, but also through threats, compulsion, and deceit. Women, therefore, should not have to provide proof of having attempted to physically resist their assailants. Sexual assault is punishable by five years' imprisonment and a fine.¹⁷³ Sentences will be increased to ten years if any of the following aggravating factors are present: if the woman is pregnant; if the victim suffers from a physical or mental disability; if the victim is threatened with a weapon; if the accused person is related to the victim, either by blood or through adoption; if the accused person is in a position of authority over the victim; if two or more people have acted together to commit the sexual assault; and if the victim has sustained other physical injuries as a result of the sexual assault.¹⁷⁴ The judge appears to be granted no discretion for sentencing purposes.

Rape is now defined as any act of sexual penetration committed through the use of physical violence, threats, compulsion, or surprise.¹⁷⁵ This new definition of rape is gender-neutral, and unlike its predecessor,¹⁷⁶ covers anal penetration and penetration occasioned with instruments as well. Rape is punishable by ten to fifteen years' imprisonment and a fine.¹⁷⁷ Sentences can be increased to twenty years if certain aggravating factors are present, including the following: if the victim is pregnant or suffers from a physical or mental disability, if the accused person is related to the victim by blood or through adoption, if the victim is a child or adolescent, or if the accused is in a position of authority over the victim.¹⁷⁸

¹⁷² *Id.* art. 330 ("Constituye una agresión sexual toda acción sexual cometida con violencia, constreñ, amenaza, sorpresa, engaño.").

¹⁷³ *Id.* art. 333 ("Toda agresión sexual que no constituye una violación, se castiga con prisión de cinco años y multa de cincuenta mil pesos.").

¹⁷⁴ *Id.*:

Sin embargo, la agresión sexual definida en el párrafo anterior se castiga con reclusión de diez años y multa de cien mil pesos cuando es cometida o intentada contra una persona particularmente deficiencia física o mental o estado de gravidéz; b) con amenaza de uso de arma; c) por un ascendiente legítimo, natural o adoptivo de la víctima; d) por una persona que tiene autoridad sobre ella; e) por dos o más autores o cómplices; f) por una persona que ha abusado de la autoridad que le confieren sus funciones; g) cuando ha ocasionado heridas o lesiones.

¹⁷⁵ *Id.* art. 331 ("Constituye una violación todo acto de penetración sexual, de cualquier naturaleza que sea cometido contra una persona mediante violencia, constreñimiento, amenaza o sorpresa.").

¹⁷⁶ See *supra* notes 70-85 and accompanying text.

¹⁷⁷ Law 24-97, art. 331 (providing that "[l]a violación será castigada con la pena de diez a quince años de reclusión y multa de cien mil a doscientos mil pesos").

¹⁷⁸ *Id.*:

Sin embargo, la violación será castigada con reclusión de diez a veinte años y multa de cien mil a doscientos mil pesos cuando haya sido cometida en perjuicio de una persona

One of the most glaring omissions from reforms introduced by Law 24-97 is the continued presence of Articles 355 and 356.¹⁷⁹ Article 355 remains essentially unchanged.¹⁸⁰ The wording in Article 356 has been amended but the changes are problematic. If a man sexually assaults and impregnates a young girl, but then marries her, under the current wording of the Article, a criminal charge can only be brought by those persons who have standing to demand the annulment of that marriage.¹⁸¹ The man can be convicted only when, and if, an annulment is granted.

2. *New Categories of Sexual Crimes*

a. *Sexual Violence within Marriage*

Law 24-97, which repealed Article 324 of the Criminal Code,¹⁸² specifically criminalizes sexual assault occurring within marriage or within consensual unions and imposes sentences similar to those prescribed for rape.¹⁸³ Law 24-97 also specifically criminalizes incest.¹⁸⁴ Both provisions

particularmente vulnerable en razón de su estado de gravidéz, invalidéz o de una discapacidad física o mental.

Será igualmente castigada con la pena de reclusión de diez a veinte años y multa de cien mil a doscientos mil pesos cuando sea cometida contra un niño, niña o adolescentes, sea con amenaza de un arma, sea por dos o más autores o cómplices, sea por ascendiente legítimo, natural o adoptivo de la víctima, sea por una persona que tiene autoridad sobre ella, o por una persona que ha abusado de la autoridad que le confieren sus funciones

¹⁷⁹ See *supra* notes 114-125 and accompanying text.

¹⁸⁰ Law 24-97, art. 355:

Todo individuo que extrajere de la casa paterna o de sus mayores, tutores o cuidadores a una joven menor de dieciocho años por cualquier otro medio que no sea los enunciados en el artículo anterior incurrirá en la pena de uno a cinco años de prisión y multa de quinientos a cinco mil pesos.

El individuo que sin ejercer violencia hubiere hecho grávida a una joven menor de dieciocho años incurrirá en las mismas penas anteriormente expresadas.

La pena será siempre el máximo de la prisión y de la multa cuando el culpable y la joven sustraída o seducida estuvieren ligados por afinidades en segundo grado o por parentesco en tercero y la reclusión cuando mediar entre ellos segundo grado de parentesco.

¹⁸¹ *Id.* art. 356 (stating that "[e]n caso de que el seductor se case con la agraviada éste solo podrá ser perseguido por la querrela de las personas que tienen calidad para demandar la anulación del matrimonio, y ser solo condenado después que esta anulación hubiere sido pronunciada").

¹⁸² *Id.* art. 5.

¹⁸³ *Id.* art. 332:

Con igual pena se sancionará a la persona que incurra en una actividad sexual no consentida en una relación de pareja, en cualesquiera de los casos siguientes: a) Mediante el empleo de fuerza, violencia, intimidación o amenaza; b) Si se ha anulado sin su consentimiento su

are gender-neutral and broadly construed to encompass rape and other forms of sexual assault. Incest or attempted incest is punishable by a mandatory minimum sentence of thirty years' imprisonment.¹⁸⁵ Judicial discretion for the purposes of sentencing is not permitted. Anyone charged under this provision is automatically denied bail.¹⁸⁶ Family members related through marriage (e.g., step-fathers and step-brothers) are not included within the scope of the provision. Surprisingly, a spouse in the act of committing adultery is no longer to be considered a mitigating factor for sentencing purposes in murder cases. The adultery provisions in Articles 336 to 339 were also repealed.¹⁸⁷

b. Sexual Harassment

Article 333-2 creates the new criminal offense of sexual harassment.¹⁸⁸ It is gender-neutral and defined as any act intended to apply pressure, or any order, threat, or offer made by an individual in a position of authority to elicit sexual favors. There is a mandatory sentence of one year imprisonment plus a fine upon conviction.¹⁸⁹ If sexual harassment occurs in the workplace, the complainant can resign from his or her position without prejudicing future criminal or civil actions related to the impugned

capacidad de resistencia por cualesquiera medios; c) Cuando por enfermedad o discapacidad mental, temporal o permanente, la persona víctima estuviere imposibilitada para comprender la naturaleza del acto en el momento de su realización; d) Cuando se obligare o indujere con violencia física o psicológica a su pareja a participar or involucrarse en una relación no sexual no deseada con terceras personas.

¹⁸⁴ *Id.* art. 132-1:

Constituye incesto todo acto de naturaleza sexual realizado por un adulto mediante engaño, violencia, amenaza, sorpresa o constreñimiento en la persona de un niño, niña o adolescente con el cual estuviere ligado por lazos de parentesco natural, legítimo o adoptivo hasta el cuarto grado o por lazos de afinidad hasta el tercer grado.

¹⁸⁵ *Id.* art. 332-2 (providing that "[l]a infracción definida en el artículo precedente se castiga con el máximo de la reclusión sin que pueda acogerse en favor de los prevenidos de ella circunstancias atenuantes"); see also *id.* at 332-3 (stating that "[l]a tentativa de la infracción definida en el artículo 332-1, se castiga como el hecho consumado").

¹⁸⁶ *Id.* art. 332-4 (providing that "[q]uedan excluidos del beneficio de la libertad provisional bajo fianza los prevenidos de la infracción definida en el artículo 332-1").

¹⁸⁷ *Id.* arts. 9, 10, 336, 337, 338.

¹⁸⁸ *Id.* art. 333-2:

Constituye acoso sexual toda orden, amenaza, constreñimiento u ofrecimiento destinado a obtener favores de naturaleza sexual, realizado por una persona (hombre o mujer) que abusa de la autoridad que le confieren sus funciones. El acoso sexual se castiga con un año de prisión y multa de cinco mil a diez mil pesos.

