

NOTE

REDUCING HARMFUL EFFECTS OF MACHISMO CULTURE ON LATIN AMERICAN DOMESTIC VIOLENCE LAWS: AMENDING THE CONVENTION OF BELÉM DO PARÁ TO RESEMBLE THE ISTANBUL CONVENTION

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INTRODUCTION

On August 27, 2014, Lucia Sandoval walked out of a Paraguayan jail, acquitted for “insufficient evidence of her involvement” in her husband’s death after serving more than three years on a homicide charge.¹ The charge stemmed from an incident in February 2011, when, after filing a domestic violence complaint, Sandoval presented her husband with her court-awarded *medida de protección* (protection measure) restraining order against him.² Under Paraguayan law, women who obtain medidas de protección are themselves responsible for informing the person against whom they obtained the order.³ In Sandoval’s case, doing so caused her husband to threaten her with a gun.⁴ This violent threat on Sandoval’s life led to a physical altercation that ultimately ended in her husband’s death.⁵

Amnesty International USA described Sandoval’s release as a “huge step forward” in protecting domestic violence survivors, and Amnesty International Paraguay noted that the ruling “gave a positive signal to women . . . [who] look for protection against their abuse[r]s.”⁶ Although Sandoval’s case ended positively, the

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1. Debbie Sharnak, *Victory in Paraguay is a Big Step Forward for Domestic Violence Survivors*, AMNESTY INT’L: HUM. RTS. NOW BLOG (Mar. 20, 2015), <http://blog.amnestyusa.org/americas/victory-in-paraguay-is-a-big-step-forward-for-domestic-violence-survivors/> [https://perma.cc/5X9H-L7CF]; *Women and Justice League, Country Details: Paraguay*, CORNELL L. SCH. (2015), <http://www.lawschool.cornell.edu/womenandjustice/Legal-and-Other-Resources/DisplayCountry.cfm?CountryID=51> [https://perma.cc/2S2M-PQXE].

2. Sharnak, *supra* note 1.

3. *Id.*

4. *Id.*

5. CORNELL L. SCH., *supra* note 1.

6. Sharnak, *supra* note 1.

celebratory press surrounding her traumatic ordeal suggests that such outcomes are rare in similar domestic violence cases.⁷ Additionally, the troubling facts surrounding the case reflected glaring defects in Paraguayan domestic violence legislation regarding the adequate protection of women, and resulted in international calls to improve how the country addresses gendered violence.⁸

The inadequacy of legislative domestic violence regulation and corresponding enforcement mechanisms is not confined to Paraguay, but is rather a dangerous theme across Latin America.⁹ The effects of these inadequacies are clear: a 2011 study found that Latin American countries accounted for almost half of the twenty-five countries associated with “high and very high” femicide rates.¹⁰ A Pan-American study similarly found steep rates of intimate partner violence against women throughout Latin American and Caribbean countries, from seventeen percent in the Dominican Republic to fifty-three percent in Bolivia.¹¹ According to the study, “a majority of women who experienced physical violence in the past [twelve] months also reported emotional abuse, ranging from 61.1% in Colombia . . . to 92.6% in El Salvador.”¹² Perhaps most disheartening is evidence that in certain countries, violence against women continues to increase in the face of justice systems that are perceived as unresponsive.¹³

One contributing factor to these rates of domestic violence is the interplay between *machismo* and *marianismo*, which are prominent social constructs about gender that play significant roles in shaping

7. *See id.*

8. This Note’s scope is limited to male-inflicted violence against women and excludes female-inflicted violence against either women or men. *See id.*

9. *See Everyday Aggression*, ECONOMIST (Sept. 2013), <http://www.economist.com/news/americas/21586575-laws-punish-domestic-violence-are-too-often-honoured-breach-everyday-aggression> [<https://perma.cc/ACB2-YUA6>].

10. GENEVA DECLARATION ON ARMED VIOLENCE AND DEVELOPMENT, GLOBAL BURDEN OF ARMED VIOLENCE 2011 119 (2011), http://www.genevadeclaration.org/fileadmin/docs/GBAV2/GBAV2011_CH4_rev.pdf [<https://perma.cc/5X67-2UA3>]; *see* Nadine Gasman & Gabriela Alvarez, *Gender: Violence Against Women*, AMERICAS Q. (Fall 2010), <http://www.americasquarterly.org/node/1930> [<https://perma.cc/G75F-XW3F>] (defining “femicide” as “the killing of women”).

11. PAN AM. HEALTH ORG., VIOLENCE AGAINST WOMEN IN LATIN AMERICA AND THE CARIBBEAN: A COMPARATIVE ANALYSIS OF POPULATION-BASED DATA FROM 12 COUNTRIES 105 (2012).

12. *Id.* at 108.

13. Sara Miller Llana & Sibylla Brodzinsky, *Violence Against Women in Latin America: Is it Getting Worse?*, MINNPOST (Nov. 20, 2012), <https://www.minnpost.com/christian-science-monitor/2012/11/violence-against-women-latin-america-it-getting-worse> [<https://perma.cc/WR8L-33GT>] (noting recent spikes in femicide in El Salvador and Honduras, along with an increased number of acid attacks against Colombian women).

cultural ideals and accepted behaviors throughout Latin America.¹⁴ Hyper-masculine machismo idealizations of aggression and dominance sharply contrast hyper-feminine marianismo associations with submissiveness and self-sacrifice.¹⁵ Politicians and activists have suggested that, in light of such high rates of violence in countries with these constructs, legal systems serve to perpetuate the cycle of domestic violence through an implicit prioritization of men over women.¹⁶

The above statistics exist despite international organizations' numerous efforts to position Latin American legislation against violence and toward protecting human rights through international treaties and human rights conventions.¹⁷ However, effective implementation of international human rights conventions requires that individual countries themselves commit to adequate compliance.¹⁸ As such, enforcement is problematic despite many Latin American

14. Robert Hanser, *Domestic Violence Against Women in Latin-America*, 17 CRIME & JUST. INT'L (July–Aug. 2001), <http://www.cjimagazine.com/archives/cji2e37.html?id=163> [<https://perma.cc/79XK-VKMU>]; see DPA News Agency, *Spain Wages War on Machismo Attitudes*, DW (July 13, 2008), <http://www.dw.com/en/spain-wages-war-on-machismo-attitudes/a-3477083> [<https://perma.cc/EUX6-WMP9>]; Giles Tremlett, *Swedish Men About the House Leave Portuguese Standing*, GUARDIAN (June 8, 2006, 6:43 AM), <http://www.theguardian.com/world/2006/jun/08/familyandrelationships.gender> [<https://perma.cc/ZG2Z-VF28>]. See generally Meredyth Edelson, et. al., *Differences in Effects of Domestic Violence Between Latina and Non-Latina Women*, 22 J. FAM. VIOLENCE 2 (Jan. 9, 2007) (suggesting the overlap of *machismo* and *marianismo* in Latino families may increase the risk of domestic violence for Latina women).

15. See Edelson et al., *supra* note 14, at 2; Bron B. Ingoldsby, *A Theory for the Development of Machismo*, Annual Meeting of the National Council on Family Relations 4, 7–8 (Nov. 4–8, 1985) <http://files.eric.ed.gov/fulltext/ED268399.pdf> [<https://perma.cc/U2WY-AXSU>] (available in the U.S. Department of Education Educational Resources Information Center); *Machismo Sexual Identity*, STANFORD UNIV. HUMBIO129: CRITICAL ISSUES IN INT'L WOMEN'S HEALTH (Mar. 18, 2008), http://web.stanford.edu/group/womenscourage/Repro_Latin/ekobash_HIVmachismo_Latin.html [<https://perma.cc/3B4G-5LNX>] [hereinafter STANFORD U.].

16. Culliton, *infra* note 76 and accompanying text; see ECONOMIST, *supra* note 9 (noting the Salvadoran first lady's opinion that one legal ruling “strengthened impunity and the dreadful practice of El Salvador's justice system to favo[r] aggressors and assassins and to punish victims of gender violence”).

17. See, e.g., U.N. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]; G.A. Res. 48/104, Declaration on the Elimination of Violence against Women (Dec. 20, 1993) [hereinafter G.A. Res. 48/104]. For a list of U.N. member states, see *Member States of the United Nations*, UNITED NATIONS, <http://www.un.org/en/members> [<https://perma.cc/W34B-AS4A>] (last visited Oct. 20, 2016).

18. *Frequently Asked Questions Regarding the Rights of Persons with Disabilities*, UNITED NATIONS ENABLE, <http://www.un.org/esa/socdev/enable/convinfaq.htm#q1> [<https://perma.cc/8BHT-R5TQ>] (last visited Oct. 20, 2016); *Why an Optional Protocol?*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/cedaw/protocol/why.htm> [<https://perma.cc/6XN4-5PLN>] (last visited Oct. 20, 2016).

countries having ratified conventions like the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁹ Furthermore, more than fifty of the countries that ratified CEDAW, including Chile, Colombia, and El Salvador, did so subject to reservations or objections to key provisions, often based on cultural or religious values.²⁰ While the messages and intentions behind such treaties are commendable, their expansive natures and numerous signatories pose real implementation problems in the face of conflicting cultural values and countries' wishes to either exempt themselves from certain provisions or adopt them according to their preferred interpretations.²¹ As a result, Latin American domestic violence rates remain remarkably high notwithstanding such instruments.²²

Additional legislation intended to deter domestic violence also exists on a regional scale.²³ The Organization of American States (OAS), an inter-continental organization composed of thirty-five North and South American countries, adopted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, known as the Convention of Belém do Pará (CBP), on June 9, 1994, in Brazil.²⁴ All but eight OAS members ratified the CBP, which specifically spells out standards to guide ratifying states in their implementation of laws regarding vio-

19. The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) aims to promote women's advancement. CEDAW, *supra* note 17, at 14. See UNITED NATIONS ENABLE, *supra* note 18; U.N. WOMEN, *supra* note 18; see also *Latin America and the Caribbean*, UNESCO, <http://www.unesco.org/new/en/unesco/worldwide/latin-america-and-the-caribbean> [<https://perma.cc/E4WZ-T8CA>] (last visited Oct. 20, 2016) (noting most Latin American states are members or associate members).

20. See generally *Declarations, Reservations and Objections to CEDAW*, U.N. WOMEN (Nov. 8, 2015), <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> [<https://perma.cc/TL3P-L3RG>] (providing member States' declarations, reservations, and objections to CEDAW including Chile and El Salvador).

21. See Emily Freeburg, *U.N. Pact Sinks on Issue of Violence Against Women*, WOMEN'S ENEWS (Apr. 24, 2003), <http://womensenews.org/story/international-policy/united-nations/030424/un-pact-sinks-issue-violence-against-women> [<https://perma.cc/W47D-A4GZ>]; U.N. WOMEN, *supra* note 20.

22. See PAN AM. HEALTH ORG., *supra* note 11, at 20, 108 and accompanying text; Llana & Brodzinsky, *supra* note 13 and accompanying text.

