

Sexual Violence in Costa Rica: A Progressive Country with Regressive Gender Policies

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Gender-based violence, although not a novel issue in international law, continues to affect nearly one in three women in the world.¹ While countries have signed treaties, passed domestic legislation, and pledged to protect women against gender-based violence, sexual violence has been blurred in national laws, lacking a comprehensive, universal definition.² Recent efforts to address sexual violence have been tailored to violations of international humanitarian law during war and armed conflict occurrences, overshadowing the day-to-day sexual attacks on women.³ Additionally, most countries suffer a legal “gap between the laws on the books and their implementation in practice.”⁴ Many countries have passed legislation to enforce their international responsibilities but have failed to provide mechanisms to ensure women are actually protected.⁵ Whether it be due to a lack of financial resources,

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1. *Facts and Figures: Ending Violence Against Women*, U.N. WOMEN, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures> (Feb. 2022).

2. See David L. Richards & Jillienne Haglund, *How Laws Around the World Do and Do Not Protect Women from Violence*, WASH. POST (Feb. 11, 2015, 10:45 A.M.), <https://www.washingtonpost.com/news/monkey-cage/wp/2015/02/11/how-laws-around-the-world-do-and-do-not-protect-women-from-violence/> (noting the variations in gender-based violence laws among different countries).

3. See generally Sara Meger, *The Fetishization of Sexual Violence in International Security*, 60 INT'L STUD. Q. 149 (2016) (arguing that isolating conflict-related sexual violence has not helped address the power imbalances that lead to gender-based violence).

4. Erin Adamson et al., *The Impact of Adjacent Laws on Implementing Violence Against Women Laws: Legal Violence in the Lives of Costa Rican Women*, 45 L. & SOC. INQUIRY 432, 432 (2020).

5. See generally Richards & Haglund, *supra* note 2 (mapping countries with and without gender-violence laws).

political willpower, or cultural perceptions of women's rights, women continue to endure violence at record-high numbers, particularly in Latin America.⁶

Throughout Central America and the world, Costa Rica is constantly praised for its progress politically, economically, socially, and environmentally.⁷ Costa Rica is further seen as a human rights champion,⁸ actively cooperating with international human rights legislation and even hosting the Inter-American Court of Human Rights in its capital, San Jose.⁹ It places highly in gender equality rankings,¹⁰ has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and has a high percentage of women in political positions.¹¹ Nonetheless, Costa Rica, continues to lag behind in sexual violence protections, as the laws that are in place are implemented incorrectly or not at all, and legislative gaps remain for certain violent acts. Costa Rica, while highly progressive, remains regressive in its gender policies, particularly as they pertain to sexual violence against women and femicide.

Compared to the rest of Latin America, Costa Rica stands relatively well in statistics for violence against women. There is a lower rate of femicide compared to its neighbors, such as Guatemala, Mexico, and El Salvador.¹² In part, this is because

6. See *Femicide and Impunity: A Humanitarian Crisis in Central America, and a Growing Problem Worldwide*, LA VIA CAMPESINA (Dec. 15, 2014), <https://viacampesina.org/en/femicide-and-impunity-a-humanitarian-crisis-in-central-america-and-a-growing-problem-worldwide/>; Mimi Yagoub, *Why Does Latin America Have the World's Highest Female Murder Rates*, INSIGHT CRIME (Feb. 11, 2016), <https://www.insightcrime.org/news/analysis/why-does-latin-america-have-the-world-s-highest-female-murder-rates/>.

7. See Auturo Wallace, *Qué tan diferentes son en realidad los habitantes de Costa Rica a los del resto de los países centroamericanos*, BBC MUNDO (May 25, 2017), <https://www.bbc.com/mundo/noticias-america-latina-40017780> (explaining why Costa Rica is denoted the Central American Switzerland).

8. Lynn Morgan, "Human Life is Inviolable": Costa Rica's Human Rights Crucible, 38 MED. ANTHROPOLOGY 493, 493 (2018) (noting Costa Rica's "long-standing commitment to health and human rights").

9. *What is the I/A Court H.R.?*, INTER-AM. CT. HUM. RTS., https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en.

10. World Econ. Forum, *Global Gender Gap Report 2020*, at 9 tbl.1 (2019), https://www3.weforum.org/docs/WEF_GGGR_2020.pdf; see also Morgan, *supra* note 5, at 496–98 (explaining Costa Rica's history and involvement with the Inter-American human rights system).

11. *Gender Quota Database: Costa Rica*, INT'L IDEA, <https://www.idea.int/data-tools/data/gender-quotas/country-view/87/35>.

12. Statista Rsch. Dep't, *Femicide Rate in Selected Countries in Latin America in 2019*, STATISTA, <https://www.statista.com/statistics/1102327/>

Costa Rica has avoided the worst effects of drug-related violence,¹³ where women are increasingly targeted in drug wars with numbers spiking in the Northern Triangle of Central America for femicide, sexual violence, and sex trafficking.¹⁴

Nonetheless, Costa Rican women still suffer femicide, inter-partner violence, sexual abuse, sexual harassment, and nonconsensual distribution of intimate pictures. Recent publicized femicides and sexual harassment scandals have resulted in protests and calls for policy reform. For example, a recent report found Costa Rica ranked eighth for countries with the highest rape rates,¹⁵ and another found there is a report of sexual violence every 80 minutes in Costa Rica.¹⁶ Even when legislation has been passed, there is, clearly, still a gap in implementation and protection for women.

This Note seeks to analyze Costa Rica's sexual violence laws, their compliance with Costa Rica's international responsibilities, and why there is a lack of a significant decrease in sexual violence rates. Part I outlines the international standards for sexual violence, as well as Costa Rica's domestic laws for protecting women. Part II details where Costa Rica's implementation has failed, focusing on legislative shortcomings and procedural deficiency in investigating sexual violence and femicide cases. This Part also discusses cultural challenges to these laws to determine why the country has not been successful

femicide-rate-latin-america-by-country/ (Feb. 11, 2022).

13. *Costa Rica Profile*, INSIGHT CRIME, <https://www.insightcrime.org/costa-rica-organized-crime-news/costa-rica/> (Nov. 27, 2019) (explaining Costa Rica's history with drug-related violence, as it has increased in recent years); see also Christopher Woody, *Drug Traffickers Are Pushing Deadly Violence to Record Levels in a Tranquil Corner of Latin America*, BUS. INSIDER (Jan. 19, 2018, 5:03 P.M.), <https://www.businessinsider.com/costa-rica-drug-traffickers-violence-record-levels-2018-1>.

14. UN Task Force on Transnat'l Organized Crime & Drug Trafficking as Threats to Sec. & Stability, U.N. Women, *A Gender Perspective on the Impact of Drug Use, the Drug Trade, and Drug Control Regimes* (July 2014), https://www.unodc.org/documents/ungass2016/Contributions/UN/Gender_and_Drugs_-_UN_Women_Policy_Brief.pdf (concluding that drug trafficking increases violence in Latin America and disproportionately affects women, noting that femicide in Honduras increased by 93% in 2009 due to increasing levels of sexual violence and sex trafficking).

15. *Rape Statistics by Country 2022*, WORLD POPULATION REV., <https://worldpopulationreview.com/country-rankings/rape-statistics-by-country> (last visited June 16, 2022).

16. *Cada 80 minutos se denuncia un delito sexual en Costa Rica*, AMELIA RUEDA, <https://especiales.ameliarueda.com/delitosexual/> (last visited July 5, 2022).

in protecting women's human rights. Part III will summarize why Costa Rica is likely to take the first steps to produce substantive change in Latin America, as well as suggest legal changes the country can follow to further comply with international obligations. This note concludes that *machismo*, in the judicial process and the law, is a key factor in hindering progress.

I. BACKGROUND

This section summarizes the current situation of femicide and sexual violence in the international arena. It details how femicide and sexual violence are defined, as well as the obligations countries have under certain treaties. This section will only address treaties that Costa Rica has signed and ratified. Additionally, this section provides definitions and clarifications of terminology used throughout the Note.