¹⁸⁹ *Id.*

conduct.¹⁹⁰ Although the Article contemplates that a complainant may wish to resign, it does not address the issue of reprisals instigated by the aggressor in response to a criminal charge.

B. Punishment and Protection Reform

Aggravating factors for sentencing purposes, which will increase the sentence imposed from a minimum of five years' to a maximum of ten years' imprisonment for those convicted of "violence against women" or "domestic violence" include the following: if the accused person commits the crime in the place where the victim has sought refuge, if a weapon was employed in the assault, if the violent acts were inflicted in the presence of children or adolescents, if the domestic violence is accompanied by death threats or the destruction of property, and if the accused was already subject to a protection order.¹⁹¹ In every reported case of "violence against women" or "domestic violence," a judge must issue a protection order.¹⁹² The court must also order those convicted of these crimes to participate in rehabilitative programs.¹⁹³

¹⁹⁰ *Id.* art. 333-2 (stating that "[e]l acoso sexual en los lugares de trabajo da lugar a dimisión justificada de conformidad con las previsiones de los artículos 96 y siguiente del Código de Trabajo, sin perjuicio de otras acciones que pueda intentar la víctima").

¹⁹¹ *Id.* art. 309-3:

Se castigarán con la pena de cinco a diez años de reclusión a los que sean culpables de violencia cuando concurren uno o varios de los hechos siguientes: a) Penetración en la casa o en el lugar en que se encuentre albergado el cónyuge, ex-cónyuge, conviviente o ex-conviviente, o pareja consensual, y cometiere allí los hechos constitutivos de violencia cuando estos se encuentren separados o se hubiere dictado orden de protección disponiendo el desalojo de la residencia del cónyuge, ex-cónyuge, conviviente, ex-conviviente, o pareja consensual; b) Cuando se causare grave daño corporal a la persona; c) Cuando el agresor portare arma en circunstancias tales que no conlleven la intención de matar o mutilar; d) Cuando la violencia se ejerciere en presencia de niños, niñas y adolescentes, todo ello independientemente de lo dispuesto por los Arts. 126 a 129, 187 a 191 del Código para la Protección de Niños, Niñas y Adolescentes (Ley No. 14-94); e) Cuando se acompañen de amenazas de muerte o destrucción de bienes; f) Cuando se restrinja la libertad por cualquier causa que fuere; g) Cuando se cometiere la violencia después de haberse dictado orden de protección, a favor de la víctima; h) Si se injurere, incitare u obligare a la persona hombre o mujer a intoxicarse con bebidas alcohólicas o embriagantes, o drogarse con sustancias controladas o con cualquier medio o sustancia que altere la voluntad de las personas.

¹⁹² *Id.* art. 309-4:

En todos los casos previstos en los artículos precedentes el tribunal dictará orden de Protección a favor de la víctima de violencia, no pudiendo en ningún caso acogerse a las circunstancias atenuantes en provecho del agresor. El tribunal condenará además de estos casos al agresor a la restitución de los bienes destruidos, dañados u ocultados.

¹⁹³ *Id.* art. 309-5:

En todos los casos previstos en el presente título el Tribunal impondrá accesoriamente a los infractores, la asistencia obligatoria a programas terapéuticos o de orientación familiar por

The protection order is a preventive measure designed to protect the life, physical and psychological integrity, and property of victims of violence when there is a risk of further assaults.¹⁹⁴ It can be issued by the Court of First Instance or the Court of Instruction. Protection Orders can also be solicited through the public prosecutors' offices.¹⁹⁵ Judges can issue the orders at the request of the victim, a lawyer, or anyone else with knowledge of the events in question, even before rendering a decision in the case.¹⁹⁶ The victim, his or her family members, or anyone else with knowledge of the criminal offense can present the information in either oral or written form to the public prosecutor or before the Court of Instruction.¹⁹⁷ Presumably this provision includes civil society groups, as

un lapso no menor de seis (6) meses en una institución pública o privada. El cumplimiento de esta pena y sus resultados serán controlados por el Tribunal.

¹⁹⁴ *Id.* art. 309-6:

La Orden de Protección que se establece en le Art. 309-4, es una disposición previa a la instrucción y juicio que dicta el Tribunal de Primera instancia, que contiene una o todas de las sanciones siguientes: a) Orden de abstenerse de molestar, intimidar o amenazar al cónyuge, ex-cónyuge, conviviente, ex-conviviente o pareja consensual o de interferir en la guarda o custodia provisional o definitiva acordada en virtud de la ley o de una orden judicial; b) Orden de desalojo del agresor de la residencia del cónyuge, ex-cónyuge, conviviente, ex-conviviente o pareja consensual; c) Interdicción del acceso a la residencia del cónyuge, ex-cónyuge, conviviente, ex-conviviente o pareja consensual; d) Interdicción de acercamiento a los lugares frecuentados por el cónyuge, ex-cónyuge, conviviente o pareja consensual; e) Prohibición a la víctima de trasladar u ocultar los hijos comunes; f) Orden de internamiento de la víctima en lugares de acogida o refugio a cargo de organismos públicos o privados; g) Orden de suministrar servicios de atención a la salud de orientación para toda la familia a cargo de organismos públicos o privados; h) Orden de presentar informes de carácter financiero sobre la gestión de los bienes comunes y de la empresa, negocio, comercio o actividad lucrativa común; i) Interdicción de enajenar, disponer, ocultar o trasladar bienes propios de la víctima o bienes comunes; j) Orden de reponer los bienes destruidos u ocultados; k) Orden de medidas conservatorias respecto de la posesión de los bienes comunes y del ajuar de la casa donde se aloja la familia; l) Orden de indemnizar a la víctima de la violencia, sin perjuicio de las acciones civiles que fueren de lugar, por los gastos legales, tratamiento médico, consejos psiquiátricos y orientación profesional, alojamiento y otros gastos similares.

¹⁹⁵ Interview with Rodríguez, *supra* note 10.

¹⁹⁶ Law 24-97, art. 236-3:

El Juez de Instrucción apoderado de la querella dispondrá inmediatamente sea a requerimiento de la víctima, como de las personas con capacidad para presentar la querella o de oficio, una, varias o todas las ordenes de protección previstas en el artículo 309-6 del Código Penal en provecho de la víctima, sin perjuicio de cualquier otra medida que a su juicio sea necesaria para garantizar la seguridad e integridad física y síquica de la víctima.

¹⁹⁷ *Id.* art. 236-2:

La querella será presentada ante el Procurador Fiscal o ante el Juez de Instrucción en forma verbal o escrita, por la víctima, sus ascendientes o tutores, o por cualquier persona que tenga conocimiento directo de los hechos constitutivos de la infracción, independientemente de cualquier autoridad con capacidad legal, de acuerdo con el presente Código.

well as police officers, indicating the codification of a policy encouraging police officers to charge the alleged offenders.¹⁹⁸

C. Changes to Enforcement

In order to boost the enforceability of the provisions contained in Law 24-97, the Dominican government also created specialized departments and services for survivors of violence against women. For example, Law 86-99¹⁹⁹ created the Secretaría de Estado de la Mujer, a government ministry dedicated to the protection and promotion of women's rights. Special police departments were also established to deal with violence against women. These departments, called Destacamentos de Protección de la Mujer, were placed within police stations in major cities such as Santo Domingo, Santiago, San Francisco de Macorís, Villa Altagracia, and Bani.²⁰⁰ These centers were intended to receive initial reports of violence against women; to provide legal advice and psychological counseling; and to provide victims with support in dealing with police, public prosecutors, magistrates, *médicos legistas*, and judges.²⁰¹

Although the government has also established specialized provincial offices dedicated to women's issues, called Oficinas Provinciales de la Mujer, this initiative has been largely confined to the National District. In Santo Domingo, there is the Departamento de Defensoría, which provides psychological and legal counseling to victims of violence against women. The Centro de Atención a Mujeres Maltratadas, which issues medical certificates prepared by *médicos legistas* and provides psychological counseling, is also located in the capital.²⁰²

Other government initiatives have included the creation of the Comisión Nacional de Prevención y Lucha Contra la Violencia Intrafamiliar ("CONAPLUVI") to "facilitate the coordination and supervision of policies for the prevention of domestic violence against

¹⁹⁸ Spousal Abuse Policies and Legislation, *supra* note 16, at 12-13 (noting that pro-charge policies generally require police officers to lay charges where there are reasonable grounds to believe that an assault has taken place, regardless of the wishes of the victim).

¹⁹⁹ Ley 86-99 sobre la creación de la Secretaría de Estado de la Mujer (1999) (Dom. Rep.) [hereinafter Law 86-99].