23. See, e.g., *infra* note 24 and accompanying text.

24. The Organization of American States (OAS)'s Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, or the Convention of Belém do Pará (CBP), addresses means for recognizing and mitigating violence against women. Inter-American Convention of the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belém Do Pará," June 9, 1994, 33 I.L.M. 1534 [hereinafter CBP]; A-61: *Inter-American Convention of the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belém do Pará"*, OAS (Nov. 8, 2015), <http://www.oas.org/juridico/english/sigs/a-61.html> [<https://perma.cc/8CDE-RBEY>].

lence against women.²⁵ The CBP seemed poised to tackle domestic violence issues through progressive provisions that acknowledged violence against women as a human rights violation, recognized different types of violence against women, and required states to provide mandatory education regarding women's rights, fight behavior that suggests gender subordination, and pass protective legislation.²⁶ In reality, however, the CBP's definitions, legislative guidelines, monitoring mechanism, and reservation requirements render it practically ineffective for shaping Latin American laws. Rather, the CBP provides opportunities for states to ignore the cultural realities of domestic violence and legislate in ways that may leave women susceptible to such violence.²⁷

The Council of Europe, a similarly structured regional intergovernmental organization, passed the European version of the CBP when its Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) went into force in 2014.²⁸ Considered "the most far reaching international treaty to tackle violence against women," the Istanbul Convention is known for extending protections to migrant women, recognizing gender-based violence as being relevant to refugee status, and being the first international treaty to define gender as a social construct.²⁹ The Istanbul Convention requires parties to provide "holistic response[s] to violence against women" through increased prevention of violence, protection of women, prosecution of perpetrators, and implementation of integrated statewide policies.³⁰

25. Notably, the United States and Canada chose not to ratify the CBP. See CBP, *supra* note 24; OAS, *supra* note 24.

26. See CBP, *supra* note 24; OAS & COUNCIL OF EUR., REGIONAL TOOLS TO FIGHT VIOLENCE AGAINST WOMEN: THE BELÉM DO PARÁ AND ISTANBUL CONVENTIONS 36–37 (2014); ECONOMIST, *supra* note 9.

27. See CBP, *supra* note 24. See generally ECONOMIST, *supra* note 9 (detailing current domestic violence issues in Latin America relating to the interplay of machismo and deficiencies in regional justice systems).

28. The Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) required ten signatories by at least eight Council of Europe member states to enter into force. Convention on Preventing and Combating Violence Against Women and Domestic Violence, Nov. 5, 2011, C.E.T.S. No. 210 [hereinafter Istanbul Convention]; Theresa Papademetriou, *Council of Europe: Convention to Prevent and Combat Violence Against Women Enters into Force*, LIBR. OF CONG. GLOB. LEGAL MONITOR (Aug. 12, 2014), <http://www.loc.gov/law/foreign-news/article/council-of-europe-convention-to-prevent-and-combat-violence-against-women-enters-into-force/> [https://perma.cc/BY2B-PBCP].

29. OAS & COUNCIL OF EUR., *supra* note 26, at 88–89.

30. *Id.* at 88.

This Note, by comparing these two regional organizations' overarching approaches to domestic violence legislation, proposes that the OAS adopt amendments to the CBP that resemble the Istanbul Convention's more protective provisions. The proposed amendments include: (1) expanded definitions of violence to account more effectively for potentially harmful machismo influences, (2) provisions to incentivize domestic violence reporting, (3) heightened monitoring of state implementation at national levels, and (4) reduced state opportunities to circumvent implementation through reservations. Such amendments would create a broader legal foundation for protection of women by eliminating the potential for harmful aspects of gender constructs to infiltrate Latin American domestic violence laws, and would ultimately help to deter domestic violence.

As a foundation, Part I first discusses Latin American gender constructs and their relation to Latin American states' domestic violence prevalence and laws, and overarching international legislation. It then compares the CBP's provisions and effects on specific state domestic violence legislation to the Istanbul Convention's provisions and effects on European countries whose cultures also contain machismo and marianismo constructs. Part II argues that by adopting language and concepts found in the Istanbul Convention, current deficiencies in the CBP would more comprehensively protect women from domestic violence. Part II also discusses how amending parts of the CBP to resemble the Istanbul Convention would more strongly incentivize Latin American states to revise their laws to better protect women from gender-based violence. Finally, this Note concludes by proposing that adoption of such standards would help Latin America to minimize gender inequities, maximize women's rights and protections, and better prevent and reduce the existence of domestic violence.

I. BACKGROUND

This Part discusses the prevalence of gendered cultural constructs across Latin America, the current state of Latin American domestic violence, and the regional instruments that guide Latin American countries in the formation of legislation to protect domestic violence victims. It then examines the parallel regional standards that guide European countries' legal treatments of domestic violence.

A. *Domestic Violence Defined*

“Gender-based violence” refers to “any harmful act that is perpetrated against a person’s will . . . based on socially ascribed (gender) differences,” including domestic violence.³¹ Gender-based violence includes the smaller category of “violence against women,” defined as “any act that results in, or is likely to result in, physical, sexual and psychological harm to women and girls.”³² Types of violence against women range from physical or sexual (including sexual harassment) to economic and psychological.³³ The prevalence and dominance of these forms of violence against women vary between Latin American countries.³⁴ In Colombia, for example, acid attacks against women almost quadrupled between 2011 and 2012, while assaults on females in Sao Paulo, Brazil occur every fifteen seconds.³⁵ In Paraguay, conversely, a 2004 study revealed more incidences of verbal and economic violence than physical violence among women who were married or living with a partner.³⁶

The Pan American Health Organization and the Inter-American Commission of Women of the Organization of States have characterized domestic violence as a critical public health problem in which women are most at risk in their own homes.³⁷ Potential consequences of domestic violence include an array of serious physical and psychological health conditions, including reproductive and social issues.³⁸ Victims of domestic violence are also more likely than non-victims to engage in behaviors that increase risks of further health issues, such as alcoholism and suicide attempts.³⁹ Regardless of the manner of infliction, domestic violence’s devas-

31. U.N. Population Fund, *Paraguay Country Assessment on Violence Against Women* 10 (Nov. 25, 2008), <http://www.un.org/womenwatch/ianwge/taskforces/vaw/Paraguay.pdf> [<https://perma.cc/AL3L-LB3K>].

32. *Id.*

33. *Id.* at 14.

34. See OAS & COUNCIL OF EUR., *supra* note 26, at 17–21.

35. See ECONOMIST, *supra* note 9.

36. U.N. Population Fund, *supra* note 31, at 14–15.

37. Liz Creel, *Domestic Violence: An Ongoing Threat to Women in Latin America and the Caribbean*, POPULATION REFERENCE BUREAU (Oct. 2001), <http://www.prb.org/Publications/Articles/2001/DomesticViolenceAnOngoingThreattoWomeninLatinAmericaandtheCaribbean.aspx> [<https://perma.cc/PBH7-EJ3>].

38. *Intimate Partner Violence: Consequences*, CTRS. DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html> [<https://perma.cc/E7YG-JF2H>] (last visited Oct. 20, 2016).

39. *Id.*

tating effects indicate a critical need for legislation to combat its incidence.⁴⁰

B. *Latin American Cultural Constructs: Machismo and Marianismo*

Like all societies, cultural constructs and values permeate Latin American society.⁴¹ Two of the most visible are machismo and marianismo, which are prominent social constructs common to Latin American, Spanish, and Portuguese cultures.⁴² Machismo signifies cultural expectations regarding male behavior, particularly in relation to women.⁴³ While machismo includes many positive associations, such as personal pride, familial dedication, and courage, it is also heavily associated with assertions of male sexual and gender dominance over women.⁴⁴ Machismo establishes men's sexual independence and domination of women as sources of "pride and prestige," and as methods of promoting exceptionally masculine reputations.⁴⁵ The concept additionally emphasizes aggression as necessary to demonstrating physical superiority.⁴⁶

Machismo's female counterpart, marianismo, refers to the set of beliefs used to shape the behavior of the "perfect" Latin American woman.⁴⁷ In contrast to machismo, which considers men the dominant sexual and social aggressors, marianismo conceptualizes women as submissive sexual objects who willingly and completely subject themselves to masculine control.⁴⁸ Although marianismo emphasizes strong spousal and familial commitments, its general

40. See Creel, *supra* note 37.

41. See, e.g., *infra* text accompanying note 42.

42. Hanser, *supra* note 14; see also DPA News Agency, *supra* note 14; Tremlett *supra* note 14.

43. See Edelson et al., *supra* note 14, at 2; STANFORD U., *supra* note 15.

44. Edelson et al., *supra* note 14, at 2; see STANFORD U., *supra* note 15.

45. Ingoldsby, *supra* note 15; STANFORD U., *supra* note 15.

46. Fictional characters that have been associated with machismo include "Zorro" and Mel Gibson's portrayal of Benjamin Martin in *The Patriot*. Ingoldsby, *supra* note 15; see also MARK GLANCY, *HOLLYWOOD AND THE AMERICANIZATION OF BRITAIN: FROM THE 1920s TO THE PRESENT* 261 (2014); TOM POLLARD, *SEX AND VIOLENCE: THE HOLLYWOOD CENSORSHIP WARS* 24 (2009); Nicholas Barber, *The Legend of Zorro (PG) Saw 2 (18) Sophie Scholl: The Final Days (PG), Thumbsucker (15)*, INDEPENDENT (OCT. 29, 2005), <http://www.independent.co.uk/arts-entertainment/films/reviews/the-legend-of-zorro-pg-saw-2-18-sophie-scholl-the-final-days-pg-thumbsucker-15-322955.html> [<https://perma.cc/F7CL-6RFR>]; DPA News Agency, *supra* note 14; Michael Wilmington, *Pride of the Yankees*, CHI. TRIB. (June 28, 2000), http://articles.chicagotribune.com/2000-06-28/features/0006280049_1_william-tavington-patriot-benjamin-martin [<https://perma.cc/4EYF-GUSE>].

47. *What Is Marianismo?*, PSYCHOL. DICTIONARY, <http://psychologydictionary.org/marianismo/> [<https://perma.cc/MFX6-7X73>] (last visited Oct. 20, 2016).