A. INTERNATIONAL TREATIES AND LEGAL STANDARDS

1. The Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the primary international treaty that sets protections for women's human rights. At the time of its passing in 1979, there was no definition for violence against women, much less for sexual violence.¹⁷ In 1989, almost a decade after its ratification, the Committee on the Elimination of All Forms of Discrimination Against Women (Committee) issued General Recommendation 12.¹⁸ This General Recommendation concisely recognized violence against women as a form of discrimination that violated the

17. Kevät Nousiainen, *CEDAW Committee General Recommendation on Violence Against Women Updated*, OXFORD HUM. RTS. HUB (Sept. 14, 2017), <https://ohrh.law.ox.ac.uk/cedaw-committee-general-recommendation-on-violence-against-women-updated/#:~:text=The%201979%20UN%20Convention%20on,no%20explicit%20reference%20to%20VAW.&text=VAW%20is%20defined%20as%20'violence,or%20that%20affects%20women%20disproportionately'>.

18. U.N. GAOR, 44th Sess., Supp. No. 38, at 75, U.N. Doc. A/44/38 (Feb. 13, 1990), *as reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 237 (2003) [hereinafter Gen. Rec. 12].

Convention.¹⁹ It stated that governments should protect women against “the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the workplace, etc.)”²⁰ This was one of the first times violence against women, and sexual violence, were mentioned under international law.²¹

General Recommendation 19, issued in 1992, was the first Committee recommendation to attempt to define and recognize sexual violence.²² In this Recommendation, “violence against women” is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately.”²³ Violence against women includes “acts that inflict physical, mental, or *sexual harm* or suffering, threats of such acts, coercion and other deprivations of liberty.”²⁴ Sexual harassment is further defined as “unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words and actions.”²⁵ Of additional relevance, the Recommendation highlights the state’s responsibility to protect against cultural stereotypes that limit women’s rights.²⁶ Specifically, the recommendation emphasizes, “[t]hese attitudes also contribute to the propagation of pornography and the depiction of other commercial exploitation of women as sexual objects”²⁷ Finally, the recommendation details, “[w]ithin family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault”²⁸

19. Gen. Rec. 12, *supra* note 18.

20. *Id.*

21. See U.N. Women, *General recommendations made by the Committee on the Elimination of Discrimination against Women*, <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (last visited July 5, 2022) (summarizing all the recommendations issued by the Committee, showing recommendations prior to Gen. Rec. 12 did not discuss violence against women).

22. U.N. GAOR, 47th Sess., Supp. No. 38, at 1, U.N. Doc. A/47/38 (Feb. 1, 1992), as reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003) [hereinafter Gen. Rec. 19].

23. Gen. Rec. 19, *supra* note 22, at 244.

24. *Id.* (emphasis added).

25. *Id.* at 246.

26. *Id.* at 245.

27. *Id.*

28. *Id.* at 246.

General Recommendation 19 goes on to issue specific recommendations for states.²⁹ Among these, the Committee suggests state regulations that adequately protect all women against family violence and abuse, rape, and sexual assault.³⁰ State action to protect women's human rights include criminal penalties, civil protections, protective services to ensure the safety and security of victims, rehabilitation programs, and support services for families that endured sexual abuse.³¹ These are by no means exhaustive measures, but rather suggestions that states can follow to ensure women are protected as instructed under international law.

Most recently, in 2017, the Committee issued General Recommendation 35, which clarified General Recommendation 19.³² Recommendation 35 tailors the definition of gender-based violence, stating, "[t]his violence takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty."³³ In its discussion, the Recommendation characterizes sexual assault as a crime against the right to personal security and integrity.³⁴ Similarly, the Recommendation highlights the importance of effective responses from authorities in cases of gender-based violence, as well as trainings and additional services to eliminate patriarchal stereotypes against women.³⁵

Recent jurisprudence before the CEDAW Committee evidences violence against women is still prevalent globally. Most complaints stem from inappropriate police and judicial

29. *Id.* at 247.

30. *Id.*

31. *Id.* 248.

32. Comm. On the Elimination of Discrimination Against Women [CEDAW], General Recommendation No. 35 on Gender-based Violence Against Women, Updating General Recommendation No. 19, U.N. Doc. CEDAW/C/GC/35 (July 26, 2017) [hereinafter Gen. Rec. 35]. After passing General Recommendation 19, the Committee recognized that state practice, as well as domestic and international court decisions, indicated "the prohibition of gender-based violence as a principle of customary international law." *Id.* ¶ 2. This determination, along with strong advocacy from women's rights organizations, encouraged the Committee to present Gen. Rec. 35 to further detail state obligations under international law. *Id.* ¶¶ 1–4.

33. *Id.* ¶ 14.

34. *Id.* ¶ 29.

35. *Id.* ¶ 30.

response to allegations of violence against women,³⁶ as well as cultural stereotypes that dehumanize and patronize women.³⁷ This goes to show that while states may have the laws in the books, they may not appropriately implement them in practice. Further, sexual violence is continuously clumped in with “domestic violence” or only addressed in international humanitarian law when it relates to war or armed conflict. By failing to differentiate sexual violence from domestic violence, or only addressing sexual violence in the context of war, protections against sexual violence will continue to fall short.

2. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará)

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, commonly known as the Convention of Belém do Pará, entered into force on March 5, 1995.³⁸ It has been ratified by thirty-two countries in Latin America and the Caribbean.³⁹ Costa Rica signed the Convention in 1994 and ratified it one year later, in 1995.⁴⁰ This regional international treaty aimed to specify how violence against women is a violation of human rights and fundamental freedoms.⁴¹ The Convention of Belém do Pará also provides a detailed definition of violence against women, further

36. See, e.g., CEDAW, Views Adopted by the Committee Under Article 7 (3) of the Optional Protocol, Concerning Communication No. 103/2016, ¶¶ 6.13, 6.16 U.N. Doc. CEDAW/C/69/D/103/2016 (Apr. 25, 2018) (concluding Finland violated the rights of a Finnish woman by failing to properly recognize domestic violence as real, as well as address gender-based violence in their institutions and judicial system).

37. See, e.g., CEDAW, Views Adopted by the Committee at its Sixty-First Session, ¶ 10, U.N. Doc. CEDAW/C/61/D/24/2009 (Aug. 25, 2015) (finding the country of Georgia failed to improve, where necessary, national policies against violence by ensuring appropriate practices in the reporting and judicial process of domestic and sexual violence).

38. Organization of American States, Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará), June 9, 1994, 33 I.L.M. 1534 [hereinafter Convention of Belém do Pará].

39. *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, Status of Signatories and Ratifications*, ORG. AM. STATES, <https://www.oas.org/en/mesecvi/docs/Signatories-Table-EN.pdf> (last visited Feb. 6, 2022).

40. *Id.*

41. See Convention of Belém do Pará, *supra* note 38, pmbl.

specifying and bringing attention to sexual violence.⁴²

Article 2 of the Convention sets forth examples of violence against women, specifically pertaining to sexual violence. This includes violence against women “within the family or domestic unit or within any interpersonal relationship” such as rape, battery, and sexual assault.⁴³ The article also emphasizes violence “that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse . . . forced prostitution, kidnapping and sexual harassment in the workplace . . .”⁴⁴ The definition and examples are important to highlight the specific actions that constitute sexual violence and, therefore, a violation of international human rights law.

The Convention further details a list of actions states should take to protect women’s human right to live a life without violence. Article 7 establishes the state’s responsibility to pass legislation to prevent violence against women.⁴⁵ Additionally, states must take “all appropriate measures, including legislative measures” to amend current laws that perpetuate gendered stereotypes or might limit a battered woman’s access to remedies.⁴⁶ Article 8 encourages states to implement educational programs at all levels of school to eliminate cultural and societal stereotypes that may incite or promote violence against women.⁴⁷ Furthermore, Article 8 calls for the “training of all those involved in the administration of justice, police and other law enforcement officers.”⁴⁸ As the Convention specifically addresses instances of sexual violence, States have a clearer indication of what their obligations are under international law. Both CEDAW and the Convention, when analyzed together, provide a better explanation of what constitutes femicide and sexual violence, along with ways states should attempt to comply with international law.

42. *Id.* arts. 1–2.

43. *Id.* art. 2(a).

44. *Id.* art. 2(b).

45. *Id.* art. 7.