²⁰⁰ Committee on the Elimination of Discrimination Against Women, Consideration of reports submitted by States under Article 18 of the Convention on the Elimination of all Forms of Discrimination against Women, Fifth Periodic Report of States Parties, Dominican Republic 9-10 (Apr. 11, 2003), <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/336/15/PDF/N0333615.pdf?OpenElement> [hereinafter Consideration of Reports].

²⁰¹ Interview with Rodríguez, *supra* note 10.

²⁰² Consideration of Reports, *supra* note 200, at 17.

women, and to monitor the enforcement” of Law 24-97.²⁰³ The government has attempted to put in place an integrated registry system for documentation and statistical review of cases of domestic violence.²⁰⁴ One of the specific mandates of the Secretaría de Estado de la Mujer is to coordinate efforts between civil society groups and the government.²⁰⁵ Unfortunately, initiatives in this area have been slow and tense.²⁰⁶

III. LAW 24-97 AND THE STRUGGLE TO ERADICATE VIOLENCE AGAINST WOMEN: CRITIQUE AND RECOMMENDATIONS

The approval in 1997 of Law 24-97 forms an integral part of the Dominican Republic’s often difficult struggle to effect institutional, judicial, political, and economic modernization and reform, a task seen as crucial to deepening the commitment to democracy. The Dominican Republic is a country in the process of strengthening its democratic institutions and raising the quality of life of an impoverished population. The transition to democracy and the struggle against poverty are threatened by corruption and inefficiency, by a judicial system that still fights to win its independence from political elites, and by poor delivery on the part of the state of basic public services such as health care, education, and a functioning judicial system.

Observers continue to criticize the Dominican political system, describing it as one that still wavers between paternalism and participation and one that continues to be shaped by traditional authoritarian tendencies.²⁰⁷ Popular perceptions regarding the role and function of government are influenced both by experiences of the recent past and the perceived inability of state institutions to respond to the needs of citizens. Of all the respondents consulted in a 1997 national survey, 42.8 percent identified a preference for democracy with the acquisition of individual rights and freedoms, yet 50.4 percent preferred a strong leader with the profile of a dictator and 59.0 percent believed that a strong leader “would

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Meeting between representatives of the Secretaría de la Mujer and civil society organizations (Oct. 18, 2001). The SEM is currently in the process of elaborating a plan designed to coordinate efforts between the state and civil society groups. This plan is being developed in two documents entitled “Propuesta sobre la Articulación entre las ONGs y la SEM: Construyendo una Integración Arquetípica entre Estado y Sociedad Civil” and “Reglamento para la Articulación entre la SEM y las Organizaciones de la Sociedad Civil.”

²⁰⁷ Ricardo Valverde Gómez, *Investigación Sobre Acceso a la Justicia en la República Dominicana, in Acceso a la Justicia y Equidad: Estudio en Siete Países de América Latina* 337 (José Thompson ed., 1st ed. 2000).

do more for the country than all the laws and institutions combined.”²⁰⁸ Demonstrating little faith in government, 64.5 percent believed that “only if God intervened” would the country’s problems be resolved.²⁰⁹

The aforementioned factors combine with cultural perceptions to produce an environment where women continue to face discrimination and violence with frustrating regularity and remain unable to access the legal system for protection of their rights despite the introduction of Law 24-97. The criminalization of forms of violence against women was a start, but needs to be supplemented with initiatives to promote the safety and security of victims of violence and to maintain confidence in the administration of justice.²¹⁰ Law 24-97, on its own, represents a purely normative response to the problem of gender-based violence. One of the most fundamental obstacles to the transformation of words into deeds is that this response to the phenomenon of violence against women has remained purely normative. The state has neglected to supplement the legislation with physical infrastructure, trained professional personnel, adequate budgetary allocations, well thought out national policies, and a dedicated commitment to re-focusing the cultural lens through which violence against women is viewed.

The result is legislation that is crippled from the start and sorely ineffective in practice. Law 24-97 remains an isolated legal initiative. A more comprehensive approach to violence against women is needed, one in which legal reforms are supported and supplemented by initiatives undertaken within the public health and public education sectors. Also problematic is the fact that Law 24-97 was largely enacted in a vacuum and remains unsupported by reform initiatives needed to address the more general problems that continue to plague the administration of justice in the Dominican Republic. With Law 24-97, the state introduced progressive legislation but has done little to ensure that the institutions charged with enforcing, administering, and interpreting the law are willing and able to do so. Many initiatives remain promising on paper but a disappointment in practice. And although the state often cites a lack of financial resources as one of the main obstacles,²¹¹ most critics point to a lack of political will as the biggest hurdle.²¹²

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ Spousal Abuse Policies and Legislation, *supra* note 16, at 15.

²¹¹ Consideration of Reports, *supra* note 200, at 16.

²¹² Interview with Rodríguez, *supra* note 10.

A. Statistics After the 1997 Reform

Violence against women continues to pose a serious threat to the physical, emotional, and psychological integrity of Dominican women. According to statistics made available by the National Police, 104 women were murdered in the Dominican Republic between November 1, 2000 and October 31, 2001.²¹³ The vast majority of victims (eighty-six percent) were between the ages of twenty and forty-five, sixty-two (sixty percent) of these murders were committed by a spouse or ex-spouse, and the assailant committed suicide after killing the woman in eighteen percent of the cases.²¹⁴ The murderers used firearms in forty-two percent of the cases and knives, machetes, or some type of blade in forty-nine percent.²¹⁵ Most telling of all, in at least twenty of these cases, the woman in question had previously reported an instance of violence or threats to the police but had not received timely and adequate help.²¹⁶

The Destacamentos de Protección de la Mujer in the police station at Villa Juana, in the city of Santo Domingo, received 13,111 complaints of domestic violence in 2003, while the Secretaría de la Mujer received 4,602 complaints during the first six months of 2003.²¹⁷ Statistics compiled by government institutions revealed that 129 women were killed by their spouses in 2003 compared with 119 in 2002.²¹⁸ Public prosecutors in Santo Domingo received 2,000 complaints of sexual assault or rape during 2003.²¹⁹ The International Labor Rights Fund has estimated that forty percent of women working in Dominican free trade zones are sexually harassed by supervisors or co-workers.²²⁰

These newer statistics reveal a much higher number of women subjected to violence than the pre-1997 statistics.²²¹ It remains unclear whether the higher number reflects a greater willingness on the part of women to report incidents of violence to public authorities, better registration systems as a result of changes introduced by Law 24-97 and

²¹³ Centro de Investigación para la Acción Femenina (CIPAF), *Por la Vida de las Mujeres: ¡Ni Una Muerte Más! Estadísticas Mujeres Muertas en Forma Violenta en el Año 2001*, Quehaceres 7 (Nov. 2001).

²¹⁴ *Id.* at 8.

²¹⁵ *Id.*

²¹⁶ *Id.* at 9.

²¹⁷ *Dominican Republic* 2003, *supra* note 59.

²¹⁸ *Id.* Non-governmental organizations estimated that, in 2003, 200 women had been murdered by their spouses.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ See *supra* notes 40-47 and accompanying text.

other government initiatives, an actual increase in the incidence of violence, or a combination of all three factors.

The Dominican state has also undertaken the complicated task of fighting poverty and raising national indicators of the quality of life. Significant progress has been achieved in this area, but problems still remain. For example, per capita income continues to rise at a progressive rate: per capita income rose from \$1,750 in 1990 to \$3,993 by 1997.²²² Literacy rates have also improved (rising from seventy-eight percent in 1990 to approximately eighty-two percent in 1997), as has the average life expectancy (increasing from sixty-seven years in 1990 to seventy years in 1997). The population with access to potable water increased by eighteen percent from 1975 to 1996.²²³ Nevertheless, twenty-two percent of the population do not have access to health services, forty-two percent of children do not obtain a fifth grade education; twenty percent of Dominicans earn one dollar per day; the per capita income of the wealthiest twenty percent of people is \$10,277, while that of poorest twenty percent is \$775; and twenty-one percent of the population live in absolute poverty, unable to meet basic dietary nutritional requirements on a day to day basis.²²⁴

Over the last three decades, successive Dominican governments have also worked to improve the quality of life of Dominican women. The efforts undertaken have resulted in many successes. For example, fertility rates and the number of deaths due to childbirth have decreased, especially in urban areas, and life expectancy has increased. Additionally, literacy rates and the number of Dominican women enrolled in technical and university programs continue to rise, as has the number of women entering and remaining in the workforce.²²⁵ Problems persist, particularly with respect to the types of jobs that women acquire and the remuneration they can expect to receive. In addition, huge discrepancies are apparent between the quality of life of women living in urban areas compared to those living in rural areas. Poverty and lack of economic opportunity force many women into international sex work. More than 50,000 Dominican women work abroad as prostitutes, and local prostitution, especially for "sex tourism" purposes, is rampant.²²⁶

²²² Gómez, *supra* note 207, at 334.