48. *Id.*; see DPA News Agency, *supra* note 14; STANFORD U., *supra* note 15.

deference to male opinions and idealization of self-sacrifice within the intimate familial unit serve to perpetuate female submission.⁴⁹

The traits associated with machismo and marianismo constructs do not solely or directly cause domestic violence, but rather are part of a complex intersection of cultural, social, and economic factors that contribute to it collectively.⁵⁰ These traits permeate the current state of violence against women across Latin American countries, both with regard to occurrences themselves and to the construction and implementation of domestic violence legislation.⁵¹ A study by the National Academy Press determined that motives of power and anger, which are commonly associated with machismo behavior, are particularly prominent in male rationalization of sexual aggression.⁵² The National Academy Press further suggested the correlation of machismo traits with increased suppression of women by noting that men “are more likely to misinterpret ambiguous evidence as confirming their beliefs” after development of “violence-supportive schema[s]” against women.⁵³ Also problematic is the use of machismo as a “cultural defense” in domestic abuse contexts.⁵⁴ Use of what is considered an innate part of relationships as a culturally accepted rationale for violent and often illegal behavior simultaneously downplays its criminal nature and minimizes the perceived need for protection against it.⁵⁵

Marianismo's acceptance of male dominance and aggression play equally significant roles in shaping the culture surrounding domestic violence.⁵⁶ A report analyzing psychological characteristics of battered women suggests that it is common for Latin American women to minimize domestic violence for the reason that they “may not consider it a problem” that requires outside assistance.⁵⁷ Additionally, even if a woman does not exemplify traditional mari-

49. See Edelson et al., *supra* note 14, at 2–3.

50. See Rachel Jewkes, *Intimate Partner Violence: Causes and Prevention*, 359 LANCET 1423, 1426 (2002).

51. See ECONOMIST, *supra* note 9; *infra* Section C. See generally Edelson et al., *supra* note 14, at 2 (discussing cultural constructs in relation to gender roles and relationships).

52. NAT'L RESEARCH COUNCIL, UNDERSTANDING VIOLENCE AGAINST WOMEN 59 (Nancy A. Crowell & Ann W. Burgess eds., 1996).

53. *Id.* at 58–59 (suggesting that these schemata are more likely to “endorse a set of attitudes . . . supportive of rape” than those of non-aggressive men).

54. See Patricia Hernandez, *The Myth of Machismo: An Everyday Reality for Latin American Women*, 15 ST. THOMAS L. REV. 859, 867 (2003).

55. See *id.*

56. See *infra* notes 57–58.

57. Edelson et al., *supra* note 14, at 2.

anismo behaviors, cultural emphasis on privacy within the familial unit suggests that discussions of domestic abuse may never leave the home.⁵⁸ These cultural attitudes complement and exacerbate one another, forming an ideal foundation for male-inflicted violence toward women in regions where machismo and marianismo behaviors are the norm.⁵⁹ While machismo ideals may encourage men to “be aggressive and channel their expressions of violence toward women,” marianismo’s suggested response to this behavior as a non-issue perfectly “position[s] women for [the] receipt of violence and [effectively] operate[s] to silence them afterwards.”⁶⁰

C. *Domestic Violence Statistics as a Reflection of Machismo and Marianismo Ideals and Behaviors*

The low prosecution rates of domestic violence cases in Latin American countries known for high rates of violence⁶¹ and traditional gender roles⁶² reflect marianismo notions and behaviors.⁶³ Vast underreporting of gender-based violence is a global phenomenon,⁶⁴ and statistics showing that even countries considered more “gender equal” struggle with domestic violence reporting further emphasize the issue’s severity.⁶⁵ Despite their statistically higher risk of domestic abuse, Latinas specifically are less likely to report

58. See *Ecuador Leads the Battle Against Domestic Violence in Latin America*, COUNCIL ON HEMISPHERIC AFFAIRS (Aug. 1, 2011), <http://www.coha.org/ecuador-leads-the-battle-against-domestic-violence-in-latin-america/> [<https://perma.cc/ME56-3RT3>]; see also Immigration and Refugee Board of Canada, *Responses to Information Requests (RIRs)*, No. ECU103278.FE, Nov. 12, 2009, <http://www.justice.gov/sites/default/files/eoir/legacy/2013/11/07/ECU103278.FE.pdf> [<https://perma.cc/EN33-JADC>] (noting that “domestic violence is [frequently] perceived as a private matter”).

59. See NAT’L RESEARCH COUNCIL, *supra* note 52, at 49. See generally Edelson et al., *supra* note 14, at 2 (suggesting that the overlap of machismo and marianismo in Latino families may increase the risk of domestic violence for Latina women).

60. NAT’L RESEARCH COUNCIL, *supra* note 52, at 49.

61. CRIME AND VIOLENCE IN LATIN AMERICA: CITIZEN SECURITY, DEMOCRACY AND THE STATE 93 (Hugo Frühling et al. eds., 2003).

62. See Edelson et al., *supra* note 14, at 8; Barbara Crossette, *For Many Latin American Women, Abuse Never Lets Up*, PASSBLUE (Aug. 19, 2013), <http://passblue.com/2013/08/19/for-many-latin-american-women-abuse-never-lets-up/> [<https://perma.cc/76MT-QWDE>]; Ann Törnkvist, *Sweden Stands Out in Domestic Violence Study*, LOCAL SE (Mar. 5, 2014), <http://www.thelocal.se/20140305/sweden-out-top-in-eu-domestic-violence-league> [<https://perma.cc/CB7Q-DJC3>].

63. See *supra* Section B.

64. Richard Felson & Paul-Philippe Paré, *The Reporting of Domestic Violence and Sexual Assault by Nonstrangers to the Police*, 3 (2005), <https://www.ncjrs.gov/pdffiles1/nij/grants/209039.pdf>; Tia Palermo et. al., *Tip of the Iceberg: Reporting and Gender-Based Violence in Developing Countries*, AM. J. EPIDEMIOLOGY, at 2 (Dec. 12, 2013), <http://aje.oxfordjournals.org/content/early/2013/12/12/aje.kwt295.full.pdfhtml> [<https://perma.cc/6KNY-CUZF>].

65. See Törnkvist, *supra* note 62.

domestic violence than Caucasian women.⁶⁶ The Human Rights Watch's Women's Rights Division reports that eighty percent of Colombian women are "reluctant to report crimes committed against them" due to the consistent lack of consequences for perpetrators,⁶⁷ even though thirty-seven percent of those who have been married or in relationships report having been victims of physical domestic abuse.⁶⁸ Similarly, a 2000 study identified "shame or fear of societal reprisal" as primary reasons for why eighty percent of married women who have experienced domestic abuse in one Nicaraguan city did not seek help.⁶⁹ Latin American women's widespread hesitation to challenge or report gender violence closely parallels marianismo ideals of self-sacrifice and submission to dominant males.⁷⁰

The silence and underreporting are particularly staggering coupled with statistics on reported cases and their resolution rates. According to the Center for Strategic and International Studies, only ninety-six of the 442,000 reports of gender-based violence filed in Bolivia between 2007 and 2011 were ultimately prosecuted.⁷¹ In El Salvador, between 2.7 percent and five percent of all cases filed with the Office of the Prosecutor General of the Republic involving violence against women were prosecuted and resulted in jail sentences for perpetrators.⁷² The University of California Hastings College of the Law's Center for Gender and Refugee Studies similarly reports a less than three percent resolution rate for the more than six hundred femicide cases reported in El Salvador in 2011.⁷³ Similarly, in Paraguay, only 127 of the 1,408 domestic violence cases reported between 2006 and 2011 were "resolved

66. COUNCIL ON HEMISPHERIC AFFAIRS, *supra* note 58.

67. Katharina Wecker, *Colombia Approves Domestic Violence Law*, COLOM. REPS. (July 11, 2012), <http://colombiareports.com/colombias-domestic-violence-law-approved/> [<https://perma.cc/PFG9-XRV7>].

68. OAS & COUNCIL OF EUR., *supra* note 26, at 17.

69. Eleanor Klibanoff, *Nicaragua: These Women Had Dreams*, PULITZER CTR. CRISIS REPORTING (Aug. 16, 2013), <http://pulitzercenter.org/reporting/central-america-nicaragua-domestic-sexual-abuse-women-children-feminist-movement> [<https://perma.cc/9GQJ-2Q2R>].

70. *Supra* Section B.

71. Carl Meacham & Johanna Mendelson Forman, *In Latin America, Women Still Confront Violence*, CTR. STRATEGIC & INT'L STUD. (Mar. 8, 2013), <http://csis.org/publication/latin-america-women-still-confront-violence> [<https://perma.cc/CD8W-7AVX>].

72. ORG. AM. STS. & COUNCIL OF EUR., *supra* note 26, at 18.

73. *Central America: Femicide and Gender-Based Violence*, CTR. GENDER & REFUGEE STUD., <http://cgrs.uchastings.edu/our-work/central-america-femicides-and-gender-based-violence> [<https://perma.cc/8XET-P25Z>] (last visited Nov. 2, 2016).

in the justice system.”⁷⁴ These limited responses serve to perpetuate the dominance of men over women in violent contexts⁷⁵ and render support for the theory that governments whose citizens promulgate these values are responsible for legally remedying this “systematic [prosecutorial] failure.”⁷⁶

D. *International Approaches to Combating Domestic Violence*

Domestic laws are influenced by more than individual countries' existing legislation and ideals.⁷⁷ There is much international legislation, which varies by specificity and geographic scope, that can guide individual ratifying countries in development of laws that pertain to domestic violence.⁷⁸ This Section discusses three relevant types of legislation: (1) United Nations treaties, (2) the Convention of Belém do Pará, and (3) the Istanbul Convention.

1. United Nations Treaties

The U.N. General Assembly adopted its Declaration on the Elimination of Violence Against Women in 1993, calling on countries to “condemn violence against women and . . . [to] not invoke any custom, tradition, or religious consideration to avoid their obligations with respect to its elimination.”⁷⁹ The declaration further urged legislatures to “develop . . . sanctions . . . to punish and redress the wrongs caused to women who are subjected to violence.”⁸⁰ The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) similarly provides the following:

Parties shall take all appropriate measures . . . to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.⁸¹

74. ORG. AM. STS. & COUNCIL OF EUR., *supra* note 26, at 19.

75. See Edelson et al., *supra* note 14, at 2.

76. Katherine M. Culliton, *Finding a Mechanism to Enforce Women's Right to State Protection from Domestic Violence in the Americas*, 34 HARV. INT'L L. J. 507, 514 (1993).

77. See UNITED NATIONS ENABLE, *supra* note 18 (noting the influence of other factors, such as international human rights treaties).

78. See *id.*; see, e.g., G.A. Res. 48/104, *supra* note 17, art. 4 (encouraging member states to create policies that eliminate violence against women and providing examples of ways to do so).

79. See G.A. Res. 48/104, *supra* note 17. A significant majority of Latin American countries are United Nations members. UNITED NATIONS, *supra* note 17.