46. *Id.* art. 7(e).

47. *Id.* art. 8.

48. *Id.*

B. DOMESTIC LEGISLATION TO COMPLY WITH INTERNATIONAL STANDARDS

1. Law Against Sexual Assault in the Work Force and School 1995

Originally published in 1995, Costa Rica passed the Law Against Sexual Assault in the Work Force and School, which was most recently amended in 2010.⁴⁹ Article 3 of the law defines sexual harassment in the work force as any unwanted sexual behavior that prejudices a woman in the conditions of her work, the obtaining and keeping of her employment, or negatively affects her wellbeing.⁵⁰ Additionally, Article 4 clarifies what actions constitute harassment, including requesting sexual favors in exchange for promises or threats, using sexual phrases, and inappropriate corporal touching and proximity.⁵¹ Finally, the law places the responsibility on the corporation or business⁵² but also emphasizes the collaboration with the Ministry of Work and Social Security to ensure women are protected as required under the law.⁵³

2. Law Against Domestic Violence 1996

To comply with CEDAW and the Convention of Belém do Pará, Costa Rica passed the Law Against Domestic Violence in 1996.⁵⁴ This legislation is aimed at protecting victims of domestic violence and victims of interfamilial sexual abuse.⁵⁵ Sexual violence is defined in article 2, Section D. It includes any act that forces a person to engage in sexual conduct, either physical or verbal, through the use of force, intimidation, coercion, blackmail, manipulation, threat, or any other way that eliminates personal will and autonomy.⁵⁶ Some of the protections awarded to these survivors are removing the aggressor from the home, limiting interactions, and issuing

49. CÓDIGO CIVIL DE COSTA RICA [CIVIL CODE OF COSTA RICA] No. 8805, Gaz. No. 45 (2010) (Costa Rica).

50. *Id.* art. 3.

51. *Id.* art. 4.

52. *Id.* art. 5.

53. *Id.* art. 6.

54. *See* CIVIL CODE No. 7586, Gaz. No. 83, art. 21 (1996) (Costa Rica).

55. *Id.*

56. *Id.* art. 2.

orders of protection.⁵⁷ Similarly, the law sets forth obligations specific to the police department, including gathering evidence and testimony, creating a report of the attack, and serving as witnesses if needed.⁵⁸ Finally, under Article 21, the state is assigned certain responsibilities and mandates. Of particular relevance, the State of Costa Rica is mandated to enforce the recognition of the right of women to live a life free of violence,⁵⁹ promote educational programs to eliminate cultural stereotypes that discriminate against women,⁶⁰ and provide training for police and other judicial agents to learn their responsibilities and the rights of women.⁶¹

3. Law Penalizing Violence Against Women 2007

Costa Rica then passed the Law Penalizing Violence Against Women in 2007.⁶² Completed in compliance with CEDAW and the Convention of Belém do Pará, Costa Rica's legislation was recognized worldwide for its novelty.⁶³ This law is unique in that it protects all women over the age of 18 from any crime that is committed due to their gender, and especially from crimes committed in marriages and civil unions.⁶⁴ The law outlines specific punishment for certain acts, with the primary punishment being prison.⁶⁵ Some alternatives include weekend detention, community service, and deportation.⁶⁶

This law was also internationally recognized because it was a pioneer in terms of criminalizing femicide.⁶⁷ Article 21 establishes a punishment of twenty to thirty-five years in prison if a woman is murdered by their husband or partner.⁶⁸ There are also punishments against physical abuse⁶⁹ and restriction of

57. *Id.* art. 3.

58. *Id.* art. 20.

59. *Id.* art. 21(3).

60. *Id.* art. 21(4).

61. *Id.* art. 21(5) and (6).

62. CIVIL CODE No. 8589, Gaz. No. 103, art. 1 (2007) (Costa Rica).

63. See, e.g., Shang Wu Hsieh, *Femicidio, un indicador de violencia social hacia la mujer*, 29 MEDICINA LEGAL DE COSTA RICA 79, 81 (2012).

64. CIVIL CODE No. 8589, art. 1.

65. *Id.* arts. 9, 11 (determining that the minimum sentence for a crime of violence against women is three years).

66. *Id.* art. 9; see also *id.* arts. 10–19.

67. Hsieh, *supra* note 63, at 81.

68. CIVIL CODE No. 8589, art. 21.

69. *Id.* art. 22.

movement, in which a partner manipulates the woman to prevent them from leaving.⁷⁰ Further, sexual violence is covered in its entirety in Chapter 3 of the law. Articles 29 through 33 establish punishment for rape,⁷¹ abusive sexual conduct⁷² and sexual exploitation.⁷³ As previously mentioned, this law was unique and innovative at the time of its passing and covered quite extensively any act of sexual violence against women.

Most recently, the previous President of Costa Rica, Carlos Alvarado, approved the extension of the criminalization of femicide laws in Costa Rica. In August of 2021, President Alvarado signed into law an extended definition of “femicide”, which includes femicides perpetuated by those based on a relationship of trust, friendship, authority, or power.⁷⁴ The intent of this modification was to punish these acts against women, as the state should, even if there is no romantic or emotional relationship between the perpetrator and the victim.⁷⁵ As the definition of femicide was only recently modified, it is still too early to know what instructions representatives of the law were given, what limitations might be present, or how it will be used in practice.

4. Law Against Street Sexual Harassment 2020

Costa Rica also passed the Law Against Street Sexual Harassment.⁷⁶ The legislative history of this law noted multiple reports of catcalling, stalking, and indecent exposure.⁷⁷ Article 1 of the law defines street sexual harassment as “any act or acts with sexual connotation and that are one-sided . . . without the consent or acceptance of the person or persons to whom they are

70. *Id.* art. 23.

71. *Id.* art. 29.

72. *Id.* art. 30.

73. *Id.* art. 31.

74. *Costa Rica sanciona ley que amplía delitos de violencia contra la mujer*, EL PAIS (Aug. 23, 2021), <https://www.elpais.cr/2021/08/23/costa-rica-sanciona-ley-que-amplia-delitos-de-violencia-contra-la-mujer/> (Costa Rica).

75. *Id.*

76. CIVIL CODE No. 9877, Gaz. No. 215 (2020) (Costa Rica); *see also* Djenane Villeneuve, *Nueva legislación en Costa Rica sanciona con cárcel el acoso callejero*, CNN (July 16, 2020, 4:36 P.M.), <https://cnnespanol.cnn.com/2020/07/16/nueva-legislacion-en-costa-rica-sanciona-con-carcel-el-acoso-callejero/>.

77. Ley Contra el Acoso Sexual Callejero, Expediente No. 20.299, at 1 (Costa Rica), <http://www.asamblea.go.cr/sd/SiteAssets/Lists/Consultas%20Biblioteca/EditForm/Proyecto-20299%20acoso%20sexual%20callejero.pdf>.

addressed, with the potential of causing bother, annoyance, intimidation, humiliation, insecurity, fear, or offense, that arises from a generally unknown person to the person receiving and that take place in public spaces or of public access.”⁷⁸ By amending a law in the penal code, it further details that acts entailing sexual harassment such as noises, obscene gestures, capturing images or videos of the victim, or public acts of exhibitionism and masturbation, are criminalized.⁷⁹ It also places a responsibility on the police to interfere if they witness an act of street sexual harassment, even requiring them to detain the perpetrator if needed.⁸⁰

C. MACHISMO CULTURE

1. Defining Machismo

Machismo describes the social and cultural perception that men are superior to women. Scholars have defined it as “the belief that women should be subordinate to the needs and desires of their male partners, taking care of them, providing them pleasure”⁸¹ The *machista* ideology pinpoints the cultural expectations of the interpersonal relationships between men and women, particularly regarding sexual and gender dominance.⁸² The “macho” is strong, aggressive, and physically powerful.⁸³ He is also hypersexual, to the point where sexual dominance is praised rather than scolded.⁸⁴ The prevalence of *machista* ideologies in society promote sexual and physical dominance, further contributing to sexual violence and femicide.

78. CIVIL CODE No. 9877, art. 1 (author’s translation).

79. *Id.* art. 5.

80. *Id.* art. 3.