²²³ *Id.* at 334-35.

²²⁴ *Id.* at 335.

²²⁵ See Baéz, *supra* note 23, at 113-14; see also Mujeres Latinoamericanas en Cifras: República Dominicana, *supra* note 122.

²²⁶ International Organization for Migration, Trafficking in Women From the Dominican Republic for Sexual Exploitation 3 (June 1996), <http://www.iom.int/documents/publication/en/mip%5Fdominican%5Ftraff%5Feng.pdf>. "The Dominican Republic has the fourth highest number in the world of women working overseas in the sex trade after Thailand, Brazil, and the Philippines." *Id.* According to the IOM, "the

B. Institutional Capacity to Enforce the Provisions of Law 24-97

Law enforcement, the judiciary, and public health care professionals remain largely unaware of the legislative changes introduced to the Criminal Code by Law 24-97. Most members of the National Police surveyed for this study during the period from November, 2001 to January, 2002 indicated that they were only vaguely aware of the existence of Law 24-97. For the most part, they seemed to have heard of the law but usually could not list any of its specific provisions.²²⁷ Only a handful of the police officers who chose to participate in the survey had received training on the substantive content of the law, the procedures to be followed under the law to ensure that it is being properly enforced and applied, or gender-sensitivity awareness.²²⁸ A sergeant of the National Police stated with conviction that a husband cannot rape his wife: “¿Cómo puede violar un hombre a su esposa? Eso no existe en nuestra ley; eso existe en otros países pero aquí no,”²²⁹ or, “How can a husband rape his wife? That doesn’t exist in our law; that exists in other places but not here.” Another police officer explained that violence against women is rampant in the Dominican Republic because Dominican women are “hot” and Dominican men are “masculine,” then noted that the majority of women who are murdered have been killed out of jealousy.²³⁰

1. The Judicial System

The way in which specific instances of gender-based violence are classified by public prosecutors and judges reflects the persistent legislative irrelevance of Law 24-97.²³¹ In the majority of cases of violence against

international sex work is viewed by many sources in the country as a concrete alternative for young, impoverished women who cannot find job opportunities at home.” *Id.* Women who were interviewed for the IOM study cited two main reasons for working abroad in the sex trade: the need to have “the financial means to feed and raise their children” and/or “to buy a home for their parents.” *Id.*

²²⁷ See Police Interviews, *supra* note 32.

²²⁸ *Id.*

²²⁹ Interview with an unnamed Sergeant of the National Police, Destacamento de la Policía Nacional, Zona Colonial, in Santo Domingo, Dom. Rep. (Nov. 2001); see also *id.*

²³⁰ Interview with the Jefe de Robo Sector Gazcue, Destacamento de la Policía Nacional de Gazcue, in Santo Domingo, Dom. Rep. (Nov. 2001). This interviewee stated that “*las mujeres dominicanas son muy calientes y los hombres son muy machistas*,” or “the Dominican women are very hot and the men have a lot of machismo.” See also Police Interviews, *supra* note 32.

²³¹ Inter-American Commission on Human Rights, *The Situation of Women in the Dominican Republic*, in *Report on the Situation of Human Rights in the Dominican Republic* (Oct. 7, 1999), <http://www.cidh.oas.org/countryrep/DominicanRep99/Chapter10.htm>:

women, crimes are not classified according to the criminal offenses created by Law 24-97; instead, they tend to be classified according to the old provisions of the Criminal Code. Recent statistics released by the Supreme Court of Justice list the number of criminal cases entered in the ten courts of the Palacio de Justicia in Santo Domingo for the period from January to June, 2000 according to the type of crime. Listed among the most common types of crimes are rape, attempts against modesty, blows and injuries, luring of minors from their homes, and attempted rape.²³² Cases classified under the new offenses created by Law 24-97 were entirely missing from the list. Despite the enactment of Law 24-97 by the National Congress in 1997, the justice system still seems to be governed by the archaic, sexist, and discriminatory provisions contained in the old Criminal Code.

a. Judicial Independence in Creating and Enforcing the Law

According to Article 4 of the Constitución, the Dominican Republic is essentially republican, democratic, and representative, with a government in which power is divided between three independent branches: the Executive Branch (President of the Republic), the Legislative Branch (a bicameral Congress composed of a Senate and a Chamber of Deputies), and the Judicial Branch (Supreme Court of Justice and all other courts).²³³ Power tends to be centralized in the Executive Branch and the authority of local governments, organized in *ayuntamientos* (municipal councils), is limited. The influence of elites within the two main political parties, the Dominican Revolutionary Party and the Dominican Liberation Party, over the Executive, Legislative, and Judicial branches of government is evident.

Some women victims of domestic violence turn to police stations, where in most cases the police refuse to take the declaration. When the police station does receive the complaints and initiates the procedure pursuant to Law 24-97, they bring the cases to the office of the public prosecutor for them to be classified as cases of family violence and referred to the investigative court. Once in those courts, the procedure strays from the purpose of the law for the judges dismiss the complaint or re-label the cases. For example, in the case of physical aggression, they characterize it as a case of blows and injuries which, if healed within [ten] days, allows the assailant to be released on bond, jeopardizing the victim, as the assailant is violent to the victim once again.

²³² Mairení Rivas, Suprema Corte de Justicia (Dom. Rep.), Estadísticas de las diez Cámaras Penales del Juzgado de Primera Instancia del Distrito Nacional (Jan.-June 2000), at 53.

²³³ Constitución (1994), art. 4:

El gobierno de la Nación es esencialmente civil, republicano, democrático y representativo. Se divide en Poder Legislativo, Poder Ejecutivo y Poder Judicial. Estos tres poderes son independientes en el ejercicio de sus respectivas funciones. Sus encargados son responsables y no pueden delegar sus atribuciones, las cuales son únicamente las determinadas por esta Constitución y las leyes.

The issue of judicial independence remains problematic. In 1994, constitutional reforms resulted in the creation of the National Judiciary Council whose members are empowered to elect judges to the Supreme Court of Justice.²³⁴ This ended the exclusive authority of the Senate, which had traditionally been empowered to appoint judges to the Supreme Court of Justice, a process over which the President of the Republic had always been able to exert a disproportionate amount of influence. In 1997, the selection of a new set of judges by the National Judiciary Council provided an important first step towards the creation of the Supreme Court of Justice that was fully independent of government. However, despite constitutional progress in this area, there is ample evidence that the separation of powers has yet to be fully institutionalized. The recent appointment of three new judges to the Supreme Court of Justice was denounced by civil society groups and politicians alike. In large part, the selection was almost entirely the result of political negotiations between the main political parties, leading critics to label the process undemocratic and “*una justicia comprada*,”²³⁵ or “justice that has been bought.” Furthermore, although new, more professionally-oriented selection criteria have been implemented to guide the hiring and selection of judges, most critics still allege that judicial posts are political posts, with candidates being chosen based more on political affiliations than merit or technical expertise.²³⁶

Judicial independence is also influenced by the prevailing Dominican vision of the role of judges within a democratic model of governance. Within general legal theory, the judge is seen as an objective and impartial civil servant, free from external pressure and influence. The judge should function independently of the other branches of government and should remain unbiased by public opinion and his or her personal worldview. Beyond applying the laws in a just and neutral manner, judges in a constitutional democracy are also responsible for ensuring that legislation and administrative actions uphold the principles enshrined in the Constitución. This means that the judiciary is not entirely independent of

²³⁴ See *id.* art. 64, para. I. The National Judiciary Council is composed of seven members—the President of the Republic, the President of the Senate and any other senator belonging to a different political party than that of the President of the Senate, the President of the Chamber of Deputies and any other deputy belonging to a different political party than that of the President of the Chamber of Deputies, the President of the Supreme Court of Justice (SCJ), and one other judge from the SCJ. *Id.*

²³⁵ Julio César Valentín, Comments at a Panel Discussion on La Reforma Judicial at the Tercer Encuentro Trimestral del Proyecto Para el Apoyo a las Iniciativas Democráticas Conference at the Pontificia Universidad Católica Madre y Maestra (Sept. 21, 2001). For the most part, candidates presented by civil society organizations were disregarded during the September 2001 selection of the three judges to the SCJ. *Id.*

²³⁶ Interview with Núñez, *supra* note 9; see also Interview with Rodríguez, *supra* note 10; see also Interview with Piñeyro, *supra* note 63.

government; rather there exists some interdependence, or some sort of dialogue, between all three branches of government.