80. *Id.*

81. CEDAW, *supra* note 17, art. 5.

Over fifty countries ratified CEDAW with reservations and objections to various provisions, a considerable number of which “go to the heart of state accountability . . . to eliminate discrimination against women” in defiance of the treaty’s objective.⁸² For instance, Algeria and Chile both declared reservations regarding implementation of any articles insofar as they are incompatible with the Algerian Family Code and Chilean legislation, respectively.⁸³ Bangladesh similarly made a sweeping reservation to avoid binding itself by Article 2 provisions that condemn discrimination against women in all its forms, as the state considers these provisions to conflict with Sharia law.⁸⁴ Many South American countries, including Colombia and El Salvador, chose to opt out of Article 29, which resolves to send unsettled interpretation disputes between state parties to arbitration and then to the International Court of Justice.⁸⁵

2. The Convention of Belém do Pará

The Organization of American States (OAS) adopted the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, or Convention of Belém do Pará (CBP), in Brazil on June 9, 1994.⁸⁶ The CBP is a regional instrument that functions as a legally binding mandate for the thirty-two Latin American and Caribbean states that have ratified it.⁸⁷ It is notable for being the first binding instrument to acknowledge the issue of violence against women specifically, and to call on states to develop mechanisms to ensure women’s rights to “live . . . free of violence.”⁸⁸ The CBP defines “violence against women” as a human rights violation consisting of “any act or conduct, based on

82. Marsha A. Freeman, *Reservations to CEDAW: An Analysis for UNICEF* (Dec. 2009), http://www.unicef.org/gender/files/Reservations_to_CEDAW-an_Analysis_for_UNICEF.pdf [<https://perma.cc/3BX4-V3QF>]; see U.N. WOMEN, *supra* note 20.

83. U.N. WOMEN, *supra* note 20.

84. *Id.*; CEDAW, *supra* note 17, art. 2.

85. CEDAW, *supra* note 17, art. 29; U.N. WOMEN, *supra* note 20.

86. CBP, *supra* note 24; *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará)*, OAS, <http://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf> [<https://perma.cc/2HVH-U2DT>] (last visited Nov. 2, 2016).

87. See OAS & COUNCIL OF EUR., *supra* note 26, at 10; *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará): Status of Signatures and Ratifications*, OAS, <http://www.oas.org/en/mesecvi/docs/Signatories-Table-EN.pdf> [<https://perma.cc/76FH-L97M>] (last visited Nov. 2, 2016).

88. OAS & COUNCIL OF EUR., *supra* note 26, at 10; HILKKA PIETILÄ, *THE UNFINISHED STORY OF WOMEN AND THE UNITED NATIONS* 31 (2007); OAS, *supra* note 86.

gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”⁸⁹

Since entering into force in 1995, the CBP has been instrumental both in pressuring state governments to prioritize domestic violence nationally and in strengthening the Inter-American Human Rights System.⁹⁰ The directness of its impact on national legislation varies across states: in some, the CBP takes precedence over national legal systems, while in others, the specific rights outlined in CBP provisions are either mandatory or apply directly.⁹¹

a. Notable CBP Provisions

Numerous parts of the CBP have the potential to influence how and whether states decide to alter their domestic violence legislation according to CBP provisions.⁹² One missed opportunity to encourage such alterations is the CBP’s failure to mention domestic violence specifically in any of its Chapter II articles outlining relevant women’s rights.⁹³ Chapter I, Article 1 broadly defines violence against women to be “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women . . . in the public or private sphere.” Article 2 contains the CBP’s sole reference to domestic violence in its definition of violence against women as “physical, sexual and psychological violence . . . *that occurs within the family or domestic unit or within any other interpersonal relationship.*”⁹⁴ However, as the CBP lacks any provision that clearly articulates its purpose, nowhere else does it reference domestic violence as a guiding principle that would encourage states to re-evaluate their current domestic violence legislation.⁹⁵

Furthermore, the CBP does not require states to criminalize specific behaviors associated with domestic violence.⁹⁶ Article 7 does require states to “*pursue . . . policies to prevent, punish and eradi-*

89. CBP, *supra* note 24, art. 1; *About the Belém do Pará Convention*, OAS, <http://www.oas.org/en/mesecvi/convention.asp> [<https://perma.cc/JN8M-Q7KP>] (last visited Nov. 2, 2016).

90. *See 20 Years After Belém do Pará: Women Defending Rights*, JUST ASSOCIATES (May 9, 2014), <http://www.justassociates.org/en/article/20-years-after-belem-do-women-defending-rights> [<https://perma.cc/TH7S-W3HN>]; OAS & COUNCIL OF EUR., *supra* note 26, at 10.

91. OAS & COUNCIL OF EUR., *supra* note 26, at 22.

92. *See* CBP, *supra* note 24.

93. *Id.* arts. 3–6.

94. *Id.* arts. 1–2 (emphasis added).

95. *See id.*

96. *See id.*

cate [violence against women]” and “include in their domestic legislation penal, civil, administrative and any other type of provision that *may be needed* to [do so].”⁹⁷ However, Article 7 ultimately fails to provide protections for women whose legislators do not feel that criminal sanctions “may be needed” to assist women’s use of the legislative system to combat their perpetrators effectively and safely.⁹⁸

Articles 6 and 8 do acknowledge the realities of how cultural and gendered behaviors impact states’ roles in protecting women and preventing domestic violence, but limit state obligations to account for this behavior to provision of education, rather than adoption of legislation.⁹⁹ Article 6 concedes that, within the right to be free from violence, women also have “[t]he right . . . to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.”¹⁰⁰ However, Article 6 does not address the legislative means by which states should make this happen.¹⁰¹ Article 8 similarly limits obligations for states to account for gender stereotypes and cultural behaviors to the educational (versus the legislative) sphere by requiring them to do as follows:

[U]ndertake progressively specific measures, including programs . . . to modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs . . . to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women.¹⁰²

While Article 9 does obligate states to “take special account of the vulnerability of women to violence,” it does so only to account for conditions unrelated to gender.¹⁰³ Its failure to acknowledge the vulnerabilities imposed on women by cultural expectations and gendered behavior presents another missed opportunity for states

97. *Id.* art. 7 (emphasis added).

98. *Id.*

99. *See id.* arts. 6, 8.

100. *Id.* art. 6.

101. *Id.*

102. *Id.* art. 8.

103. Article 9 identifies specific women’s vulnerabilities to include citizenship, residency status, race, ethnicity, age, socioeconomic status, pregnancy, or disability. *Id.* art. 9.

to update their laws with measures to account for these conditions.¹⁰⁴

Additionally, despite global evidence of low domestic violence reporting rates,¹⁰⁵ CBP provisions do not impose upon states any obligations to alter their domestic violence legislation to rectify this problem.¹⁰⁶ There is no reference to or recommendation regarding protective orders, specification about who may report cases of domestic violence, or procedures to utilize following such reports.¹⁰⁷ Failure to include any such references provides minimal assistance to victims in states where current domestic violence legislation accounts for neither the potential dangers associated with reporting domestic violence¹⁰⁸ nor the culturally imposed hesitation to do so.¹⁰⁹

b. CBP Enforcement

In 2004, the OAS developed the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) to monitor national implementation of the CBP more closely via exchanges between states and MESECVI's independent Committee of Experts.¹¹⁰ The national monitoring process has two parts.¹¹¹ First, MESECVI conducts an evaluation round in which states respond to questionnaires sent out by the Committee of Experts concerning six CBP "action areas."¹¹² The Committee of Experts then evaluates the completed questionnaires and issues a Hemispheric Report with recommendations for improved implementation.¹¹³ During the second follow-up round, the Committee of Experts measures state

104. While the CBP's introduction does articulate a "concern[] . . . that violence against women is . . . a manifestation of the historically unequal power relations between women and men," CBP articles do not specifically address such inequities. *Id.*

105. Edelson et al., *supra* note 14, at 2; Felson & Paré, *supra* note 64; Törnkvist, *supra* note 62; *see supra* Section C.

106. *See* CBP, *supra* note 24, ch. III.

107. *See id.* Cf. Istanbul Convention, *supra* note 28.

108. *See* Sharnak, *supra* note 1.

109. *See* Palermo, *supra* note 64; Wecker, *supra* note 67.

110. The Follow-up Mechanism to the Belém do Pará Convention (MESECVI) responded to the need for "continuous and independent" implementation evaluation. *What Is MESECVI?*, OAS, <http://www.oas.org/en/mese cvi/about.asp> [<https://perma.cc/VBK4-5PEY>] (last visited Nov. 2, 2016).

111. *See id.*

112. The CBP's six action areas are: (1) legislation, (2) national plans, (3) access to justice, (4) specialized services, (5) budgets, and (6) information and statistics. OAS & COUNCIL OF EUR., *supra* note 26 at 15.

113. OAS, *supra* note 110.

progress and issues a report summarizing its findings.¹¹⁴ In preparing its recommendations, the Committee of Experts may use shadow reports from nongovernmental women's rights organizations registered with MESECVI's civil society network to obtain a clearer understanding of states' legal issue areas with regard to violence against women.¹¹⁵

States also have the opportunity to avoid compliance with portions of the CBP.¹¹⁶ As with CEDAW,¹¹⁷ states bound by the CBP are permitted "at the time of approval, signature, ratification or accession" to make reservations to provisions to which they object.¹¹⁸ This reservation option is subject to two conditions: states may not make reservations "incompatible with the object and purpose of the convention," and any reservations must "relate to one or more specific provisions" rather than just object generally.¹¹⁹ This second prong provides an additional barrier to limit the potential for states to make reservations and helps insulate the CBP from a flood of reservations.¹²⁰ Only the Bahamas has expressed any reservations thus far.¹²¹

c. Latin American Approaches to Domestic Violence Legislation

Examining states' domestic violence legislation under CBP guidelines provides a snapshot of the issues that result from the regional instrument's deficiencies. As written, the CBP has resulted in two troubling inconsistencies across states' domestic

114. *Id.*; OAS & COUNCIL OF EUR., *supra* note 26, at 15.

115. OAS & COUNCIL OF EUR., *supra* note 26, at 15; *Civil Society Organizations*, OAS, <http://www.oas.org/en/mesecevi/civilsociety.asp> [<https://perma.cc/C43Y-HE9A>] (last visited Dec. 1, 2016).

116. *See* CBP, *supra* note 24, art. 18.

117. *See* U.N. WOMEN, *supra* note 20.

118. *See* CBP, *supra* note 24, art. 18.

119. *Id.*

120. The language in CEDAW's reservation clause and the CBP's reservation clause is almost identical. *Compare* CEDAW, *supra* note 17, art. 28 ("[a] reservation incompatible with the object and purpose of the present Convention shall not be permitted"), *with* CBP, *supra* note 24, art. 18 ("[a]ny State may, at the time of approval, signature, ratification, or accession, make reservations to this Convention provided that such reservations are . . . not incompatible with the object and purpose of the Convention").