81. Tamar Diana Wilson, *Violence Against Women in Latin America*, 41 *LATIN AM. PERSPS.* 3, 4 (2014).

82. See Bron B. Ingoldsby, *A Theory for the Development of Machismo*, Paper Presented at the Annual Meeting of the National Council on Family Relations 1, 4 (1985) (describing how *machismo* creates dominant cultural stereotypes).

83. *Id.* at 3 (describing two principal characteristics of machismo: aggressiveness and hypersexuality); see also Meredith Kimelblatt, 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*, 49 *GEO. WASH. INT’L L. REV.* 405, 412 (2016) (associating machismo the concept of men as the dominant and sexual aggressor with physical superiority).

84. Ingoldsby, *supra* note 82, at 3.

2. Femicide, Femicide and Sexual Violence

“Femicide” is a political term used in Latin America that refers to government unresponsiveness to killings of women and girls.⁸⁵ In comparison to femicide, femicide emphasizes state culpability as well as inadequate responses to the murder of women.⁸⁶ This Note will use femicide and femicide interchangeably as both definitions recognize a structural situation, where both social and cultural customs come into play, when analyzing the deaths of women.⁸⁷ Further, it is impossible to address sexual violence without evaluating femicide. Sexual violence is one of the most prevalent indicators for femicide, for both intimate and non-intimate violence.⁸⁸ Femicide, therefore, is a form of sexual violence and sexual violence is a cause of femicide. Thus, when discussing statutes and statistics regarding sexual violence, this note will simultaneously reference statutes and statistics addressing femicide.

II. ANALYSIS

In theory, Costa Rica currently has the laws in place to protect women against sexual violence and femicide. Nonetheless, as a culture heavily influenced by machismo, sexual violence and femicide continues to prevail in Costa Rican society.⁸⁹ Specifically, the way machista ideologies are interwoven into the laws protects abusers rather than survivors, making prosecutions and convictions less likely.

85. *Femicide and Femicide*, GUAT. HUM. RTS. COMM'N, http://www.ghrc-usa.org/Programs/ForWomensRighttoLive/factsheet_femicide.pdf.

86. *Id.*

87. Myrna Dawson & Michelle Carrigan, *Identifying Femicide Locally and Globally: Understanding the Utility and Accessibility of Sex/Gender-Related Motives and Indicators*, 69 CURRENT SOCIO. 682, 687 (2021) (citing to CEDAW, Report on Mexico Produced by the Committee on the Elimination of Discrimination Against Women Under Article 8 of the Optional Protocol to the Convention, U.N. Doc. CEDAW/C/2005/OP.8/MEXICO (Jan. 27, 2005)).

88. *Id.* (finding that Latin American countries list “sexual violence . . . among non-intimate partner femicide indicators . . . although arguably [it] could also be indicators for intimate partner femicide”).

89. See, e.g., *Costa Rica acumula 4,047 mujeres atendidas por violencia y 11 femicidios en 2021*, EFE (Nov. 26, 2021), <https://www.efe.com/efe/america/sociedad/costa-rica-acumula-4-047-mujeres-atendidas-por-violencia-y-11-femicidios-en-2021/20000013-4684738>.

A. THE INTERCONNECTION OF MACHISMO CULTURE AND THE LAW

1. Machismo in the Statutes

Despite having relatively progressive laws, these statutes implicitly promote machista views of the perpetrators. Rather than recognize in the laws that sexual violence is a cultural problem nationwide, the laws tend to portray a particular type of perpetrator—an immigrant, substance-abuser, mentally unstable man. For example, the 2007 Law Penalizing Violence Against Women states abusers can get a “conduct plan” without jail, sentenced by a judge.⁹⁰ These plans include alcohol and drug treatment, psychological and psychiatric help, and residential limitations.⁹¹ This indirectly portrays perpetrators as alcoholics, drug users, mentally ill members of society, or immigrants. Furthermore, Article 19 of the law places specific emphasis on immigrants, as it allows deportation of any foreign national sentenced to five years or less.⁹² An immigrant removed from Costa Rica under this charge is banned from returning to Costa Rica for double the length of their criminal sentence.⁹³ In other words, a convict sentenced to five years in prison might be deported and prohibited from reentering the country for ten years.

Some might argue this could be a good method to punish perpetrators of gender-based violence, as there have been cases of migrants being the abusers.⁹⁴ Rather than have them in Costa Rican jails, these abusers can be deported, and resources saved to fight gender-based violence in Costa Rica. Nonetheless, this can backfire, as failure to recognize that Costa Rican men, regardless of alcoholism, drug use, or nationality, are killing and sexually abusing women will continue to impede any progress in protecting women. Additionally, regardless of nationality or substance abuse, the Costa Rican government is obligated to

90. CIVIL CODE No. 8589, art. 16.

91. *Id.*

92. *Id.* art. 19.

93. *Id.*

94. See *Sospechosos de femicidio de nicaragüense será deportado de Costa Rica*, ARTÍCULO 66 (Dec. 2, 2021), <https://www.articulo66.com/2021/12/02/heydi-jarquin-femicidio-costa-rica-frontera-nicaragua-sospechosos-deportacion/>.

Costa Rica does not have clear statistics on the nationality of each abuser, so there is no way to conclusively determine whether migrants are more likely to be abusers than Costa Rican nationals.

protect the women in their territory.

Another limitation to the way the laws are implemented that continues to encourage machismo in Costa Rican culture is the Law Penalizing Violence Against Women. Although it was widely acclaimed for its innovative definition of femicide, the definition only included murders from relatives or intimate partners.⁹⁵ This made it difficult to prosecute femicide where the perpetrators were neighbors, friends, or strangers.⁹⁶ Since femicide has historically not been prosecuted,⁹⁷ it reinforces the idea to the public that a man enforcing dominance and control over women can act with impunity. This incidentally hints at governmental and prosecutorial compliance with *machista* ideologies.⁹⁸ In other words, while the law is on the books, the lack of prosecution and accountability continues to reinforce *machismo* by signaling that men will not be held accountable.⁹⁹

Finally, there has been evidence that while there are laws directly addressing sexual violence and femicide, there are adjacent laws that may negatively impact the application of laws intended to protect and prevent gender-based violence.¹⁰⁰ When prosecutors and police officers have other laws to negate the protection of gender-based violence, as well as *machista* ideologies to reinforce their preconceptions of women, the violence against women laws are ineffective. As one report

95. CIVIL CODE No. 8589, art. 21.

96. In August of 2021, the current President of Costa Rica, Carlos Alvarado, signed into law an extended definition of femicide to include any relationship based on trust, friendship, authority, or power. *See Presidente afirma ley que amplia delito de feminicidio en Costa Rica*, SWISSINFO.CH (Aug. 23, 2021), https://www.swissinfo.ch/spa/costa-rica-feminicidio_presidente-firma-ley-que-ampl%C3%ADa-el-delito-de-feminicidio-en-costa-rica/46890254. As the definition of femicide was recently expanded, it is still too early to know what instructions representatives of the law were given, what limitations might be present, or how it will be used in practice.

97. CEDAW, Concluding Observations on the Seventh Periodic Report of Costa Rica, ¶ 16(a), U.N. Doc. CEDAW/C/CRI/CO/7 (July 24, 2017).

98. In Costa Rica's latest CEDAW Country Report, the Committee expressed concern on the "discriminatory stereotypes that women seeking justice and the limited knowledge of women's rights among law enforcement officers, including the police, throughout the State party." *Id.* ¶ 8(c).

99. *See generally* Shannon Drysdale Walsh & Cecilia Menjivar, *Impunity and Multisided Violence in the Lives of Latin American Women: El Salvador in Comparative Perspective*, 64 CURRENT SOCIO. 586 (2016) (explaining how the overall culture of impunity in El Salvador deters successful prosecution of femicide and sexual violence).

100. *See generally* Adamson et al., *supra* note 4 (finding that laws regarding land titles, employment, and immigration interfered with laws protecting women against gender-based violence).

stated, many lawyers are *machistas* who do not understand how to handle cases of violence against women.¹⁰¹ Traditional views of gender norms and the family influence officials, who then encourage women to reconcile with their aggressors, if they are partners or family.¹⁰² Until the law fully recognizes the extent of *machista* ideologies in Costa Rican society, as well as all the possible perpetrators and victims of sexual assault and femicide, women will continue to suffer human rights violations.