However, in the Dominican Republic, judge-made law has always been regarded with deep suspicion. The Supreme Court of Justice has noted on more than one occasion that judges should limit themselves to applying the laws and should refrain from interpreting them except in "pathological" cases; in other words, judicial interpretation should be limited to those rare instances of "imperfection" in the law.²³⁷ This vision of the role of the judge finds its source in the origins of the Dominican legal system, a system rooted in the more centralized Napoleonic model, and in turn, on the Romano-Germanic model, both of which have given little support to the idea of judicial activism.²³⁸ The theory upon which the justice system has been founded has combined with, and in turn complemented, historical trends which also reveal a strong tradition of subordinating the judicial power to, and making it dependent on, the Executive and Legislative branches of government. As one commentator has noted, restrictions that have traditionally been placed on judicial interpretation, and the dominant view that has identified law with legislation and the will of the legislator, can only be explained as part of a bid to provide the Executive and Legislative branches with unfettered power.²³⁹

As a result, there has traditionally existed little support for the idea of judicial review or judicial supervision of the constitutionality of legislation and administrative actions in the Dominican Republic. Judges have played an extremely limited role in criticizing unjust laws, ensuring that constitutional rights are respected, or updating the notoriously archaic nature of much of the Dominican codified legislative regime. That judges tend to be chosen for their political affiliation suggests that the judiciary itself has been complicit in this process, exacerbating popular perceptions of the justice system as corrupt, inefficient, and a waste of time. Consequently, the judiciary has remained largely silent when confronted with discriminatory legislation and judicial procedures that have undermined the rights of women.

b. Lack of Reform in the Rules of Evidence and Criminal Procedure

In addition to the inefficiencies and human rights abuses that continue to plague the judicial system, rights of the accused and public confidence in the system are also undermined by what can only be termed arbitrary criminal procedures. One of the biggest problems is that the

²³⁷ Roberto Obando Prestol, Sistema de Administración de Justicia y Gobernabilidad, Comisionado de Apoyo a la Reforma y Modernización de la Justicia 1998, <http://www.reforma-justicia.gov.do/sisadmin.htm> (last visited Nov. 7, 2004).

²³⁸ *Id.*

²³⁹ *Id.*

Dominican criminal law system is not premised, in practice, on the presumption of innocence.²⁴⁰ An accused person is presumed guilty until such time as he or she can prove his or her innocence. In practice, the burden of proof is on the accused rather than on the state and, furthermore, the principle that a reasonable doubt should favor the accused is routinely ignored.²⁴¹ Although these fundamental civil rights have now been codified in the country's new Code of Criminal Procedure, the Constitución still does not guarantee the presumption of innocence or the right to legal counsel.²⁴²

Criminal cases are not decided by juries.²⁴³ Instead, verdicts emerge from "*la íntima convicción del juez*." This is a system which relies on judicial weighing of the evidence in accordance with the "intimate and subjective conviction" of the presiding judge.²⁴⁴ Instead of relying on principles of objectivity based on careful weighing of relevant evidence, the Dominican criminal law system permits subjective assessments which are often arbitrary and lack transparency. The judge is not obligated to publicize the reasons for his or her decision in a particular case. As one lawyer recently observed, the "intimate conviction of the judge" is often

²⁴⁰ Prestol & Azouri, *supra* note 5; see also Código de Procedimiento Penal [Code of Criminal Procedure], <http://www.reforma-justicia.gov.do/Ncpd/editorial.htm> (last visited Nov. 8, 2004). Article 2 of the new Code of Criminal Procedure, which came into force on September 27, 2004, codifies the presumption of innocence, explaining that "[t]oda persona perseguida penalmente se presume inocente de los hechos que se les imputan. La presunción de inocencia impone a quien acusa la obligación de investigar y presentar las pruebas de la culpabilidad, conforme a las reglas planteadas por el presente Código."

²⁴¹ Code of Criminal Procedure, *supra* note 240, art. 3 (providing that the burden of proof rests with the prosecutor):

La prueba de la culpabilidad de la persona perseguida corresponde al órgano acusador. El Ministerio Público debe establecer la realidad y la calificación jurídica de los hechos así como la existencia de todo elemento susceptible de tener influencia sobre éstos; la participación en estos hechos de la persona que se persiga; la existencia en dicha persona de la intención culpable requerida por el texto de la incriminación.

See also Constitución (2002) art. 4 (stating that any doubt favors the accused).

²⁴² See Constitución (2002).

²⁴³ Dominican Republic 2003, *supra* note 59.

²⁴⁴ Inter-American Commission on Human Rights, The Right to Judicial Recourse and the Administration of Justice in the Dominican Republic, in Report on the Situation of Human Rights in the Dominican Republic (1999), <http://www.cidh.oas.org/countryrep/DominicanRep99/Chapter3.htm> [hereinafter Right to Judicial Recourse]. According to lawyers Henriquez, Mena, and Piñeyro, there is no specific provision or article in the Criminal Code or in the Code of Criminal Procedure that mandates a criminal system based on the "intimate and subjective conviction" of the judge. See Interview with Henriquez, *supra* note 8; see also Interview with Mena, *supra* note 62; see also Interview with Piñeyro, *supra* note 63. This principle seems to have been developed in legal doctrine and is also implied by references to "*la apreciación de los jueces*" in various articles of the Criminal Code. See, e.g., Criminal Code, art. 2.

influenced by the mood of the judge on that particular day, the physical appearance of the victim or the accused, and whether the judge is on friendly terms with either the public prosecutor or lawyers for the defense.²⁴⁵ As a result of the lack of gender-sensitivity training for judges and the changes introduced by Law 24-97, this procedure permits dominant stereotypes to inform judicial decision making.²⁴⁶

Law 24-97 has not changed the role played by the *médico legista* in cases of violence against women and remains particularly problematic in situations of sexual assault and rape. In a recent case, a twelve-year-old girl raped by a thirty-seven-year-old male friend of the family did not report the incident until six months later when she discovered that she was pregnant, tried to induce an abortion, and became seriously ill.²⁴⁷ The police sent the girl to the *médico legista* who issued a certificate with the following "findings": that the patient was female, non-virgin, below the age of puberty, capable of conceiving, with adequately developed secondary sexual characteristics, and with a "*himen dilatable complaciente*,"²⁴⁸ or "hymen not intact." The man was not charged.²⁴⁹

In cases of sexual assault and rape, the *médico legista* continues to focus almost exclusively on the "condition" of the hymen, rejecting a more holistic approach that would take into consideration the emotional, psychological, and physical state of the victim. In addition, the "findings" of the *médico legista* continue to determine whether or not a charge will be laid by public prosecutors; if a charge is laid, the certificate will determine under which Criminal Code provision the accused will be charged and what sentence, if any, will be imposed by the judge. The source of this problem lies partially in a lack of training for these professionals.

c. *The Role of the Prosecutor*

There is a worrisome tendency for public prosecutors to "resolve" cases of violence against women through conciliation rather than through the application of relevant provisions of Law 24-97. From October, 1997 to November, 1998, 1,000 of the 4,136 reports of violence against women received by the Departamento de Protección de la Mujer (Villa Juana Police Detachment, Santo Domingo) were resolved through agreements worked

²⁴⁵ Interview with Rodríguez, *supra* note 10.

²⁴⁶ *Id.*; see also Interview with Núñez, *supra* note 9; see also Interview with Piñeyro, *supra* note 63.

²⁴⁷ Susi Pola, *¿Más penalización a los agresores?*, El Nacional, <http://www.elnacional.com.do> (last visited Dec. 18, 2001) (on file with author).