121. *Multilateral Treaties A-61: Inter-American Convention of the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belém Do Pará"*, OAS (Feb. 2, 2016), <http://www.oas.org/juridico/english/signs/a-61.html#BAHAMAS> [<https://perma.cc/XV4V-XAPQ>] ("Article 7(g) . . . imports no obligation upon the [Bahamian] [g]overnment . . . to provide . . . compensation from public funds to any woman . . . subjected to violence in circumstances in which liability would not normally have been incurred under existing Bahamian law.").

legislation with regard to criminalization and reporting incentives.¹²²

First, that the CBP does not spell out criminalization requirements, allowing states to pick and choose which behaviors to criminalize, has resulted in significant variation in criminalization throughout the region and raises the possibility that many perpetrators of domestic violence will not face punishment for their actions.¹²³ For instance, while Ecuador and Nicaragua criminalize domestic violence,¹²⁴ Paraguay does so only if the violence is “habitual” and the victim is “cohabitating” with the offender.¹²⁵ Punishments for domestic violence are also inconsistent: whereas Brazil allows sentences ranging from three months to three years for violence against an intimate partner,¹²⁶ Colombia permits fines and prison time only for “grave” or “recurrent” domestic violence,¹²⁷ and Argentina characterizes domestic violence as merely a civil crime.¹²⁸

Second, the CBP’s failure to address domestic violence reporting has resulted in highly inconsistent reporting incentives across domestic legislation.¹²⁹ Some states, like El Salvador, have taken steps to encourage victim reporting by discouraging alternative dispute resolution¹³⁰ in domestic violence cases, which reduces the

122. See *infra* notes 123, 129 and accompanying text.

123. See, e.g., CBP, *supra* note 24; U.S. DEP’T STATE, *infra* note 125.

124. 2014 *Human Rights Reports: Ecuador*, U.S. DEP’T STATE (June 25, 2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236686> [https://perma.cc/ER7R-6Z2U]; 2014 *Human Rights Reports: Nicaragua*, U.S. DEP’T STATE (June 25, 2015), <http://www.state.gov/j/drl/rls/hrrpt/2014/wha/236704.htm> [https://perma.cc/7SBL-ANTF] [hereinafter 2014 *Human Rights Reports: Nicaragua*].

125. 2014 *Human Rights Reports: Paraguay*, U.S. DEP’T STATE (June 25, 2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236708> [https://perma.cc/URU8-6MU2]; see *Paraguay Report*, AMNESTY INT’L, <https://www.amnesty.org/en/countries/americas/paraguay/report-paraguay/> [https://perma.cc/CN4N-XNR2] (last visited Oct. 20, 2016).

126. 2014 *Human Rights Reports: Brazil*, U.S. DEP’T STATE (June 25, 2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dclid=252995> [https://perma.cc/Z3ST-B789].

127. 2014 *Human Rights Reports: Colombia*, U.S. DEP’T STATE (June 25, 2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dclid=253001> [https://perma.cc/GJ3U-5P98].

128. 2014 *Human Rights Reports: Argentina*, U.S. DEP’T STATE (June 25, 2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dclid=252985> [https://perma.cc/68LT-EGQQ].

129. See *infra* notes 130–134 and accompanying text.

130. “Alternative dispute resolution” refers to “any method of resolving disputes other than by litigation,” such as mediation, negotiation, and arbitration. These methods often require parties to come together to resolve a dispute. *Alternative Dispute Resolution*, LEGAL

possibility of victim-abuser interactions.¹³¹ To the same effect, Uruguay mandates that victims and defendants wear tracking bracelets during investigations to ensure that no interaction occurs.¹³² Other states' steps to encourage reporting include Colombian laws that require immediate protection for victims¹³³ and Peruvian laws that require investigations into domestic violence allegations within five days.¹³⁴

However, certain states retain laws that have the potential to not only affect, but actively discourage, whether a domestic violence victim attempts to take legal action against her abuser.¹³⁵ Paraguay, for example, requires victims themselves to present their abusers with the protective orders against them and—highlighting its lack of measures providing for the separation of victims and abusers—permits courts to bring victims and defendants together through mediation.¹³⁶ Similarly, Nicaragua's laws allow courts to mediate designated “light” crimes like domestic and psychological violence that have penalties of less than five years.¹³⁷ This drastic variation, conceivably derived from the CBP's lack of provisions that would mandate state efforts to improve the frequency and ease of victim reporting, leaves open the possibility that many victims will continue not to utilize legal systems to their benefit.¹³⁸

INFO. INST., CORNELL U. L. SCH., https://www.law.cornell.edu/wex/alternative_dispute_resolution [<https://perma.cc/Y8NK-DNPH>] (last visited Nov. 2, 2016).

131. *2014 Human Rights Reports: El Salvador*, U.S. DEP'T STATE (June 25, 2015), <http://www.state.gov/j/drl/rls/hrrpt/2014/wha/236688.htm> [<https://perma.cc/Y52Q-6REJ>].

132. *2014 Human Rights Reports: Uruguay*, U.S. DEP'T STATE (June 25, 2015), <http://www.state.gov/j/drl/rls/hrrpt/2014/wha/236722.htm> [<https://perma.cc/ZA2P-6R9Q>].

133. *2014 Human Rights Reports: Colombia*, *supra* note 127.

134. *2014 Human Rights Reports: Peru*, U.S. DEP'T STATE (June 25, 2015), <http://www.state.gov/j/drl/rls/hrrpt/2014/wha/236710.htm> [<https://perma.cc/G6SK-U64M>].

135. *See, e.g., infra* note 136 and accompanying text. *See generally supra* Section C (discussing trends and barriers regarding domestic violence reporting).

136. *Paraguay 2012 Human Rights Report*, U.S. DEP'T STATE (2012), <http://www.state.gov/documents/organization/204680.pdf> [<https://perma.cc/NVD8-YAJX>] (last visited Nov. 2, 2016).

137. *2014 Human Rights Reports: Nicaragua*, *supra* note 124; Anastasia Moloney, *Nicaragua Law Change on Gender Violence is 'Huge Step Back for Women' - Amnesty*, THOMPSON REUTERS FOUND. NEWS (Oct. 18, 2013), <http://www.trust.org/item/20131018161121-bvp0f/> [<https://perma.cc/JD38-LRSS>]; Emily Schechter, *Nicaraguan Law Update 'Piles Pressure on Women to Face Abusers*, GUARDIAN (Sept. 27, 2013), <http://www.theguardian.com/global-development/poverty-matters/2013/sep/27/nicaraguan-law-reforms-women-face-abusers> [<https://perma.cc/V35S-2ACA>].

138. *See* CBP, *supra* note 24, art. 8(h); *supra* Sections C, D.2.a.

3. The Istanbul Convention

The Istanbul Convention¹³⁹ opened for signature on May 11, 2011 and entered into force on August 1, 2014, with fourteen signatories, following its tenth ratification.¹⁴⁰ Thirty-nine of the Council of Europe's forty-seven member states have currently signed the convention, twenty-one of whom have ratified and are bound by its articles.¹⁴¹ Like the CBP, the Istanbul Convention functions as a legally binding instrument on parties and dictates guidelines for shaping domestic legislation pertaining to prevention of violence against women.¹⁴² Although the Istanbul Convention was not the Council of Europe's first effort to combat domestic violence,¹⁴³ it was the first legally binding instrument at a

139. Istanbul Convention, *supra* note 28.

140. Andorra was the tenth member state to ratify the Istanbul Convention. *Historical Background*, COUNCIL EUR., <http://www.coe.int/en/web/istanbul-convention/historical-background> [<https://perma.cc/3G9S-QXFU>] (last visited Nov. 2, 2016). Drafting the Istanbul Convention began in December 2008, after the Council of Europe determined that comprehensive regional standards would serve its cause better than a variety of national interpretations. *Id.* A Council of Europe-appointed expert group finalized the draft in December 2010 before the Council of Europe Committee of Ministers adopted it in April 2011. Istanbul Convention, *supra* note 28; *47 Member States*, COUNCIL OF EUR., <http://www.coe.int/en/web/portal/47-members-states> [<https://perma.cc/7GKL-JU39>] (last visited Oct. 20, 2016); *Historical Background*, COUNCIL EUR., *supra* note 140; Papademetriou, *supra* note 28.

141. *Full List: Chart of Signatures and Ratifications of Treaty 210*, COUNCIL EUR. (Mar. 20, 2016), <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures> [<https://perma.cc/4KBB-JK6S>] [hereinafter *Chart of Signatures*, COUNCIL OF EUR.].

142. *See 13 Countries Sign New Convention in Istanbul*, U.N. REGIONAL INFO. CTR. FOR W. EUR., <http://www.unric.org/en/violence-against-women/27000-13-countries-sign-new-convention-in-istanbul> [<https://perma.cc/F9EQ-SWX6>] (last visited Nov. 2, 2016).

143. The Council of Europe has engaged in numerous efforts to combat violence against women since the 1990s. The Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of violence against women was adopted in April 2002. *The Council of Europe Campaign to Combat Violence Against Women, Including Domestic Violence*, COUNCIL OF EUR. (Sept. 2008), http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Fact_Sheet_en.asp [<https://perma.cc/QND9-YQX8>] [hereinafter *Council of Europe Campaign*, COUNCIL EUR.]. This non-binding recommendation proposed ways for member state governments to adopt legislation and organizational structures to mitigate women's precarious social situations with regard to violence against them. *See id.* In 2006, the Council of Europe launched the Campaign to Combat Violence Against Women, Including Domestic Violence, which involved engagement with member states to conduct seminars, studies, and meetings to raise awareness about violence against women and domestic violence, and to develop methods of diminishing it. *Id.* Though the campaign ended in 2008, it was effective in gaining widespread recognition of violence against women as a human rights violation and bringing the issues more clearly to the attention of member states. *Historical Background*, COUNCIL EUR., *supra* note 140; *Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the Protection of Women Against Violence*, Apr. 30, 2002, <https://wcd.coe.int/ViewDoc.jsp?id=280915> [<https://perma.cc/9ZNT-2WX5>] (last visited Nov. 2, 2016); *Council of Europe Campaign*, COUNCIL OF EUR., *supra* note 143.

European level to create a truly comprehensive legal framework to accomplish its primary aims of “protection of women against all forms of violence” and “prevention, prosecution and elimination of violence against women.”¹⁴⁴ Guided by these objectives, the Council of Europe designed Istanbul Convention articles to encourage effective prosecution of individuals who commit domestic violence acts, promote gender equality, and ultimately eliminate discrimination against women.¹⁴⁵

The Istanbul Convention binds ratifying parties to numerous provisions, including requirements to enact legislation and develop additional measures “designed to prevent all forms of violence against women” as well as “to fight societal prejudices and bias against women.”¹⁴⁶

a. Notable Istanbul Convention Provisions

Although it went into force only recently,¹⁴⁷ the Istanbul Convention’s growing number of signatories¹⁴⁸ and ratification by dominant European countries¹⁴⁹ reveals a regional acknowledgment of the gendered realities associated with domestic violence and strong consensus on the need to combat these constructs at a broader level.¹⁵⁰ Language throughout the Istanbul Convention clearly communicates to its signatories the implications and need to oppose the influence of machismo- and marianismo-type behav-

144. Istanbul Convention, *supra* note 28, art. 1(1)(a); see UNRIC, *supra* note 142; *Press Release*, WAVE, http://files.wave-network.org/pressreleases/PR_2014_08_2.pdf [https://perma.cc/5B6K-N3S2] (last visited Nov. 2, 2016); *Historical Background*, COUNCIL EUR., *supra* note 140.