2. Machismo in Practice—Law Enforcement and the Judicial Process

It is equally important to discuss the role of officers of the law, such as prosecutors and judges, in the protection of women, as they represent the law. Further, the law is useless if it is not enforced. In 2016, 88% of the cases filed for violence against women were not prosecuted.¹⁰³ In 2018, there were a total of 27 femicides, but only 10 convictions under the femicide law.¹⁰⁴ Regarding sexual violence, there was a clear lack of prosecution and accountability. In 2019, there were 12,348 reports of sexual violence including rape, sexual relationships with minors, pornography distribution, and sexual abuse of women over eighteen.¹⁰⁵ Nonetheless, there were only 1,669 sentences, setting a conviction rate of 14%.¹⁰⁶ The low conviction rate could be for a multitude of reasons, but one element historically

101. Morgan, *supra* note 8, at 499; *see also* Mauricio Paris, *El techo de cristal del sector legal en América Latina*, IDEALEX (Sept. 3, 2020), <https://idealex.press/el-techo-de-cristal-del-sector-legal-en-america-latina/> (reporting that 19% of lawyers ranked in Chambers & Partners' ranking of Latin American lawyers are women, meaning 81% are men). Currently, there are no clear statistics on the gender makeup of the legal profession in Costa Rica. *See also* CEDAW, *supra* note 97, ¶¶ 8(c), 9(c), 14.

102. *See* Monserrat Sagot & Ana Carcedo Cabañas, *When Violence Against Women Kills: Femicide in Costa Rica, 1990–1999*, in *TERRORIZING WOMEN: FEMINICIDE IN THE AMERICAS* 138, 156 (Rosa-Linda Fregoso & Cynthia Bejarano eds., 2010); *see also* Adamson et al., *supra* note 4, at 445.

103. Adamson et al., *supra* note 4, at 434.

104. *Femicidio*, PODER JUDICIAL REPÚBLICA DE COSTA RICA: OBSERVATORIO DE VIOLENCIA DE GÉNERO, <https://observatoriodegenero.poder-judicial.go.cr/index.php/soy-especialista-y-busco/estadisticas/femicidio> (last visited Mar. 5, 2022).

105. *Delitos Sexuales*, PODER JUDICIAL REPÚBLICA DE COSTA RICA: OBSERVATORIO DE VIOLENCIA DE GÉNERO, <https://observatoriodegenero.poder-judicial.go.cr/index.php/soy-especialista-y-busco/estadisticas/delitos-sexuales> (last visited June 19, 2022).

106. *Id.*

present in Costa Rica is machismo.¹⁰⁷ For example, in some cases that were dismissed, investigators and prosecutors determined that incidents of gender-based violence, including sexual violence, were private affairs between couples.¹⁰⁸ This supports the contention that *machista* ideologies are present in the law through the officers of the law that are charged with protecting women. Although the laws are intended to protect women, those in charge of enforcing the laws are more interested in protecting family units, even encouraging women to stay with their abusers and resolve the issue to ensure the family is preserved.¹⁰⁹ If they believe women should be subject to *machista* ideologies, and therefore not protected from violence, reports of abuse will not be prosecuted.

Another report looking at the sentences for femicide from 2013 to 2017 found that there were no acquittals in that period, and that the highest year of convictions was in 2016.¹¹⁰ For *attempted femicides*, there were a total of 71 acquittals, or 55.5% of the charges ended in acquittals.¹¹¹ This study did not address why there was a higher acquittal in attempted femicides.¹¹² Nonetheless, because the victims survived, it is possible that they were not believed when they testified, or the attack was not considered as severe.¹¹³ Additionally, there may be problems of evidence-gathering or incorrect assigning of the charge.¹¹⁴ For example, some of these may be prosecuted under assault, which does not help get a clear understanding of the extent of violence

107. CEDAW, *supra* note 97, ¶¶ 16–17.

108. Adamson et al., *supra* note 4, at 448.

109. *See id.* at 440.

110. INSTITUTO NACIONAL DE LAS MUJERES ET AL., TERCER ESTADO DE LOS DERECHOS HUMANOS DE LAS MUJERES EN COSTA RICA 232 (2019), <https://repositorio.ciem.ucr.ac.cr/bitstream/123456789/228/3/RCIEM206.pdf>.

111. *Id.*

112. *Id.*

113. *See* Xinia Fernandez Vargas, Poder Judicial de la República de Costa Rica, *Estudio descriptivo de las víctimas de violencia por el delito de tentativa de femicidio en el marco de aplicación de la Ley de Penalización de Violencia Contra Mujeres*, PLANovi COSTA RICA 20 (2018), <http://planovicr.org/caja-herramientas/estudio-descriptivo-de-las-victimas-de-violencia-por-el-delito-de-tentativa-de> (finding that in 38 of 77 cases, there was no description of medical care the victims had to endure as a result of the attack, suggesting a lack of evidence gathering). Similarly, in 67 of the 77 cases, it was not addressed whether victims were referred to Costa Rica's Office of Attention and Protection of Victims of a Crime, whose purpose is to help victims navigate the legal system. *Id.* at 23.

114. *See id.* at 24 (noting the lack of information collected by authorities in femicide cases).

against women in the country. Finally, it could also be that cases just take an extremely long time to make it through the courts, so the sentences do not accurately reflect when the attempt happened and when the cases were concluded in the courts.¹¹⁵

One study found that among the cases that were the most delayed, sexual abuse against minors was the second most common case to be delayed, while rape was the third most likely case to be delayed or take a long time to resolve.¹¹⁶ It is likely that attempted assault is either charged along with some of these sexual violence charges, or that it is simply caught up in similar delays in the judicial process. This infringes the victims/survivors right to an expeditious judicial process and having them waiting for a decision increases the feelings of despair, anxiety, uncertainty and insecurity tied to attempted femicide, femicide, or sexual violence.¹¹⁷

B. APPLYING COSTA RICAN LAW TO CASES OF SEXUAL VIOLENCE

As previously mentioned, an analysis of how Costa Rica is complying with international law is complicated, as the state has passed many laws that facially comply with international standards. Nonetheless, how these laws are and aren't applied demonstrate that Costa Rica is not actually in compliance with international treaties. Recently, there have been two important sexual violence cases that have raised national attention. By evaluating how the Costa Rican police force and judiciary have handled these cases, it is evident that they are not putting women's rights at the forefront, as they should under a human rights framework. Abusers are getting away with low sentences, if they are sentenced at all, and the law is being misapplied.

1. Two Tourist Women Raped on a Costa Rican Beach

In the early days of 2022, two European women reported they had been raped and sexually abused by a group of men in

115. INSTITUTO NACIONAL DE LAS MUJERES ET AL., *supra* note 110, at 232.

116. Hulda Miranda, *Cuando la justicia "pronta" tarda hasta décadas en llegar*, SEMANARIO UNIVERSIDAD (Nov. 6, 2019), <https://semanario.universidad.com/destacadas/cuando-la-justicia-pronta-tarda-hasta-decadas-en-llegar/>. The cases that were most often delayed were those of robbery. *Id.*

117. See INSTITUTO NACIONAL DE LAS MUJERES ET AL., *supra* note 110, at 232.

Puerto Viejo,¹¹⁸ a common destination for tourists who want to visit the beautiful beaches of Costa Rica. While the women's identities are being protected, accounts of police mistreatment have already been reported in the handling of these two cases. For instance, one of the survivors was interviewed by police while she was still naked, and a bystander reported the police officer had been "rude" and "insensitive".¹¹⁹ Furthermore, once the survivor indicated her other friend was still missing, the police were slow to act, prompting a group of women's rights advocates called *Unidas Talamanca* to search the beach where the assault took place.¹²⁰ Currently, both women have returned to their home countries, discouraged by the treatment endured in Costa Rica.¹²¹

As the investigation is ongoing, questions remain as to what charges will be brought or how effective the investigation will actually be. For now, one local entity reported there was an investigation for rape,¹²² while the Judicial Organism of Investigation (OIJ) stated that it was only for the illegal detention of the women.¹²³ Specifically, the OIJ claimed the investigation was for illegal detention only because it has not yet been determined whether sexual assault happened.¹²⁴ This is to say, the survivors' accounts, despite being naked and distraught, were not enough to motivate the OIJ to investigate the claims as rape or sexual assault. The fact that these women were not believed shows the lack in training on trauma-informed investigations. It reiterates the contention that machismo runs deep in the veins of the Costa Rican police force, showing women alone are not believed. There are also concerns about evidence-gathering, as the survivors' narrative may not be accurate if they are revictimized and not offered the support they need. As this story continues to break, it will be interesting to see how Costa

118. Daniela Muñoz Solano, *Ante desidia estatal, se agravan agresiones sexuales contra turistas en el caribe sur*, SEMANARIO UNIVERSIDAD (Jan. 7, 2022), <https://semanariouniversidad.com/pais/ante-desidia-estatal-se-agravan-agresiones-sexuales-contra-turistas-en-el-caribe-sur/>.