²⁴⁸ *Id.*

²⁴⁹ *Id.*

out between the parties.²⁵⁰ There is every indication that the proportion of cases being resolved through conciliation has risen since then.²⁵¹ The reliance on this approach results in part from an attempt to quickly process the overwhelming number of cases of violence against women that are received on a daily basis at the various Departamentos de Protección de la Mujer located throughout the country.²⁵²

One of the most troubling consequences of this approach is that it almost always forces women to continue to live under the same roof as their assailants with few guarantees from the state that the terms and conditions of the agreements between the parties will be respected.²⁵³ In many cases, mediation means that assailants are “off the hook,” while the victim’s situation remains virtually unchanged. In some cases, the victim is worse off because she now faces increased resentment and anger from the aggressor. There is little supervision and little follow-up on these cases. Conciliation can be dangerous because it is used in situations where there exists an acute power imbalance between the victim and the person inflicting the abuse; any agreement will more than likely reflect this disequilibrium and will tend, in effect, to re-victimize the victim.²⁵⁴ During the conciliation process, women are forced to sit in the same room with their assailant, often without the benefit of legal representation, and often under conditions of disempowerment. Here they must work out an “agreement” meant to end what in many cases constitutes years of physical, verbal, and psychological abuse, and sometimes results in death.²⁵⁵ One commentator has noted that conciliation has, in practice, replaced the protection order.²⁵⁶

d. Inefficiency in the Administration of Justice by the Courts

The administration of justice in the Dominican Republic suffers from extreme inefficiency and is unable to provide prompt and fair resolution of cases. This results in serious violations of the rights of accused persons. It also prompts survivors of violence to quickly lose faith in the system and refuse to follow up on their cases, with the end result that cases are abandoned by police and public prosecutors and assailants remain

²⁵⁰ Báez, *supra* note 23, at 123.

²⁵¹ Interview with Núñez, *supra* note 9; *see also* Interview with Rodríguez, *supra* note 10.

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ Pola, *¿Más penalización a los agresores?*, *supra* note 247.

²⁵⁵ Interview with Núñez, *supra* note 9.

²⁵⁶ *See* Pola, *¿Más penalización a los agresores?*, *supra* note 247.

immune from criminal prosecution. Inefficiency also does little to address the common issue of the reluctant witness in spousal abuse cases.

A study conducted by the Pontificia Universidad Católica Madre y Maestra in 1988 found that Courts of First Instance were ruling on only seventeen percent of correctional cases and sixty-six percent of criminal cases; at that rate, the backlog of cases was set to double every two-and-a-half years.²⁵⁷ In 1996, the Supreme Court of Justice had 15,000 to 20,000 cases pending and was only able to rule on eight to ten cases per month.²⁵⁸ Statistics from the Departamento de Protección de la Mujer in Santo Domingo for the period October, 1997 to November, 1998, reveal that of the 4,136 reports of violence against women that were received, 2,024 (approximately forty-nine percent) were processed.²⁵⁹ Those cases that were processed were either sent to the proper tribunal, dismissed, sent to another department or jurisdiction, or settled by an agreement between the parties.²⁶⁰ Over half of the cases, comprising 2,112 reports of violence against women, were not processed at all, either because they were still being investigated or, in the majority of these cases, because the parties involved did not follow up.²⁶¹

One of the consequences of this inefficiency is a disproportionate number of detained persons being held in preventive detention, many of whom have not yet been officially charged with a crime. The Inter-American Commission on Human Rights found that in 1998 eighty-five percent of Dominican prisoners were being held in preventive detention.²⁶² The situation has improved somewhat since then. As of August, 2001, there were 11,510 persons being held in preventive detention, representing seventy-two percent of the prison population.²⁶³ In 2003, seventy percent of

²⁵⁷ *Right to Judicial Recourse*, *supra* note 244.

²⁵⁸ *Id.*

²⁵⁹ Báez, *supra* note 23, at 123.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Right to Judicial Recourse*, *supra* note 244.

²⁶³ Directorate of Prisons, *Relación y Porcentaje de Reclusos por Cárceles y Condición Jurídica en la República Dominicana*, Agosto 2001, Reporte de Cárceles (2001) [hereinafter Directorate of Prisons]; see also U.S. Dep't of State, *Dominican Republic, in Country Reports on Human Rights Practices—2000* (Feb. 23, 2001), <http://www.state.gov/g/drl/rls/hrrpt/2000/wha/761.htm> [hereinafter *Dominican Republic 2000*]. The inefficiency of Dominican courts has been slightly improved through the implementation of several government initiatives. These have included the creation of a prisoner registry system, the release of inmates being held solely pending the payment of a fine, the pardoning of prisoners every Christmas (especially those that are elderly and/or sick), the use of community conciliation centers to resolve new cases, and efforts to improve the productivity of judges. *Dominican Republic 2000*. One of the biggest obstacles to clearing the backlog of cases relates to the lack of funds for transporting prisoners to court.

the prison population was being held in preventive detention and the average pre-trial detention across the country lasted six months or more.²⁶⁴

From the perspective of violence against women, this inefficiency can have negative effects. The negative effects stem from different considerations. On the one hand, survivors of violence may tend to quickly lose faith in the system's ability to provide protection, restitution, and recourse for a criminal wrong, and either choose not to report a crime or refuse to follow up. On the other hand, given the complexity of spousal abuse specifically, women may choose not to press charges or pressure prosecution if the result will be that their spouse will be held in preventive detention for months or even years at a time. Spousal abuse victims have established relationships with their abuser: a spousal relationship, a financial relationship, and often a parental relationship. A large percentage of women who flee abusive relationships later reconcile with the abuser.²⁶⁵ In Canada, for example, the vast majority of women suffering spousal abuse tend to support pro-charge policies because police charges put an immediate stop to the violence; however, a smaller proportion support pro-prosecution policies.²⁶⁶

Recent statistics published by the Supreme Court of Justice for the ten courts that comprise the Palacio de Justicia in Santo Domingo reveal additional problems that work to impede judicial processes. One of the most common complaints concerns the endless number of hearings that are remanded or cancelled. Of 20,120 hearings held in the period January to June, 2001, 13,269 were still pending a decision; of these, 8,960 were correctional cases and 3,550 were classified as criminal in nature.²⁶⁷ There were 8,174 remands and 4,116 cancellations.²⁶⁸

The primary reasons noted for remands in criminal cases included: lack of a summons (152); incomplete record or documentation for the case (378); lawyer for the defense missing (271); defense asked for more time to study the record of the case (170); witnesses unavailable to testify (221); victim missing from the hearing (326); prisoners not transferred from the

In 2002, the Supreme Court of Justice started a pilot program designed to bring the courts to the prisons and set up mobile courts of instruction. *Dominican Republic* 2003, *supra* note 59.

²⁶⁴ *Dominican Republic* 2003, *supra* note 59.

²⁶⁵ *Spousal Abuse Policies and Legislation*, *supra* note 16, at 15, 21-22. In Canada, for example, sixty percent of women who flee an abusive partner and take refuge in a shelter will return to their partner and suffer subsequent violence. Often, women refuse to cooperate with prosecutors because they wish to reconcile with the offender. Some women continue to have a parental relationship with the abuser and some experience financial hardship following the arrest of the abuser. *Id.*

²⁶⁶ *Id.*

²⁶⁷ Rivas, *supra* note 232, at 12-13, 20.

²⁶⁸ *Id.*

prison to the courthouse (454); and other reasons not specified (617).²⁶⁹ The reasons listed for remands in correctional cases were quite similar. The primary reasons listed for cancellations of criminal cases included: prisoners not transferred from their prison to the courthouse (341); failure of parties to the proceedings to appear (134); absence of the public prosecutor from the proceedings (54); and other reasons not specified (86).²⁷⁰ Again, the reasons noted for cancellation of correctional cases are similar to those for criminal cases, but the numbers are strikingly different; for example, failure of parties to the proceedings to attend the hearing resulted in the cancellation of 2,349 hearings in correctional cases.²⁷¹

These numbers reflect the fact that many survivors of violence refuse to follow up on their cases either because they have lost faith in the administration of justice or because they have sought to reconcile with the abuser. In a large percentage of the cases, remands or cancellations are due to the fact that the plaintiff did not appear in court. Often, if the survivor of violence does not ensure that summons have been issued, that the record of the case is complete and has been photocopied and filed with the court, and that the public prosecutor is aware of the date of the hearing and intends to attend, then the case will either become bogged down in countless remands or will be dropped altogether.²⁷²

If survivors of violence do not follow up on their cases, public prosecutors will usually abandon the proceedings. This may be due to evidentiary considerations, because a reluctant witness may be the only credible source of compelling testimony, or it may reflect a general disinterest in prosecuting crimes against women. The issue of the recalcitrant witness points to the need for policies that support the values codified in Law 24-97, especially in the context of an extremely inefficient system. Pro-prosecution policies work best when victims are supported and have options. Measures that would help decrease the number of charges that do not proceed to trial and sentencing include the following: the availability of videotaped testimony, cautious use of judicial interim release only with appropriate conditions, provision of timely information to victims throughout the criminal process, access for victims to support services such as shelters and counseling, and the development of police investigative techniques designed to gather all available evidence rather than relying solely on the evidence of the abused woman.²⁷³

²⁶⁹ *Id.* at 29.