145. See Papademetriou, *supra* note 28.

146. See *id.*

147. See *supra* Section D.3.

148. See *Chart of Signatures*, COUNCIL EUR., *supra* note 141; *supra* Section D.3.

149. After entering into force with just fourteen signatories, the Istanbul Convention has thirty-nine signatories as of March 20, 2016. *Chart of Signatures*, COUNCIL EUR., *supra* note 141. As of the same date, the following countries have now ratified the Istanbul Convention: Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Denmark, Finland, France, Italy, Malta, Monaco, Montenegro, Netherlands, Poland, Portugal, San Marino, Serbia, Slovenia, Spain, Sweden, and Turkey. *Id.*; see *Population Figures by Country*, ONE WORLD NATIONS ONLINE, <http://www.nationsonline.org/oneworld/population-by-country.htm> [https://perma.cc/5C6J-MVTR] (last visited Nov. 2, 2016).

150. The European Parliament voting in E.U.-wide protection orders for domestic violence victims by a vote of 602 in favor, twenty-three against, and sixty-three abstentions on May 22, 2013, evidences this common mindset just before the Istanbul Convention entered into force. *EU-wide Protection for Victims of Domestic Violence to Become Law*, EUR. COMMISSION PRESS RELEASE DATABASE (May 22, 2013), http://europa.eu/rapid/press-release_MEMO-13-449_en.htm [https://perma.cc/XB5W-JRE2].

iors and mindsets through national domestic violence laws.¹⁵¹ Article 1 directly and repeatedly mentions domestic violence in establishing the Istanbul Convention's multiple purposes, which include: (1) the prevention, prosecution, and elimination of domestic violence, (2) the creation of a "comprehensive framework, policies and measures" to protect domestic violence victims, (3) international cooperation toward elimination of domestic violence, and (4) the provision of "support and assistance to organizations and law enforcement agencies to . . . adopt an integrated approach" designed to eliminate domestic violence.¹⁵² Likewise, in defining the Istanbul Convention's scope, Article 2 accounts for the gendered aspects of domestic violence.¹⁵³ Specifically, it explains the necessity of integrating Istanbul Convention provisions into national legislation due to domestic violence's "disproportionate" effect on women.¹⁵⁴

The Council of Europe additionally emphasizes its commitment to thwarting the perpetuation of harmful gender constructs in national legislation by requiring that parties amend their legislation to criminalize numerous behaviors intertwined with machismo-like notions of aggression and dominance.¹⁵⁵ These criminalized behaviors include intentional infliction of psychological abuse, stalking, physical assault, sexual abuse or harassment, and participation in the commission of any such offense.¹⁵⁶ Article 42 simultaneously promotes this commitment by prohibiting states from allowing defendants to use cultural behaviors or honor defenses as justifications for mitigating circumstances when seeking reduced sentences.¹⁵⁷

Article 3 also compels states to account for social and cultural constructs in enactment of national legislation through highly expansive definitions that consider gender and cultural influences.¹⁵⁸ For example, "violence against woman" is defined to include "gender-based violence [against women]," which is itself defined as "violence that is directed against a woman because she is a woman or that affects women disproportionately."¹⁵⁹ The Istan-

151. See Istanbul Convention, *supra* note 28, arts. 1–6; *supra* Sections B–C.

152. Istanbul Convention, *supra* note 28, art. 1.

153. *Id.* art. 2.

154. *Id.*

155. See *id.* arts. 33–36, 40–41.

156. *Id.*

157. *Id.* art. 42; Papademetriou, *supra* note 28.

158. See Istanbul Convention, *supra* note 28, art. 3.

159. *Id.*

bul Convention also notably defines “gender” as the “socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for men and women.”¹⁶⁰

The progressive language in these definitions¹⁶¹ forces ratifying parties to acknowledge gender inequities and the role of social constructs in applying Istanbul Convention provisions to their domestic legislation. For example, Spanish law acknowledges its susceptibility to the influence of gendered constructs by legally differentiating between violence that occurs within a family environment and violence that occurs specifically within intimate relationships, noting that the latter is a result of domestic violence victims’ “special situations[s] of vulnerability.”¹⁶² This language endorses the idea that laws should account for the existence of gender and cultural imbalances in effectively protecting domestic violence victims.¹⁶³ Similarly, Portuguese law connects domestic violence to the prospect of women’s “pathologic dependences” on men.¹⁶⁴ Here, this acknowledgment that gender could impact the use of the legal system in domestic violence situations ultimately advances the European understanding of broader behavioral influences as inextricable aspects of domestic violence.¹⁶⁵

Furthermore, the Istanbul Convention includes numerous provisions that require states to alter national legislation to facilitate victim-reporting procedures and provide increased opportunities for

160. *Id.*

161. *See id.*

162. C.E., B.O.E. 2003, 183 (Spain) [hereinafter B.O.E. n. 183], <http://www.poderjudicial.es/cgpj/en/Subjects/Domestic-and-gender-violence/The-order-of-protection/relacionados/ACT-27-2003-of-31st-July-on-the-order-of-protection-for-victims-of-domestic-violence> [<https://perma.cc/254G-FCT7>] (scroll down to “Associated Files”; then click on the PDF link titled “ACT 27/2003 of 31st July on the order of protection for victims of domestic violence”); *see Protection of the Gender-Based Violence Victims in the European Union* 30–31 (Teresa Freixes & Laura Román eds., 2014); *see also supra* note 42 and accompanying text (noting the existence of machismo constructs in Spanish culture).

163. *See* B.O.E. n. 183, *supra* note 162; *Protection of the Gender-Based Violence Victims in the European Union*, *supra* note 162, at 31; *Explanatory Report to the Council of Europe Convention on Preventing Violence Against Women and Domestic Violence*, at 5–6 (Apr. 12, 2011), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a> [<https://perma.cc/9NQ7-4BYF>] (navigate to the row titled “Related links”; follow “Explanatory report”).

164. DIRECÇÃO-GERAL DA POLÍTICA DE JUSTIÇA & MINISTÉRIO DA JUSTIÇA, “BREAKING THE SILENCE—UNITED AGAINST DOMESTIC VIOLENCE,” 29TH COUNCIL OF EUROPE CONFERENCE OF MINISTERS OF JUSTICE REPORT FROM PORTUGAL 3 [hereinafter BREAKING THE SILENCE], <http://www.coe.int/t/dghl/standardsetting/minjust/mju29/Report%20from%20Portugal%20-%20Domestic%20Violence.pdf> [<https://perma.cc/TC79-M34V>]; *see also supra* text accompanying note 42 (noting the existence of machismo constructs in Portuguese culture).

165. *See* Crossette, *supra* note 62.

victims to utilize them.¹⁶⁶ Requiring legally binding national legislation revisions that better protect victims and streamline reporting processes encourages victims to make use of the legal remedies available to them, which in turn helps to reduce domestic violence overall.¹⁶⁷ One example is Article 27, which allows persons other than victims to report acts of domestic violence based on “reasonable grounds.”¹⁶⁸ This permits family members, friends, or any outside observer of domestic violence to stand up for women too afraid to come forward themselves as a result of learned submissiveness, shame, or fear of retaliation.¹⁶⁹ Another example is Article 48, which requires states to prohibit mandated alternative dispute resolution such as mediation and conciliation for “all forms of violence” that the Istanbul Convention’s scope covers.¹⁷⁰ This eliminates the possibility that victims would be forced to sit down with their abusers to resolve issues prior to or instead of using other legal remedies.¹⁷¹

Spanish and Portuguese laws also provide examples of how parties can adapt key Istanbul Convention articles to improve reporting procedures for domestic violence.¹⁷² Both states provide legislative means to prevent victim-defendant contact throughout investigations and prosecutions, thereby allowing victims to pursue charges without risk to their safety or pressure to withdraw complaints.¹⁷³ Spanish law additionally provides for expedited domestic violence trials to minimize the windows of opportunity for victims to withdraw their complaints or for perpetrators to evade judicial authorities.¹⁷⁴ Similarly, Portuguese law reduces the likelihood that defendants will commit further violence by limiting their

166. Istanbul Convention, *supra* note 28, arts. 23, 27, 48.

167. See Palermo, *supra* note 64, at 9; *supra* Section C.

168. Istanbul Convention, *supra* note 28, art. 27.

169. See *id.*; *supra* Parts I.B–C.

170. Istanbul Convention, *supra* note 28, art. 48.

171. See JESSICA PEARSON, DIVORCE MEDIATION AND DOMESTIC VIOLENCE, U.S. DEP’T OF JUSTICE RESEARCH REP. 164658, at 2 (Nat’l Criminal Justice Reference Serv. Apr. 1997) <https://www.ncjrs.gov/pdffiles1/nij/grants/164658.pdf> [<https://perma.cc/ES2P-HZ5L>] (explaining a frequent criticism of mandated mediation).

172. See, e.g., *infra* note 173 and accompanying text.

173. See B.O.E. n. 183, *supra* note 162; BREAKING THE SILENCE, *supra* note 164, at 2–3.

174. BRITISH CONSULATE-GENERAL MADRID, FOREIGN & COMMONWEALTH OFFICE LEGAL PROCEDURES IN CRIMINAL CASES PREPARED BY BRITISH CONSULATE-GENERAL MADRID, 4–5 (Mar. 23, 2013), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/139600/legal-procedures-criminal-cases.pdf [<https://perma.cc/68XF-UCDK>]; LEGAL DEFENCE, OEPM STOPFALSIFICACIONES.ES (Oct. 25, 2011), http://oepm-stopfalsificaciones.es/en/informaciongeneral/defensajuridica/ley38_2002.html [<https://perma.cc/7QDV-JUTR>].

use of and access to registered weapons.¹⁷⁵ Thus, imposing Istanbul Convention measures on national legislation can effectively heighten the likelihoods of prosecuting perpetrators and preventing them from re-offending, while better protecting victims by reducing their interactions with defendants.¹⁷⁶

b. Istanbul Convention Enforcement

To ensure that ratifying parties implement the Istanbul Convention to an acceptable degree, the Council of Europe created the Group of Experts on Action against Violence Against Women and Domestic Violence (GREVIO).¹⁷⁷ Similar to MESECVI,¹⁷⁸ GREVIO consists of an elected body of independent experts tasked with evaluating how parties have aligned their legislation or otherwise complied with provisions, and publishing reports that summarize findings and recommendations for increased compliance.¹⁷⁹ GREVIO also has proactive capabilities and may both provide general recommendations and—unlike MESECVI¹⁸⁰—conduct emergency inquiries or request special reports when reliable information suggests intervention to stop Istanbul Convention violations would be necessary.¹⁸¹ To supplement its abilities to conduct thorough evaluations and develop well-informed recommendations, GREVIO may receive implementation information from general non-governmental, civil society, and national human rights organizations.¹⁸² GREVIO is similarly required to take “due consideration” of existing information present in “other regional and international instruments and bodies” relevant to prevention of violence against women, to help conduct its responsibilities as effectively as possible.¹⁸³

175. BREAKING THE SILENCE, *supra* note 164, at 3.

176. *Supra* notes 172–175 and accompanying text; *see* Istanbul Convention, *supra* note 28, arts. 27, 48.