119. Daniel Chinchilla, *Policía hizo declarar desnuda a turista Danesa que denunció violación en Puerto Viejo, dice testigo*, AMELIA RUEDA (Jan. 7, 2022, 5:51 P.M.), ameliarueda.com/nota/turista-danesa-denuncia-violacion-puerto-viejo-noticias-costarica.

120. Solano, *supra* note 118.

121. Chinchilla, *supra* note 119.

122. *Id.*

123. Solano, *supra* note 118.

124. *Id.*

Rica responds to the continuous reports and challenges of sexual violence against tourist women.¹²⁵

2. Telegram and the Distribution of Unconsented Nude Photographs

This example regards the unconsented distribution of nude photographs. As explained under CEDAW General Comment 35 and Article 2 of the Convention Belém do Pará, distributing personal photos of a woman violates the rights of women to live a life free of violence and constitutes sexual violence.¹²⁶ Recently, it was exposed that a group in the social media platform “Telegram”, which had over 3,000 men as members, was using the platform to share photos and videos of women.¹²⁷ The group had the sole purpose of distributing intimate media of multiple women and underage girls without their consent.¹²⁸ While people raised concerns about the group multiple times, it was not until the National Institute for Women (INAMU, in Spanish) got involved that the OIJ took action.¹²⁹

Initially, the OIJ was working with the Deputy Prosecutor for Gender, as the crime of sharing these images was recognized as another act of violence against women.¹³⁰ Nonetheless, it was

125. See Allan Madriz, *Denuncia de agresión sexual a turistas vuelve a poner en jaque seguridad e imagen del país como destino*, LA REPUBLICA (Jan. 7, 2022, 2:33 P.M.), <https://www.larepublica.net/noticia/denuncia-de-agresion-sexual-a-turistas-vuelve-a-poner-en-jaque-seguridad-e-imagen-del-pais-como-destino> (noting violence in the Caribbean area); see also Jason Ureña, *Mujeres de Talamanca denuncian ola de violaciones de turistas en Puerto Viejo*, CR HOY (Jan. 7, 2022, 10:59 A.M.), <https://www.crhoy.com/sin-categoria/mujeres-de-talamanca-denuncian-ola-de-violaciones-de-turistas-en-puerto-viejo/>.

126. Gen. Rec. 35, *supra* note 31; Convention of Belém do Pará, *supra* note 38.

127. Fiorella Abarca, *Grupo de Telegram con más de 3000 personas se dedica a compartir fotos íntimas de mujeres sin su consentimiento*, EL MUNDO CR (Nov. 26, 2020), <https://www.elmundo.cr/costa-rica/grupo-de-telegram-con-mas-de-3000-personas-se-dedica-a-compartir-fotos-intimas-de-mujeres-sin-su-consentimiento/>.

128. *Id.*

129. Eillyn Jiménez B., *Inamu pide intervenir grupo de Telegram en el que se comparten fotos íntimas de mujeres en Costa Rica*, LA NACIÓN (Nov. 27, 2020, 5:46 P.M.), <https://www.nacion.com/sucesos/judiciales/video-inamu-pide-intervenir-grupo-de-telegram-en/OMWCAU254BESLFBDRKFRTPPF3VU/story/>.

130. Eillyn Jiménez B., *Fiscalía investiga presunta tenencia de material pornográfico y difusión de pornografía en grupo de Telegram*, LA NACIÓN (Feb. 22, 2021, 12:47 P.M.), <https://www.nacion.com/sucesos/judiciales/fiscalia-investiga-presunta-tenencia-de-material/7LBNG4UEIJAT5C4KJSWXRXP6E>

being investigated under Article 196 of the Penal Code, which sets a sentence of one to three years for the sharing of documentation or communication without the other person's consent.¹³¹ This is under the general Penal Code for Crimes Against the Scope of Privacy, not under any laws protecting women against violence. The OIJ was so slow that even members of Congress issued a press release denouncing these groups and asking that the investigation include charges for the violation of national *and* international law.¹³² This has yet to occur. Rather, the most recent news on the case indicates the case was dismissed under Article 282 of the Penal Code.¹³³ This Article allows a case to be dismissed when the denounced act is not a crime, or it is impossible to proceed.¹³⁴ The OIJ's individual investigation was also temporarily closed, under the premise that there was not enough information to identify the perpetrators or the victims.¹³⁵ Both the OIJ investigation and criminal procedure may be reopened if new information becomes available¹³⁶ but, at this time, the dismissal of this case is troubling, as it indicates the greater gaps in the law, both in the books and in practice.

Under national law, the OIJ could further press charges under the Law Criminalizing Violence Against Women, particularly under Article 26. This charge is under psychological violence and includes a punishment of two to four years for threats, intimidation, or blackmail.¹³⁷ There were multiple indications that this group included "revenge porn," so Article 26 is one possibility.¹³⁸ Charging them could be difficult, as the OIJ might need to identify the women in the pictures and establish a motive for the sending of the pictures. This might subject the

A/story/.

131. *Id.*; CÓDIGO PENAL No. 4573, art. 196, Gaz. No. 98 (Costa Rica).

132. Bharley Quirós Navarro, *PAC y el Inamu piden eliminar grupo de Telegram "Nudes CR": Más de 3300 hombres comparten ahí fotos de mujeres con contenido sexual*, DIARIO EXTRA (Nov. 27, 2020, 1:31 P.M.), <https://www.diarioextra.com/Noticia/detalle/434974/pac-y-el-inamu-piden-eliminar-grupo-de-telegram-nudes-cr>.

133. Eilyn Jiménez B., *Juzgado desestima causa por difusión de fotos y videos de mujeres en grupo de Telegram*, LA NACIÓN (Aug. 27, 2021, 6:30 P.M.), <https://www.nacion.com/sucesos/judiciales/juzgado-desestima-causa-por-difusion-de-fotos-y/HLCKGZKIQJGUZL5CPV2YOXL3F4/story/>.

134. *Id.*

135. *Id.*

136. *Id.*

137. CIVIL CODE No. 8589, art. 16.

138. Jiménez B., *supra* note 133.

survivors to additional trauma and embarrassment, as well as violate laws of privacy. Regardless, there is something to be said about the lack of laws against these sorts of acts, such as revenge porn or the more general non-consensual distribution of private images, especially as they pertain to women.

Distribution of pornography and revenge porn is recognized under international law as a violation of women's human rights.¹³⁹ Costa Rica should extend its laws to protect women specifically. As the law currently stands, prosecution for the non-consensual distribution of private pictures would occur under regular laws of privacy—the same laws that protect trade secrets and businesses. Nonetheless, privacy is not “one size fits all,” as these general laws of privacy erase the unique experiences, trauma, and disproportionate impact women endure under these situations. Failure to do so does not place the rights or interest of women at the forefront, rather it renders their distinctive, gendered experiences invisible under the law.

C. APPLYING COSTA RICAN LAW TO CASES OF FEMICIDE

While Costa Rica's law criminalizing femicide was initially internationally acclaimed, in practice, it has failed women who have suffered death at the hands of their abusers. The primary concern has been that it failed to criminalize murder based on gender by men who are not romantically involved with the victim. The following examples show the loophole in the law, along with the prevalent *machista* ideologies in law enforcement and the judiciary.