²⁷⁰ *Id.* at 32-33.

²⁷¹ *Id.*

²⁷² Interview with Núñez, *supra* note 9.

²⁷³ Spousal Abuse Policies and Legislation, *supra* note 16, at 21-23.

e. Judicial Awareness of Law 24-97

Many judges and lawyers also remain ignorant of Law 24-97 or refuse to apply and/or interpret this piece of legislation correctly. In a recent case handled by CENSEL, the lawyer for a man accused of having anally raped a ten-year-old girl brought an application for habeas corpus, arguing that anal penetration did not constitute the criminal offense of rape as defined in the Criminal Code and that, as a result, his client was being unlawfully detained.²⁷⁴ This lawyer would have been correctly interpreting the law as it existed prior to 1997, but the new definition of rape in Law 24-97 no longer excludes anal penetration. In another CENSEL case, a man accused of incest was found guilty of sexual assault and given a sentence of twenty years by the judge, even though paternity was never questioned at trial and the accused himself had admitted that the victims in question were his children.²⁷⁵ The minimum sentence upon conviction for incest according to Article 332-2 of Law 24-97 is thirty years.²⁷⁶ The judge provided no reasons for his decision. On appeal, the sentence was confirmed.²⁷⁷

2. The National Police and Prison System

Another factor that can lead women to hesitate to press charges and push for prosecution stems from the abysmal human rights record of the National Police and the regularity with which human rights abuses occur in the prison system. Many Dominicans are fearful of the National Police and are reluctant to approach police for help or protection.²⁷⁸

a. Public Distrust of the Police

Although the Dominican Republic has worked to improve the human rights record of its internal security forces, serious problems remain. According to the U.S. Department of State, there were seventy-five extrajudicial killings by the police in 1998; many of these unwarranted, arbitrary killings were justified by authorities as resulting from “exchanges of gunfire,” or the need on the part of the police to practice self-defense.²⁷⁹

²⁷⁴ Interview with Rodríguez, *supra* note 10.

²⁷⁵ *Id.*

²⁷⁶ Law 24-97, art. 332-2.

²⁷⁷ E-mail from Lucila Lara Núñez, Executive Director of CENSEL, to Mercedes Perez, Associate, Swadron Associates (Oct. 22, 2004) (on file with author).

²⁷⁸ Interview with Rodríguez, *supra* note 10.

²⁷⁹ U.S. Dep’t of State, *Dominican Republic*, in *Country Reports on Human Rights Practices—1998* (Feb. 26, 1999), http://www.state.gov/www/global/human_rights/1998_hrp_report/domrepub.html [hereinafter *Dominican Republic* 1998].

In 2003, an estimated 150 to 292 extrajudicial killings by police occurred.²⁸⁰ Newspaper articles describing these incidents usually quote police sources who readily label the victims as “*delincuentes*,” or “delinquents,” a characterization designed to legitimize police action.

The police are cited much more often for human rights abuses than the military.²⁸¹ Although on paper the National Police is controlled by the civilian government administration, there are reports of human rights abuses in which the police refuse to cooperate with public prosecutors in resolving incidents of such abuses.²⁸² Other abuses attributed to the police include psychological and physical abuse of prisoners, detained persons, and their families; the use of live ammunition to disperse demonstrations;²⁸³ arbitrary arrests and detentions; searches of private residences without prior judicial authorization; and “uniformed vigilantism.”²⁸⁴ It should also be noted that often these abuses occur with the tacit approval of government officials.²⁸⁵ The result is that police are perceived to be above the law.

b. Police Awareness of Law 24-97

Most police who were interviewed had not heard of the Protection Order; if they had heard of it, they were only vaguely aware of its purpose and were unsure as to how an Order could be solicited.²⁸⁶ The majority of police believed that a woman who has been raped will also exhibit bruises or other signs of violence on her body and that many women who allege rape have in fact “provoked” their assailants in some way, usually through their choice of dress, through flirtation, or by permitting a man to buy them a drink.²⁸⁷ Most also believed that the certificates issued by the *médico legista* should be given substantially more evidentiary weight than the testimony of the woman because some women tend to lie whereas the certificate represents a “neutral” and “scientific” assessment provided by a medical and legal professional.²⁸⁸

²⁸⁰ *Dominican Republic* 2003, *supra* note 59.

²⁸¹ *Id.*; see also *Dominican Republic* 1998, *supra* note 279.

²⁸² *Dominican Republic* 2000, *supra* note 263.

²⁸³ *Dominican Republic* 1998, *supra* note 279.

²⁸⁴ *Dominican Republic* 2000, *supra* note 263. “Uniformed vigilantism” is used to describe situations in which the police employ unwarranted deadly force against criminal suspects.

²⁸⁵ *Id.*

²⁸⁶ Interview with the Jefe de Robo Sector Gazcue, *supra* note 230.

²⁸⁷ Police Interviews, *supra* note 32; see also *id.*

²⁸⁸ *Id.*

While conducting the survey, it became readily apparent that the vast majority of police officers are unaware of their professional responsibilities under Law 24-97. The police officers questioned believed that cases of violence against women do not constitute a “regular” police matter; rather, these are “special” cases that fall under the jurisdiction of the specialized police departments such as the Departamento de Protección de la Mujer (Villa Juana Police Detachment, Santo Domingo) or, for sexual assault and rape cases, the Sexual Abuse Center.²⁸⁹ Police will only act if the woman arrives at a police detachment with an arrest warrant in hand or if police officers surprise an assailant in “*delito flagrante*,”²⁹⁰ or “in the act of committing a crime.” Those interviewed also indicated that it is not the role of police to provide women with any information on the law, legal procedure, or support services.²⁹¹ According to police officers, this function has been assigned exclusively to public prosecutors; interestingly, however, almost every police officer indicated that he or she would prefer to increase his or her knowledge of Law 24-97 in order to better assist women.²⁹²

C. Other Government Actors

1. *Secretaría de Estado de la Mujer*

Despite the enactment of Law 24-97, the Dominican state remains unwilling to protect the rights of victims of gender-based violence. A telling example is the attitude of public prosecutors. The Public Ministry should represent the interests of victims in denouncing and punishing public wrongs. Yet, public prosecutors often lack adequate training to properly navigate cases of violence against women and provide support to survivors throughout the charge and prosecution stages of the judicial process.²⁹³ Many of these officials are overworked political appointees who lack

²⁸⁹ *Id.*

²⁹⁰ *Id.* For example, during an interview with the Regional Supervisor of the National Police who was temporarily stationed in the Sánchez Luperón police detachment (El Capotillo), I was told that prior to the enactment of Law 24-97 violence against women was a “regular” police matter but that since 1997 these cases have fallen under the exclusive jurisdiction of the newly created specialized departments. “Regular” police officers are now only responsible for sending women to the specialized department at the police station in Villa Juana (Santo Domingo) and for executing an arrest warrant if and when one has been issued. This officer also told me that in cases where a woman has been “severely” beaten, the “regular” police can act right away by arresting the accused, even in the absence of an arrest warrant. However, this only occurs in what police perceive to be exceptional circumstances.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ Interview with Mena, *supra* note 62; see also Interview with Piñeyro, *supra* note 63; see also Interview with Rodríguez, *supra* note 10.

specific legal expertise; they prefer "quick" solutions, such as conciliation, and turn away "less serious" cases.²⁹⁴ Sadly, there is a dearth of supportive services available for even those prosecutors who are sympathetic to the plight of female survivors of violence.

If a woman wants to prosecute her assailant, she will be much more likely to succeed if she hires a lawyer to represent her interests in court. For poor women, however, the state provides little help. Under a current program established by the Secretaría de Estado de la Mujer, the Secretaria will pay for lawyers provided by a non-governmental organization, such as CENSEL, for women who cannot afford to hire their own lawyers.²⁹⁵ Unfortunately, the funding provided is severely inadequate. The Secretaria will merely pay approximately seventeen dollars per accompaniment and will allow a maximum of only five accompaniments by a lawyer.²⁹⁶ This is insufficient. Most cases take much longer than a year to resolve and require more than five accompaniments. The funding provided by the Secretaria does not cover preparation and court attendance time by lawyer and, in any event, Dominican lawyers tend to charge much more than what the Secretaria is willing to pay with the result that lawyers willing to work for non-governmental organizations are few and far between.²⁹⁷ In addition, although the Secretaria will pay for five accompaniments, it will not pay for anything else. The result is that women must cover all disbursements, such as transportation costs, photocopying and filing of documents, service of documents, and applicable taxes.²⁹⁸ These costs can become quite onerous, especially for economically disadvantaged women.

