

# ARMENIA AND THE BATTLE TO DEFEAT ETHNO-NATIONALIST ATTACKS ON THE ISTANBUL CONVENTION

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## I. THE COMMISSION, THE CONVENTION, AND THE CONSTITUTION

The Third Republic of Armenia was established in 1991, when the country gained its independence from the Soviet Union.<sup>1</sup> Armenia, as a new State in the international community and Armenians, as a long-repressed people, face particular challenges when pressured regarding international human rights. Principal forces in Armenia resist international attempts to put codes on the behavior of the citizens due to the fact that Armenians have suffered so badly at the hands of foreign governments in the past. To be appreciated as a sovereign State, Armenia must be willing to learn from and

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1. *A Guide to the United States' History of Recognition*, OFFICE OF THE HISTORIAN, <https://history.state.gov/countries/armenia> (last visited Sept. 6, 2020).

adapt progressive guidelines from international instruments and be a part of the give and take of sovereign states.

In this breakdown of Armenia's path towards ratification of Convention on Preventing and Combating Violence Against Women and Domestic Violence ("Istanbul Convention"), I will discuss gender-based violence and domestic violence towards women and how the Istanbul Convention would benefit Armenia's evolving governmental system. To further this point, I will use the recently published opinion by the Venice Commission ("Commission"), which was requested by leaders of the Armenian government, to discuss how ratification of the Istanbul Convention would impact Armenia.

Domestic and gender-based violence is a legal, educational, health, developmental and, above all, a human rights issue. Domestic violence against women has always been prevalent in Armenia. For hundreds of years, society viewed women as less than human, and likewise husbands viewed their wives as property. Women, who grew up in homes where their mothers were beaten, accepted it as their role as a wife, and most often married men who also abused them. Women in the early nineteenth hundreds believed that being abused was just a part of their duties as a wife. Many believed they deserved to be hit – they had done something wrong and needed physical punishment. Men who grew up in homes where their fathers beat their mothers continued the abuse in their marriages, and in most cases also abused their children. Although domestic violence can include the abuse of parents, children, and siblings, it mainly involves violence against sexual partners, with women being the most common victims, and men being the aggressors.

These outdated views must end. Domestic violence is a societal problem; it leads to extensive physical and psychological consequences, some with fatal outcomes, and societies ought to hold it as a separate crime with a separate law and regulation. Moreover, when domestic violence goes unpunished, the damage to the family, which is the core of society, is significant. Consequently, domestic violence inflicts grievous harm to the State. Police and prosecutors must function competently to help women in all steps of receiving protection, without being ashamed or afraid of public opinion. There are many steps States, such as Armenia, may take to help combat this issue of domestic and gender-based violence. Armenia has already taken major steps in signing and ratifying numerous United Nations ("UN") and Council of Europe conventions, such as the Convention on Elimination of All Forms of Discrimination against Women ("CEDAW") and the Istanbul Convention. In 1993, Armenia ratified the CEDAW Convention and in 2018, Armenia signed the Istanbul Convention, but has yet to ratify it.

The UN, a major international rights organization, maintains peace and security, while working to protect human rights.<sup>2</sup> In 1985, the UN General Assembly and its human rights bodies adopted several resolutions and recommendations on violence against women, highlighting the importance of adopting specific measures to combat violence against women.<sup>3</sup> At the regional level, the Council of Europe, since the late 1990s, continues to raise its concern towards domestic violence.

One of the most important achievements for women's rights was the adoption of CEDAW. Although CEDAW does not contain any specific clause on domestic violence, the CEDAW Committee adopted several general recommendations and individual decisions on violence against women in the private sphere.<sup>4</sup> Beginning in 1992, the CEDAW committee in its General Recommendation No. 19 affirmed that "violence against women is a form of discrimination, directed towards a woman because she is a woman or that affects women disproportionately."<sup>5</sup> This type of violence directed towards women inhibits their ability to enjoy their rights and freedoms with the same equality as men. In 2017, the CEDAW committee marked its 25<sup>th</sup> anniversary of General Recommendation No. 19 by elaborating in its General Recommendation No. 35 additional international standards on gender-based violence against women. General Recommendation No. 35 recognizes that "prohibition of gender-based violence against women has evolved into a principle of customary international law."<sup>6</sup> Thus, the CEDAW Committee reaffirmed that violence towards women is one of the main obstacles to the achievement of equality between women and men in its Recommendation to the Member States.

The Istanbul Convention was implemented by the Council of Europe. The purposes of the Convention are to "protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence."<sup>7</sup> A major concern and purpose is also support for victims of domestic violence.<sup>8</sup> The Convention acknowledges that women are

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2. *About the UN*, UNITED NATIONS, <https://www.un.org/en/about-un/> (last visited Sept. 6, 2020).