1. The Femicide of Luany Valeria Salazar Samora

The femicide of Luany Valeria Salazar Samora evinces both the inefficient investigative system in Costa Rica, as well as the problem with only recognizing femicide as murder by an intimate partner. Luany, a twenty-three-year-old woman from Cartago, Costa Rica, was murdered by one of her neighbors.¹⁴⁰

139. See Gen. Rec. 35, *supra* note 31, ¶¶ 6, 20, 29, 33; see also Convention of Belém do Pará, *supra* note 38, art. 2.

140. See Eilyn Jiménez B., *Madre de Luany Valeria Salazar: Mi hija era amante del fútbol y aspiraba a estudiar Derecho*, LA NACIÓN (July 5, 2020, 8:00 A.M.), <https://www.nacion.com/sucesos/crimenes/madre-de-luany-valeria-salazar-mi-hija-era-amante/2B4WRE4RMFDYRKNMB5BZU3HRGM/story/> (attesting to the character of Luany, and summarizing her death).

Luany's mother had told the police that she suspected a nearby neighbor was responsible for the disappearance of her daughter.¹⁴¹ When Luany's mother first reported her daughter missing and that she presumed the neighbor was involved, the police told her Luany was "probably off with some boyfriend," instead of investigating the neighbor who had showed signs of stalking Luany.¹⁴² Additionally, when the body was ultimately found at the neighbor's house and the mother spoke against the police, the head of the OIJ seemed to hint at a history of substance abuse and sexual activity as the reason to not investigate as needed.¹⁴³ Specifically, the head of the OIJ stated that Luany was dating a drug dealer, had a history of drug use, and was known to work at a hotel famous for prostitution.¹⁴⁴

Statements like these are especially concerning, as the head of the investigative unit is pinpointing *machista* ideologies in his reasoning for not investigating the neighbor. With his statement, it appears a woman who is not a "perfect" or "moral" woman does not deserve equal protection under the law. Rather, the police and OIJ's *machista* viewpoints of how a woman should behave interrupted their work and protection of women. Similarly, the police's statement that Luany was probably off with some boyfriend, instead of conducting a thorough investigation and believing she was in danger, indicates key characteristics of machismo. They failed to believe Luany's mom, who knew Luany better than anyone. Rather than accept that Luany was at risk of being a missing person, the police preferred to believe traditional and outdated perceptions that young women would run away from home with their boyfriends and want to hide it from their mothers.¹⁴⁵ Presenting an all-knowing,

141. Yaslin Cabezas, *Madre señala a "vecino del barrio" por el asesinato de su hija Luany*, CR HOY (June 16, 2020, 7:26 A.M.), <https://www.crhoy.com/nacionales/madre-senala-a-vecino-del-barrio-por-el-asesinato-de-su-hija-luany/>.

142. *Id.*

143. Katherine Chaves R., *Luany Valeria Salazar era pareja de sicario de la banda del Pollo, revela director del OIJ*, LA NACIÓN (June 25, 2020, 5:02 P.M.), <https://www.nacion.com/sucesos/judiciales/luany-valeria-salazar-era-pareja-de-sicario-de/CAXAIRPW4NCH5O7TWUBHGIFTOU/story/#:~:text=Luany%20Valeria%20Salazar%2C%20cuyo%20cuerpo,quien%20est%C3%A1%20preso%20en%20Nicaragua.>

144. *Id.*

145. See Cabezas, *supra* note 141. Luany's mother knew where her daughter had been before her disappearance and had received a text message from her daughter that she was almost home, but never showed up. *Id.* Luany's mother contacted the OIJ that same day of the text message, on Thursday, and it was

superiority complex, the police overlooked key information and evidence that could have resulted in a speedy investigation and prosecution.

Moreover, because the murderer was a neighbor, not a partner or ex-partner of Luany, the femicide was not properly categorized as a femicide. INAMU presents statistics for both femicide under domestic law and international law (namely, the Convention of Belém do Pará), coining femicide by someone other than a romantic partner “amplified femicide.”¹⁴⁶ While it is a good practice that these murders are considered in femicide statistics, it raises a series of concerns. Primarily, it did not legally protect women against femicide. At the time of Luany’s murder, domestic law still only protected women against partner-related deaths, so it was a failure to women everywhere who were victims of femicide by individuals that were not their partners.¹⁴⁷ Further, it failed to provide public attention to femicides, again restraining the accountability and visibility of gender-related violence to the *machista* population. It is misleading in research and the media,¹⁴⁸ as it clumps femicide into one group of women (intimate partners), while forgetting another group of victims (non-intimate deaths) which are still victims as a result of machismo.¹⁴⁹ By restricting who is covered under femicide statutes, as well as what factors are considered in the statistics, the state perpetuates machismo and erases non-intimate femicides from the country’s narrative.¹⁵⁰ Additionally,

on Monday when the OIJ representatives said Luany must have “gone off with some boyfriend.” *Id.* Luany’s mother even stated that her daughter would never do that to her, but it took the OIJ at least five days to process Luany as a missing person and assign an investigative officer to her case. *Id.*

146. *Femicidio*, *supra* note 104 (defining “femicidio ampliado,” or amplified femicide, as any violent death of women, due to their gender, where there was no marital or romantic relationship, in compliance with the Convention of Belém do Pará).

147. See Dawson & Carrigan, *supra* note 87, at 686 (defining “non-intimate femicide” as including “sexual femicide [that] may be committed by someone who did or did not have a relationship with the victim, involving sexual aggression before or after death.”).

148. See generally Zoe Holman, *The Importance of Recognizing the Murder of Women as a Hate Crime*, VICE (Jan. 11, 2017, 4:40 P.M.), <https://www.vice.com/en/article/3k8ngj/the-importance-of-recognizing-the-murder-of-women-as-a-hate-crime> (chronicling the fight for femicide to be recognized as a gender-motivated crime).

149. Dawson & Carrigan, *supra* note 87, at 683–84 (concluding that accurate statistics for *all* types of femicide, intimate and non-intimate, is essential information for research and prevention initiatives).

150. *Id.* at 695 (defining public patriarchy, which enforces historical and

the fact that there were two separate definitions of femicide evidences the non-compliance with international law. Costa Rica's definition of femicide did not cover non-intimate deaths, while the definition of femicide under the Convention of Belém do Pará does. Consequently, Costa Rica was violating international law by not having a holistic, all-inclusive definition of femicide.

2. The Femicide of Allison Bonilla

Another example of machismo in practice is the dismissive treatment of the OIJ when investigating femicides. The case of Allison Bonilla, whose body disappeared for over six months before her remains were found, is particularly relevant.¹⁵¹ Allison Bonilla, like Luany, was a young woman who was murdered by a neighbor.¹⁵² And, like Luany, the OIJ failed to conduct an in-depth, efficient, and effective investigation.¹⁵³ Allison was also reportedly raped before being murdered.¹⁵⁴ According to news reports, a suspected assailant had testified to where he buried the body.¹⁵⁵ Nonetheless, the OIJ only searched the area briefly before moving on to other things. It took a group of civilians and family members of the victim to sweep the area profusely to find the body.¹⁵⁶

The police's superficial investigation reflects the police's indifferent attitude towards acts of violence against women. As

present-day social structures, limiting the information available to the public by subordinating women in all areas of public life). This article specifically finds "the criminal justice system is a patriarchal, traditionally masculine institution and, as such, the recording of data for police investigations and prosecutions will reflect this fact." *Id.*

151. Tomás Gómez, *Caso de Allison Bonilla: familia pudo darle un funeral 8 meses Después*, EL OBSERVADOR (Oct. 25, 2020), <https://observador.cr/caso-de-allison-bonilla-familia-pudo-darle-un-funeral-8-meses-despues/>.

152. Rico, *Allison Bonilla Case: Suspect Confessed He Raped the Young Woman and Then Killed Her*, Q COSTA RICA (Sept. 4, 2020), <https://qcostarica.com/allison-bonilla-case-suspect-confessed-he-raped-the-young-woman-and-then-killed-her/>.