The Secretaria has established a Departamento de Defensoría, which currently has five lawyers available to aid survivors of violence.²⁹⁹ The Departamento de Defensoría, however, is limited to providing legal advice and legal information; there is currently only one lawyer who accepts cases that are going to trial.³⁰⁰ Women who require accompaniment and legal representation are usually directed to the few non-governmental organizations that provide this type of service.

The government has established Unidades de Abuso Sexual (Sexual Abuse Units) within specialized police detachments and public prosecutors' offices. These units were established to provide psychological counseling

²⁹⁴ *Id.*

²⁹⁵ Interview with Núñez, *supra* note 9.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ Interview with Rodríguez, *supra* note 10.

³⁰⁰ *Id.* Rodríguez, a CENSEL lawyer, also works at the Departamento de Defensoría and is the only lawyer willing to handle cases through to trial.

for women, as well as more progressive and less traumatic medical examinations. Unfortunately, in Santo Domingo, the same police detachment that houses the Unidad de Abuso Sexual also has an office established by the Comisionado de Apoyo a la Reforma y Modernización de la Justicia (Commission for the Support of the Reform and Modernization of Justice), which provides legal aid services and public defenders to accused persons.³⁰¹ Women who have been sexually assaulted or raped will receive counseling in the very same place where their assailants prepare their defenses.

Law 24-97 has not been supplemented by effective policies or programs designed to protect women from violence or to help them recover from violence. For example, Law 24-97 establishes that a Protection Order can include an order to provide victims and their families with required health care and counseling services,³⁰² but in practice this order is ineffective because there are very limited public or private resources dedicated to providing these types of services. Furthermore, no shelters are available for battered women anywhere in the Dominican Republic.³⁰³

2. *Public Health System*

Public hospital emergency room personnel who participated in the survey were equally unfamiliar with the specific content of Law 24-97 and held opinions regarding gender-based violence similar to those of the police officers.³⁰⁴ Most doctors and nurses indicated that their only function is to provide medical assistance to victims of violence; anything outside the provision of health care services is considered a police matter. Doctors and nurses who were interviewed stated that they would only intervene if the woman herself requested legal assistance or if the woman was "severely" injured, but even in these cases, the doctors and nurses had little knowledge of the substantive content of Law 24-97 or legal procedure and would therefore be of little assistance to a woman requesting help.³⁰⁵

The confusion, misinformation, ignorance, and lack of gender sensitivity demonstrated by judicial, law enforcement, and public health care personnel is part of a much larger problem, one that cannot simply be attributed to the continued prevalence of *machismo* and patriarchal structures, or a simple lack of training. Many police are functionally illiterate or have not completed elementary and high school, and police

³⁰¹ *Id.*

³⁰² Law 24-97, art. 309-6 ("Orden de suministrar servicios de atención a la salud y de orientación para toda la familia a cargo de organismos públicos o privados . . .").

³⁰³ *Consideration of Reports*, *supra* note 200, at 16.

³⁰⁴ Police Interviews, *supra* note 32.

³⁰⁵ *Id.*

training does not include in-depth analysis of existing laws and criminal procedure.³⁰⁶ The posts of public prosecutor, assistant public prosecutor, judge, and magistrate are largely political posts; individuals are nominated to these positions based on their political affiliations.³⁰⁷ Public hospital emergency rooms tend to be staffed primarily by medical students completing their residency and by doctors who only work at the hospital a few times a month because they run private practices or work elsewhere the remainder of the time.³⁰⁸ Many hospital "nurses" do not hold a nursing degree, receive little training, and are intended to assist nursing staff, rather than replace nursing staff.³⁰⁹

Law 24-97 must be supplemented with written directives and guidelines to assist police, hospital workers, public prosecutors, and judges to adequately support and assist survivors of violence. Pro-charge and pro-prosecution policies should be studied and implemented.

D. Popular Perceptions of the Administration of Justice

The need for continued reform of the judicial system results in a generalized, popular distrust of the Dominican legal system. A survey conducted in 1993 by the firm MERCADESA in the city of Santo Domingo found that approximately sixty-seven percent of respondents felt that the Dominican justice system functioned badly or very badly.³¹⁰ When asked which sector of society presented the biggest obstacle to judicial reform, 32.6 percent indicated the government (then headed by Joaquín Balaguer), 12.6 percent the political parties, 11.6 percent the drug traffickers, and 11.2 percent the Supreme Court of Justice.³¹¹

A February, 1999 survey conducted by the Proyecto de Modernización de Tribunales concluded that approximately sixty-eight percent of respondents believed that the judicial process had improved since 1997.³¹² Nevertheless, most people thought that serious problems still plagued the administration of justice. Approximately sixty percent of respondents believed that men and women did not receive the same treatment under existing legislation and before the courts, while fifty-three

³⁰⁶ Interview with Rodríguez, *supra* note 10; see also Interview with Mena, *supra* note 62.

³⁰⁷ *Id.*; see also Interview with Henriquez, *supra* note 8; see also Interview with Núñez, *supra* note 9; see also Interview with Piñeyro, *supra* note 63.

³⁰⁸ Interview with Núñez, *supra* note 9.

³⁰⁹ *Id.*

³¹⁰ Gómez, *supra* note 207, at 345.

³¹¹ *Id.*

³¹² *Id.* at 355.

percent perceived that skin color was also a factor.³¹³ When asked the reasons for not seeking judicial recourse, 20.8 percent responded that it was a waste of time, 18.8 percent indicated that legal costs rendered the process too expensive, 17.4 percent feared police and other members of the judicial system, and 16.8 percent noted that they did not understand the procedures involved.³¹⁴

CONCLUSION

The Pan American Health Organization (PAHO), in its Strategic and Programmatic Orientations 1991-1994, identified gender-based violence not only as a public health problem but also as a "hidden obstacle to socioeconomic development and a flagrant violation of human rights."³¹⁵ As mentioned above, to date there has been no systematic study of the effects of this type of violence on the health, productivity, and general well-being of Dominican women, their families, and their communities. Nonetheless, studies conducted in other Latin American countries, as well as in market economies, provide some insight into the possible consequences of gender-based violence on individual victims and on society in general. One observer notes, for example, that the impact of violence on health is clear and often drastic:

Rape and domestic violence account for significant numbers of deaths and disabilities among women of child-bearing age. Women victimized by violence not only may sustain bruises, wounds, broken bones, loss of hearing, retinal detachment, sexually transmitted diseases, miscarriage, and even death, but they also may suffer from chronic stress and related conditions such as hypertension, diabetes, asthma, and obesity. Frequently, as a consequence of both physical and psychological abuse, women suffer chronic headaches, sexual disorders, depression, phobias, and persistent fear. In addition, they often have low self-esteem, which directly affects their productivity in the workplace and ability to report the abuse and seek protection.³¹⁶

The impact of violence against women on the health of women and their families produces other consequences. It negatively affects the economic and social well-being of entire communities and, in turn, undermines processes of development and democratization. To date, there has been no investigation into the impact of violence against women on

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ Shrader & Sagot, *supra* note 27, at 5.

³¹⁶ *Id.*

society and development in the Dominican Republic. Nevertheless, studies from other countries indicate that sexual and physical abuse lowers women's income between three and twenty percent because such abuse undermines health, educational achievement, and ability to enter and stay in the labor market.³¹⁷ In market economies, the most common form of gender-based violence, family violence, accounts for almost one year of life lost for every five years of healthy life among women aged fifteen to forty-four.³¹⁸

Furthermore, violence against women that is condoned by the state calls into question that government's commitment to democracy. When the state refuses to respond to violence against women, women are denied their right to fully participate in the social, political, and economic development of their country. The result is a system marked by discrimination, inequality, and injustice which denies women access to the resources of the state and prevents them from contributing to national processes of development and social change. A passive state, in effect, is one that condones the abuse of human rights. Violence against women threatens the liberty, dignity, security, and other rights of affected individuals. As one commentator has written, "[m]any types of family violence are, in fact, forms of torture, imprisonment in the home, sexual terrorism, or slavery."³¹⁹

In an effort to combat violence against women, the Dominican Republic has enacted criminal legislation, Law 24-97, and has begun to institutionalize the procedures, policies, and structures necessary to support this legislative initiative. But there is still much to be done if the government means to comply with international obligations. Violence against women still occurs at unacceptable rates and victims remain unable to access the justice system and other services, such as health care. Protection, support, guarantee, and enforcement of women's rights cannot be excluded from the more general attempts being undertaken to modernize institutions, deepen the democratic commitment, and end poverty through economic development.

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*