177. The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) is responsible for monitoring parties' implementation. *About GREVIO – Group of Experts on Action Against Violence Against Women and Domestic Violence*, COUNCIL OF EUR. <http://www.coe.int/en/web/istanbul-convention/grevio> [<https://perma.cc/U78W-4SQW>] (last visited Nov. 2, 2016) [hereinafter *GREVIO*, COUNCIL OF EUR.].

178. *See supra* Section D.2.b.

179. COUNCIL OF EUR., *supra* note 177.

180. *See supra* Section D.2.b.

181. Istanbul Convention, *supra* note 28, art. 68; OAS & COUNCIL OF EUR., *supra* note 26, at 82; *GREVIO*, COUNCIL OF EUR., *supra* note 177.

182. Istanbul Convention, *supra* note 28, art. 68; OAS & COUNCIL OF EUR., *supra* note 26, at 81.

183. Istanbul Convention, *supra* note 28, art. 68; *see* OAS & COUNCIL OF EUR., *supra* note 26, at 81.

Rather than permitting reservations subject to conditions, like the CBP does,¹⁸⁴ the Council of Europe guarantees compliance with the vast majority of Istanbul Convention provisions by prohibiting parties from making reservations to any provisions outside the exceptions listed under Article 78, Part 2.¹⁸⁵ The listed exceptions pertain to narrow issues involving state compensation, jurisdiction, statutes of limitations, and residence status with regard to forced marriage, female genital mutilation, and forced abortion or sterilization.¹⁸⁶ In addition, parties must justify renewal of their reservations to GREVIO every five years, which further limits the potential for violations.¹⁸⁷

Istanbul Convention provisions reveal the values and goals that guide European parties in development of domestic violence legislation that comprehensively protects women, particularly against gendered behaviors such as those associated with machismo.¹⁸⁸ This insight becomes particularly relevant when understood in conjunction with those values and goals that the CBP emphasizes, resulting state legislation, and these instruments' potential to mitigate the influence of harmful machismo-associated behaviors.

II. ANALYSIS

At this time, the CBP does not sufficiently protect women from domestic violence in cultures heavily influenced by machismo and marianismo gender constructs. Specifically, the CBP's definitions, lack of reporting incentives, current monitoring mechanism, and reservation standards do not do enough to protect women. If the OAS intends to improve the legal situation of women under current domestic violence legislation, it needs to broaden the CBP's scope to account for the gender, social, and cultural influences that seriously affect how states shape and victims utilize domestic violence legislation. This Part argues that the OAS should reduce Latin American states' potential for retaining laws and legislating in ways that perpetuate potentially harmful machismo ideals associ-

184. *Supra* note 119 and accompanying text.

185. Istanbul Convention, *supra* note 28, art. 78; OAS & COUNCIL OF EUR., *supra* note 26, at 84.

186. Istanbul Convention, *supra* note 28, art. 78; OAS & COUNCIL OF EUR., *supra* note 26, at 84.

187. Istanbul Convention, *supra* note 28, art. 79; OAS & COUNCIL OF EUR., *supra* note 26, at 85.

188. *See supra* Section I.D.3.a.

ated with domestic violence.¹⁸⁹ To accomplish this, the CBP should adopt provisions modeled after the Istanbul Convention, which more comprehensively accounts for gender and cultural constructs in its guidance for European domestic violence legislation.

The proposed amendments to the CBP would: (1) expand definitions to account more comprehensively for harmful machismo influences, (2) adopt provisions that incentivize domestic violence reporting, (3) update its overarching monitoring mechanism to more closely monitor state implementation at a national level, and (4) reduce states' opportunities to circumvent implementation by creating a provision that specifies the CBP's purpose and a more stringent reservation provision.

A. *Expanded Definitions*

The first proposed amendment is for the CBP to adopt more expansive definitions that account for and protect against gendered violence and prevalent social constructs. In defining the CBP's scope, terminology, and protected rights, the OAS should follow the Istanbul Convention's example of deliberately incorporating cultural constructs and gender-based violence into its primary objectives and definitions.¹⁹⁰ The OAS should also adopt the Istanbul Convention's practice of criminalizing specific behaviors associated with domestic violence.¹⁹¹

1. Current CBP Definitions' Failure to Protect Women from Domestic Violence

By not using language that imposes duties upon states to update domestic legislation in ways that would acknowledge the gendered and cultural realities of domestic violence,¹⁹² CBP definitions and terminology miss opportunities to more comprehensively combat harmful behaviors associated with domestic violence. While CBP Article 6's definition of "the right[s] of . . . women to be free from violence" appears far-reaching on its face, it does not account for states that accept "stereotyped patterns of behavior" as the norm, instead of as a form of discrimination warranting protection.¹⁹³ It

189. See *supra* Sections I.B–C (discussions of machismo and marianismo constructs in relation to domestic violence).

190. See *supra* Section I.D.3.a.

191. See *id.*

192. See, e.g., CBP, *supra* note 24, art. 9; *supra* Section I.C.

193. See CBP, *supra* note 24, art. 6.

also does not account for those individuals who do not receive educations that combat such notions.¹⁹⁴

CBP provisions that outline other relevant definitions and states' duties are similarly deficient.¹⁹⁵ Article 1's broad definition of violence against women not only fails to account for domestic violence's various forms, but also lacks any reference to domestic violence at all.¹⁹⁶ This failure is also present in Article 7's call for states merely to pursue generalized policies to eradicate violence against women, and in Articles 6, 8, and 9's limited state obligations to account for gender and cultural behaviors in protecting women.¹⁹⁷ Additionally, Article 7 does not clearly define what the appropriate legislative measures needed to amend or repeal "legal or customary practices which sustain the persistence and tolerance of violence against women" would resemble in reality.¹⁹⁸ Latin American domestic legislation that similarly fails to address the influence of gender on domestic violence¹⁹⁹ further reflects the CBP's incomplete inclusion of gender and culture throughout its provisions.²⁰⁰

Furthermore, the CBP does not provide states with any guidance regarding how to punish various forms of violence against women.²⁰¹ In states like Colombia,²⁰² where only certain "grave" forms of domestic violence are met with penalties,²⁰³ the CBP's lack of criminalization guidelines²⁰⁴ fails to minimize the effect of cultural norms on such domestic violence punishment. Failure to define standards for criminalization essentially communicates to states that their current regimes are acceptable, which as a result risks victims not receiving adequate protection and justice in states that do not criminalize certain violent behaviors.

2. Potential Benefits of Expanded Definitions

The Istanbul Convention's decision to emphasize gender and social constructs so prominently and expansively in Articles 1 and 3 guides European states effectively in drafting national legislation

194. *See id.*

195. *See infra* text accompanying notes 196–200.

196. *See* CBP, *supra* note 24, art. 1; *supra* text accompanying note 94.

197. *See* CBP, *supra* note 24, art. 6–9; Part I.D.2.a.

198. CBP, *supra* note 24, art. 7.

199. *See supra* Section I.D.2.c.

200. *See supra* Section I.D.2.a.

201. *See* CBP, *supra* note 24.

202. U.S. DEP'T OF STATE, *supra* note 127.

203. *See* U.S. DEP'T OF STATE, *supra* note 127; *supra* Part I.D.2.c.

204. *See* CBP, *supra* note 24.

that both recognizes and protects against aspects of the interplay between gender and domestic violence.²⁰⁵ Accordingly, such amendments to the CBP would have comparable effects on Latin American states. Including standardized criminalization provisions in the CBP, in a manner similar to the Istanbul Convention,²⁰⁶ would also ensure that perpetrators of behaviors associated with domestic violence are held accountable for their actions.

Such standardization would not blindly dictate to states what behaviors are prohibited and acceptable regardless of cultural practices; states could retain the autonomy to determine to what degree to criminalize behaviors and the appropriate sanctions for such behaviors. Rather, more standardized criminalization would expressly discourage behaviors that currently hurt women, in accordance with the CBP's goal of preventing behaviors that cause "physical, sexual or psychological harm or suffering to women."²⁰⁷ It would also encourage a more cohesive regional rejection of behaviors associated with domestic violence. For example, inclusion of such behaviors would allow abusers currently evading punishment for domestic violence on "cohabitation" or "recurrent" technicalities²⁰⁸ to be brought to justice for practices often criminalized in other states. This in turn would help deter certain harmful behaviors associated with machismo ideology.²⁰⁹

B. *Inclusion of Provisions That Incentivize Domestic Violence Reporting*

Second, the OAS should amend the CBP to, like the Istanbul Convention, include provisions that incentivize domestic violence reporting to improve domestic violence prevention and facilitate prosecution of perpetrators. The CBP should include requirements that specifically relate to or incentivize reporting through the designation of protective measures that would make it easier and safer for individuals to report domestic violence incidents.

1. The CBP's Failure to Incentivize Domestic Violence Reporting

The CBP inadequately protects domestic violence victims' interests in light of machismo and marianismo stereotypes by not only failing to include any reference to victim reporting in its guiding

205. See Istanbul Convention, *supra* note 28, art. 1, 3.

206. See *supra* notes 155, 156, and accompanying text.

207. CBP, *supra* note 24, art. 1.

208. See U.S. DEP'T OF STATE, *supra* notes 125, 127, and accompanying text.

209. See *supra* Part I.B.

provisions to states,²¹⁰ but also by lacking provisions specifically aimed to provide individuals with increased incentives or means to report domestic violence.²¹¹ As reporting is consistently regarded as a significant obstacle to both improving gender relations and most effectively utilizing domestic violence legislation,²¹² requiring states to include provisions that encourage reporting—or to frame existing provisions in ways that do so—would help the OAS better protect women's stated rights to be free from violence.²¹³

Under current laws guided by CBP provisions, a domestic violence victim in Uruguay may be likely to report her abuser because Uruguayan laws mandate victim-abuser separation,²¹⁴ while a Paraguayan victim may not report at all because Paraguayan laws give courts the option of requiring that she engage in mediation with her abuser.²¹⁵ The failure of national laws like Paraguay's to account for the cultural and behavioral patterns related to domestic violence reporting is particularly troubling in light of prevalent marianismo ideals that emphasize amenability and submission, and that have the potential to inhibit reporting.²¹⁶

2. Potential Benefits of Including Provisions That Incentivize Domestic Violence Reporting

The OAS should update the CBP to create incentives similar to the Istanbul Convention articles that incentivize domestic violence reporting.²¹⁷ Adopting provisions that mirror Istanbul Convention Articles 27 and 48, for example, which require states to prohibit mandatory alternative dispute resolution and allow non-victims to report domestic violence and request protective orders,²¹⁸ would eliminate some of the barriers that currently discourage Latin American victims from reporting.²¹⁹ Addition of language that permits third parties to report domestic violence and requires timeliness with regard to investigations and issuance of protective orders would enhance underlying protective goals and would pre-

210. See CBP, *supra* note 24; *supra* notes 105–107 and accompanying text.

211. See CBP, *supra* note 24; *supra* Section I.D.2.a.

212. Wecker, *supra* note 67 and accompanying text; Klibanoff, *supra* note 69 and accompanying text.

213. See CBP, *supra* note 24, art. 3; *supra* Part I.D.2.a; *supra* Part I.D.3.a.

214. U.S. DEP'T OF STATE, *supra* note 132.

215. U.S. DEP'T OF STATE, *supra* note 136.

216. See *supra* Part I.C.

217. See *supra* Part I.D.3.a.

218. *Supra* notes 168, 170, and accompanying text.