3. *See* G.A. Res. 40/36, ¶ 2 on Domestic Violence (Nov. 29, 1985).

4. Convention on the Elimination of All Forms of Discrimination against Women art. 16, Sept. 3, 1981, S. Treaty Doc. No. 96-53, 1249 U.N.T.S. 20378.

5. *See* Comm. on the Elimination of Discrimination against Women Gen. Recommendation No. 19. On Its Eleventh Session, U.N. Doc. A/47/38 (1992).

6. Comm. on the Elimination of Discrimination against Women Gen. Recommendation No. 35, 2017.

7. *Convention on Preventing and Combating Violence against Women and Domestic Violence*, COUNCIL OF EUROPE, art. 1 (April 12, 2011), <https://rm.coe.int/168046031c>.

8. *Id.*, art. 2.

affected by domestic violence disproportionately and necessitates Parties of the Convention to pay particular attention to women while implementing the provisions of the Convention.<sup>9</sup> Additionally, the Convention in Article 4 (1) explicitly compels parties to protect women “in both the public and the private sphere.”<sup>10</sup> Article 29 of the Convention states:

1. Parties shall take the necessary legislative or other measures to provide victims with adequate civil remedies against the perpetrator.
2. Parties shall take the necessary legislative or other measures to provide victims, in accordance with the general principles of international law, with adequate civil remedies against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.<sup>11</sup>

CEDAW and the Convention have focused attention on domestic abuse so that State agencies will no longer assess domestic violence as a private matter and remain dormant on the issue. Furthermore, the Convention holds State authorities responsible, if the State authorities fail to protect individuals from domestic violence, by demanding that the State provide adequate remedies to victims.

After signing the Convention on January 18, 2018, Armenia became the 45th member State of the Council of Europe to do so, however the process of ratification is still pending due to the concerns of many Armenian ethno-nationalists regarding the substance of the Convention.<sup>12</sup> I will discuss these concerns, how the Venice Commission’s report responds to them and the impact these explanations by the Venice Commission will have on the advancement of society in Armenia.

## II. CONCERNS REGARDING THE ISTANBUL CONVENTION AS VOCALIZED BY ETHNO-NATIONALISTS IN ARMENIA

The signing of the Convention produced a backlash in Armenia, with many challengers disapproving of the Convention because it endangers national Armenian traditions and values. This makes issues of domestic violence a particular challenge. To help shed light on matters of domestic violence and various other problems, the Minister of Justice of Armenia, Rustam Badasyan, applied to the Venice Commission, requesting an opinion

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9. *Id.*

10. *Id.*, art. 4(1).

11. *Id.*, art. 29(1)-(2).

12. See *Armenia signs the Istanbul Convention*, COUNCIL OF EUROPE (Jan. 18, 2018), <https://www.coe.int/en/web/istanbul-convention/-/armenia-signs-the-istanbul-convention>.

on the constitutional implications for Armenia of ratifying the Convention.<sup>13</sup> The Commission is the Council of Europe's advisory body on constitutional matters.<sup>14</sup> The Commission's role is to help States, such as Armenia, who wish to adjust their legal and institutional bodies in line with European standards.<sup>15</sup> The Commission's report on the ratification of the Convention in Armenia took a significant step forward by addressing the ethnonationalist concerns of many in Armenia so that the Convention cannot reasonably be seen to assault Armenia's cultural identity, as many challengers of the Convention believe it does.<sup>16</sup> The Commission's report outlines struggles that Armenia has between defending its national traditions and integration of the Convention. It also offers Armenia a productive path toward ratification.<sup>17</sup>

Opponents of the Convention in Armenia argue that the Convention is not necessary because there is already a national framework in Armenia to combat violence against women. Further, opponents of the Convention argue that the Convention would result in legislative changes that would infringe on the national constitution of the country regarding same-sex marriage. Lastly, the opponents argue that international bodies should not dictate to the Armenian people how to educate the population on gender and domestic violence.<sup>18</sup>

A significant opponent against the ratification of the Convention is the former Minister of Justice, Davit Harutyunyan. He believes that several provisions in the Convention will not be valid for Armenia, because of the "peculiarities of [Armenia's] legal system."<sup>19</sup> Another radical critic of the Convention is the President of the Chamber of Advocates, Ara Zohrabyan, who considers Article 12(1) of the Convention as one of the most controversial concepts because it requires Armenia to question its cultural

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13. See Aneta Harutyunyan, *Armenian Justice Minister requests Venice Commission for Opinion over Istanbul Convention*, ARMENPRESS (July 26, 2019), <https://armenpress.am/eng/news/982943/>.