153. See Keyna Calderón & Fernando Gutiérrez, *Caso de Allison Bonilla: Rescatistas rastrearon puntos no inspeccionados para dar con evidencias claves del caso*, LA NACIÓN (Oct. 10, 2020, 4:30 P.M.), <https://www.nacion.com/sucesos/crimenes/caso-de-allison-bonilla-rescatistasrastrearon/OECTGX5O2JCGXAIMKIIIECI6QWY/story/>.

154. Rico, *supra* note 152.

155. Calderón & Gutiérrez, *supra* note 153.

156. *Id.*

a predominantly male police force,¹⁵⁷ it is possible they were less careful with the investigation of this woman and were more interested in closing the case. They glanced over the property where the body could be to look for other avenues, potentially leading to the dearth of evidence. If it were not for the civilians, the body may never have been found. While the OIJ could claim that they already had the testimony of the assailant, finding the body would have given peace to Allison's family, as well as the respect Allison deserved. Ignoring evidence and treating these cases apathetically reinforces machismo in society, the judicial system, and public patriarchy.

Additionally, Allison's case will not be considered femicide in Costa Rica, because even though she was murdered because of her gender, her assailant was not an intimate partner or family member. One indication that she was murdered because of her gender is that she was sexually abused prior to being killed and there are allegations that the accused testified he had a sexual obsession with Allison.¹⁵⁸ To raise further concern, the Court ultimately found the assailant not guilty of sexual assault or rape, claiming a lack of evidence.¹⁵⁹ Had the body been recovered expeditiously, it may have been possible to obtain physical evidence of any sexual assault. The alleged sexual abuse further serves as an indication of the gender element in this case, which is erased by claiming a homicide rather than a femicide.

As discussed with the murder of Luany, these women's human rights are being erased and ignored. Both their cases are being prosecuted as homicides, which essentially deletes their gender from the narrative. Most importantly, both cases have experienced setbacks and delays based on the dismissive treatment of police officers and investigators. This sort of *machista* viewpoint, where women are seen as "less than" and the abusive men are protected by governmental practices, fails to put women's human rights at the forefront.

157. At least 70% of the OIJ is made up of men. *Mujeres en la Policía*, ORGANISMO DE INVESTIGACIÓN JUDICIAL, <https://sitiooij.poder-judicial.go.cr/index.php/institucion/talento/mujeres-en-la-policia>.

158. Rico, *supra* note 152.

159. Paula Villalobos Saborío, *Tribunal absuelve por violación a responsable del asesinato de Allison Bonilla*, AMELIA RUEDA (Aug. 18, 2021, 11:10 A.M.), <https://www.ameliarueda.com/nota/tribunal-absuelve-violacion-asesinato-allison-bonilla-noticias-costa-rica>.

D. RECOMMENDATIONS

Costa Rica treasures its international image as a leader in human rights.¹⁶⁰ The Costa Rican government is likely to take suggestions and recommendations to continue to maintain its international prestige. For example, when Costa Rica was found to be in violation of international law for banning *in vitro* fertilization, the nation quickly adjusted its laws to comply, despite having a strong religious constituency that disagreed.¹⁶¹ Additionally, Costa Rica thrives off of its tourist economy.¹⁶² As tourist women are continuously targeted in cases of sexual violence, Costa Rica will likely want to protect its image on the international tourist stage to avoid a hit to its economy.¹⁶³ Therefore, it is important to highlight steps the state can take to further comply with international law and protect women's human rights to a life without violence.

1. Ensure Appropriate and Trauma-Informed Implementation of the Law

Failure to include amplified femicide in its definition of "femicide" is a violation of international human rights law.¹⁶⁴ Costa Rica's recent extension of the definition of *femicide* to include non-romantic relationships¹⁶⁵ is a step in the right

160. See, e.g., Morgan, *supra* note 8, at 493–94, 496–97, 500 (discussing Costa Rica's reputation as a "champion for pro-life causes" and a leader in promoting human rights in Latin America).

161. *Id.* at 498.

162. See Alejandro Zuñiga, *Total Paralysis: Costa Rica, a Country Reliant on Tourism, Prepares for Nearly a Month Without Tourists*, TICO TIMES (Mar. 17, 2020), <https://ticotimes.net/2020/03/17/total-paralysis-costa-rica-a-country-reliant-on-tourism-prepares-for-nearly-a-month-without-tourists> ("Tourism is one of the country's principal economic drivers, directly or indirectly contributing to 8.2% of Costa Rica's gross domestic product (GDP) and creating 9% of the nation's jobs, according to the Costa Rican Tourism Board (ICT).").

163. See, e.g., Madris, *supra* note 125 (exemplifying one such case).

164. See Org. of Am. States, Comm. of Experts of the Follow-Up Mechanism to the Belém do Pará Convention, Declaration on Femicide, Aug. 15, 2008, ¶ 2, Doc. No. OEA/Ser.L/II.7.10 (defining "femicide" broadly as "the violent death of women based on gender, whether it occurs within the family, a domestic partnership, or any other interpersonal relationship; in the community, by any person, or when it is perpetrated or tolerated by the state or its agents, by action or omission").

165. *Presidente afirma ley que amplia delito de femicidio en Costa Rica*, SWISSINFO.CH (Aug. 23, 2021), https://www.swissinfo.ch/spa/costa-rica-femicidio_presidente-firma-ley-que-ampl%C3%ADa-el-delito-de-femicidio-

direction and should serve as motivation for other Latin American countries. Nonetheless, as amply explained in this Note, this law will not be effective unless it is properly implemented. If Costa Rica continues to embody *machista* ideologies within its judicial system, the extended definition of *femicide*, or other laws in place to protect women, could very well be useless. Therefore, the Costa Rican government should work to improve gender and trauma-sensitive trainings, to ensure every single individual in the legal and judicial system know women's rights. Clear guidelines should be provided to members of the legal system to know why this extension is necessary, the eligibility criteria for certain cases, what evidence is necessary in said cases, and how to ensure women's human rights are protected, even if post-mortem. Furthermore, this recommendation should not be limited to femicide. The Committee on the Elimination of Discrimination Against Women has continuously emphasized the problem cultural stereotypes play in the administration of justice, particularly in cases of gender-based violence, including sexual violence.¹⁶⁶ Any governmental representative and legal advocate should be provided information and training to better understand how cultural stereotypes are both incorrect and harmful to the rights of women.

2. Modify Domestic Legislation to Protect Women Against Revenge Pornography and Unlawful Distribution of Personal Photographs

Additionally, the Costa Rican legislature should extend protections for sexual harassment and violence. As evidenced with the *Telegram* fiasco, women continue to be sexualized and sexually harassed by means of revenge porn and the unconsented distribution of their private photographs. Passing stronger laws specifically targeting this behavior would ensure women have their "right to mental and moral integrity" and the "right to . . . inherent dignity of her person" protected.¹⁶⁷ Changes in legislation addressing specific behavior seem to be relatively successful in Costa Rica, as exemplified by the passing of the sexual harassment law in the public.¹⁶⁸ Therefore, Costa

en-costa-rica/46890254.

166. CEDAW, *supra* note 97, ¶¶ 14–17.

167. Convention of Belém do Pará, *supra* note 38, art. 4.

168. See Allan Madriz, *Hombre recibe primera sentencia por acoso sexual*

Rica should amend its laws to persuade men to stop behaving in a violent and sexually abusive way against women and strengthen the enforcement of current and future laws.

CONCLUSION

While there has been significant progress in the area of international women's human rights, women continue to be subject to gender-based violence and femicide. This is particularly challenging in Latin America, where there are some of the highest rates of femicide and violence against women. Even in countries with progressive laws, such as Costa Rica, femicide and sexual violence are still the primary causes of premature deaths for women. This note finds that machismo, in conjunction with the law and sociocultural factors, is the defining feature in hindering progress and protection of women's rights. Particularly, masked machismo within the state and the community are limiting successful implementations of international law. Failure to recognize the problems of machismo deep in the spirit of Costa Rica will obstruct any remedy to women.

callejero en Costa Rica, EL PERIÓDICO CR (Oct. 26, 2020), <https://elperiodicocr.com/hombre-recibe-primer-sentencia-por-acoso-sexual-callejero-en-costa-rica/> (reporting the first sentence issued against a man for breaking Costa Rica's law against street sexual harassment shortly after the law was passed).