219. Wecker, *supra* note 67 and accompanying text; Klibanoff, *supra* note 69 and accompanying text.

vent more victims from experiencing issues similar to those of Lucia Sandoval.²²⁰ More specifically addressing reporting requirements would also help the OAS achieve its goal of producing more unified measures across Latin America.²²¹

This proposal for more unified national approaches is not meant to suggest that every ratifying state should produce identical laws; rather, these measures would be unified in the sense that states' legislation would expand in scope to provide more widespread protections to domestic violence victims. Additionally, inclusion of such incentives would not require states to legislate beyond any standard to which international instruments do not already bind them.²²² Increasing the ease and safety of reporting domestic violence aligns with states' current obligations to adopt measures to modify customary practices that generate fear of or obstacles to reporting,²²³ and that perpetuate violence against women.²²⁴

C. *A More Proactive Monitoring Mechanism*

Third, although the CBP's and Istanbul Convention's monitoring mechanisms are similar in scope and function,²²⁵ the OAS should adopt the Istanbul Convention's more proactive approach to monitoring and addressing violence against women.²²⁶ Specifically, the CBP's overarching monitoring mechanism (MESECVI) should expand its current report evaluation and implementation follow-up processes to function more like the those of the Istanbul Convention's monitoring mechanism (GREVIO) that allow GREVIO to request special reports and conduct emergency inquiries.²²⁷ Additionally, the OAS should broaden its civil society organization participation to match that of GREVIO.²²⁸ Doing so would allow MESECVI to consider other regional and international instruments' information and methodologies in its effort to pre-

220. Lucia Sandoval's husband assaulted her after she informed him of her protective order against him. Sharnak, *supra* note 1.

221. See *supra* note 140 and accompanying text in footnote; *supra* Section I.D.3.a.

222. See CBP, *supra* note 24, ch.3; *supra* Section I.D.1.

223. See *supra* Section I.C.

224. Wecker, *supra* note 67 and accompanying text; Klibanoff, *supra* note 69 and accompanying text; see *id.*

225. *Supra* Sections I.D.2.b, I.D.3.b. Compare *The MESECVI Process*, OAS, <http://www.oas.org/en/mese cvi/process.asp> [<https://perma.cc/Y57Z-H3Q2>] (last visited Oct. 20, 2016), with OAS & COUNCIL OF EUR., *supra* note 26, at 79–82.

226. See *supra* Section I.D.3.b.

227. Istanbul Convention, *supra* note 28, art. 68; see *supra* Section I.D.3.b.

228. *Supra* note 182 and accompanying text.

vent violence against women, as well as look to any other outside organizations for assistance with implementation strategies.²²⁹

1. The CBP's Passive Monitoring Mechanism

Although MESECVI aims to protect and defend women's rights against violence, its procedural setup is inadequate to do so, as it does not provide a means to investigate or request information regarding potential CBP violations as it becomes aware of them.²³⁰ Instead, MESECVI functions passively by waiting for responses to circulated questionnaires before evaluating those responses and issuing recommendations.²³¹ This passive methodology that analyzes state progress in implementation of previous recommendations is not a highly effective way to protect victims or respond to situations that require immediate examination, and MESECVI should therefore be equipped with more proactive capabilities.

2. Potential Benefits of a More Proactive Monitoring Mechanism

A proactive expansion would likely expedite the implementation of Committee of Experts recommendations and provide MESECVI with a more tangible means of dealing with the legislative deficiencies it already aims to improve.²³² Expanding MESECVI's non-governmental organization participation beyond those organizations registered with its network and involved with national plans²³³ would increase exposure to relevant organizations and provide a more accurate snapshot of states' current issues, to thereby improve the protective and gender-equal qualities of national domestic violence legislation.²³⁴

D. *Addition of a Purpose Provision and More Stringent Reservation Provision*

Finally, the OAS should reduce states' opportunities to circumvent CBP provisions by including a specific purpose provision and a less flexible reservation provision. First, the OAS should amend the CBP to include a clear and comprehensive purpose to prevent states from potentially using the broad language in Article 18 to

229. See Istanbul Convention, *supra* note 28, art. 68.

230. See *supra* Section I.D.2.b.

231. See *id.*

232. See *supra* note 110; *supra* text accompanying note 113.

233. OAS, *supra* note 115.

234. See OAS & COUNCIL OF EUR., *supra* note 26, at 36.

avoid full compliance with the CBP.²³⁵ Ideally, the OAS should blend the aims of CBP Chapter I articles defining violence against women and the CBP's scope²³⁶ into a statement of purpose that specifically references domestic violence. The CBP's statement of purpose should emulate, in terms of specificity and scope, that of the Istanbul Convention, which specifically mentions the "prevention, prosecution, and elimination of domestic violence" and the creation of a "comprehensive framework" for domestic violence victims as driving forces behind the instrument.²³⁷ The CBP should also adopt language from Istanbul Convention Article 2 that acknowledges the gravity of gender-based violence and domestic violence's disproportionate impact on women.²³⁸ Finally, the CBP's reservation provision should mirror the Istanbul Convention's list of provisions to which parties may permissibly make reservations,²³⁹ as such a list would prevent states from using strategic interpretation to avoid implementation of any parts of provisions critical to protecting women.²⁴⁰

1. Opportunities for State Circumvention Under the Current Requirements

As written, the CBP risks subjecting women to uncomprehensive domestic violence legislation, as its ambiguous purpose and objectives provide states with too much discretion regarding the type of provisions to which they may make reservations.²⁴¹ While reservations to the CBP are permissible as long as they are compatible with its purpose and objective,²⁴² failing to articulate specifically these components opens the door to potentially CBP-defeating reservations and puts women in a vulnerable position. This vulnerability exists due to CBP phrasing that provides states with opportunities to interpret the CBP's ambiguous purpose and objective, and strategically pass legislation that may inadvertently

235. CBP, *supra* note 24, art. 18.

236. *Id.* ch. 1; *see supra* Section I.D.2.a.

237. The Istanbul Convention also emphasizes the importance of designing policies to protect and assist domestic violence victims, focusing on elimination of violence against women and domestic violence as components of international cooperation, and contributing to female empowerment and equality between sexes. Istanbul Convention, *supra* note 28, art. 1; OAS & COUNCIL OF EUR., *supra* note 26, at 63; *see also supra* Section I.D.3.a.

238. Istanbul Convention, *supra* note 28, art. 2.

239. *Id.* art. 78.

240. *See supra* Section I.D.2.b.

241. *See* CBP, *supra* note 24, art. 18.

242. *Id.*

perpetuate harmful machismo ideology or opt out of provisions designed to protect women.²⁴³

2. Potential Benefits of a Purpose Provision and Amended Reservation Requirements

Formulation of a provision that expressly articulates the CBP's purpose and emulates the Istanbul Convention's language would be instrumental in not only reinforcing the OAS's legislative goals,²⁴⁴ but also in reducing the possibility of state evasion of obligations to domestic violence victims. While the Istanbul Convention still permits reservations, it subjects each one to consideration regarding whether a specific case or condition qualifies.²⁴⁵ Adoption of a similar methodology would permit the OAS and states to engage in such considerations and weigh the potential impacts of any reservations more thoroughly. Such an approach also reduces the possibility of an influx of reservations, especially those founded on infringement on religious beliefs or cultural traditions, similar to what occurred with CEDAW.²⁴⁶ Furthermore, it is unlikely that a state would decline to adopt the CBP entirely—and risk regional or international admonishment—based solely on its inability to object to certain provisions constructed to benefit women and reduce domestic violence.

CONCLUSION

While countries worldwide have acknowledged the need to improve and strengthen domestic violence laws,²⁴⁷ legislation in Latin American countries, where domestic violence is prevalent, stands out as being particularly ineffective with regard to prevention and prosecution.²⁴⁸ Inadequate legislation persists in the face of high rates of violence against women,²⁴⁹ in part due to institutionalized and cultural acceptances of behavioral patterns favoring female submission and male dominance.²⁵⁰

International treaties that contain broad scopes, weak enforcement capabilities, and the potential for reservations on religious or cultural grounds, have not meaningfully improved domestic vio-

243. See *id.*; *supra* notes 20, 21, and accompanying text; *supra* Section I.D.2.b.

244. See *supra* text accompanying notes 88–90.

245. See Istanbul Convention, *supra* note 28, art. 78–79; *supra* Section I.D.3.b.

246. See U.N. WOMEN, *supra* note 20 and accompanying text.

247. See ECONOMIST, *supra* note 9; G.A. Res. 48/104, *supra* note 17.

248. See ECONOMIST, *supra* note 9; see *supra* Section I.D.2.c.

249. See ECONOMIST, *supra* note 9.

250. See *supra* Section I.B.

lence issues at national levels.²⁵¹ Analysis of regional convention requirements governing Latin American states' domestic legislation indicates a similar failure to account for the intersection of cultural ideals with the treatment of domestic violence and an inability to provide adequate protection to domestic violence victims.²⁵²

Protective deficiencies across state legislation²⁵³ suggest that Latin American regional guidelines would benefit from adoption of aspects of the Council of Europe's Istanbul Convention governing violence against women.²⁵⁴ This Note proposed to make the CBP more similar to the Istanbul Convention to improve states' national domestic violence laws and better protect domestic violence victims. The proposed amendments to the CBP would include the following four items: expanded definitions, provisions aimed to incentivize domestic violence reporting, a more proactive monitoring mechanism, and more stringent reservation regulations. Amending the CBP in these ways would help to prevent domestic violence ordeals, like the one Lucia Sandoval²⁵⁵ endured, from reoccurring.²⁵⁶ Such amendments would also broaden the scope of Latin American domestic violence coverage to limit the influence of potentially harmful gendered behavior on national domestic violence legislation and provide more comprehensive protections to women.²⁵⁷

251. *See supra* Section I.D.1.

252. *See supra* Section I.D.2.a.

253. *See supra* Section I.D.2.c.

254. *See supra* Sections I.D.3.a, Part II.

255. *See* Sharnak, *supra* note 1.

256. *See supra* Part II.

257. *See supra* Part II.