14. *The Venice Commission of the Council of Europe*, COUNCIL OF EUROPE, [https://www.venice.coe.int/WebForms/pages/?p=01\\_Presentation](https://www.venice.coe.int/WebForms/pages/?p=01_Presentation) (last visited Dec. 19, 2019).

15. See *id.*

16. See CDL-AD(2019)018-e, *Opinion on the Constitutional Implications of the Ratification of the Istanbul Convention Adopted by the Venice Commission*, COUNCIL OF EUROPE (Oct. 11, 2019), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)018-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)018-e).

17. See *id.*

18. See Ani Mejlumyan, *Armenian Government Fighting for Ratification of Convention on Violence Against Women*, EURASIANET (July 31, 2019), <https://eurasianet.org/armenian-government-fighting-for-ratification-of-convention-on-violence-against-women>.

19. Hovhannes Nazaretyan & Karine Kirakosyan, *Manipulations Regarding the Istanbul Convention*, FACT INVESTIGATION PLATFORM (July 12, 2019), <https://fip.am/en/7547>.

traditions.<sup>20</sup> Mr. Zohrabyan believes that Article 12(1) states “the Convention will force States to eradicate prejudices, customs, traditions and all other practices which are based on the idea of stereotyped roles for women and men.”<sup>21</sup> However, Mr. Zohrabyan has omitted an important distinction. Article 12(1) states, “Parties shall take the necessary measures to promote changes in the social and cultural patterns of behavior of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.”<sup>22</sup> The Convention wants to eradicate prejudices, customs, and traditions which are based on the inferiority of women or on stereotyped roles.<sup>23</sup> That omission is a key part of the article because without it, the content of what the Convention wishes to accomplish is inaccurate. Various other opponents that have voiced their concerns in the Armenian Parliament have proposed that “Armenia adopt its own ‘local’ document on the prevention of domestic violence, one that leaves no room for ambiguity.”<sup>24</sup> They believe that the Convention is contrary to the traditions and values of Armenia as well.<sup>25</sup>

Armenian nationalists also oppose same-sex marriage and claim that the Convention will open the door to same-sex marriage. Their understanding is that the Convention seeks to entirely alter the culture of national states, such as Armenia, and by that alteration, force them to reject biological differences between men and women.<sup>26</sup>

Mr. Zohrabyan “has been rallying support for his campaign to ‘stop the Istanbul Convention’ through a website.”<sup>27</sup> Mr. Zohrabyan emphasized that he sees a threat to family values and that is why he has raised his concerns.<sup>28</sup> He supports the prevention of violence and believes the Convention has tools that should be applied in Armenia’s legislation, but the Convention has some

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20. *Id.*

21. *Id.*

22. *Convention on Preventing and Combating Violence against Women and Domestic Violence*, *supra* note 7, art.12(1).

23. *Id.*

24. Sona Martirosyan, *Why Armenia isn’t taking to the European convention against domestic violence – myths and refutations*, JAM NEWS (Nov. 15, 2019), <https://jam-news.net/myths-surround-the-european-convention-on-the-prevention-of-violence-against-women-in-armenia/>.

25. *Id.*

26. *Venice Commission: No Provisions of the Istanbul Convention can be Considered Contradictory to the Constitution of Armenia*, HETQ (Oct. 11, 2019), <https://hetq.am/en/article/108549>.

27. Susan Badalian, *Armenian Official Voices Support For Istanbul Convention Ratification*, AZATUTYUN (July 30, 2019), <https://www.azatutyun.am/a/30083775.html>.

28. *Id.*

unacceptable wording.<sup>29</sup> Mr. Zohrabyan states that, along with the word “family” the Convention uses the term “domestic unit,” which contains a risk that LGBT community members will also be able to create families.<sup>30</sup> He believes that a separate law should be passed protecting the rights of LGBT people, “but not write about domestic violence and include them in the family, because in that case, tomorrow the conception of family will already imply these people as well.”<sup>31</sup>

In addition to the Armenian nationalists, the Armenian Apostolic Church, which rarely voices political concerns, criticized the Convention as well.<sup>32</sup> It believes that the freedom for people to choose their gender, goes against the Armenian perception of what a family consists of—a union between a man and a woman.<sup>33</sup> The Deputy Minister of Justice, Rafik Grigorian, said that according to Armenia’s Constitution, “only a man and a woman who attain the marriageable age shall have the right to marry and form a family.”<sup>34</sup> Due to the opposition and societal outcry, it has forced the authorities to delay the ratification process until 2020.<sup>35</sup>

Lastly, there is opposition to international instruments, such as the Convention, dictating how to educate Armenian citizens regarding gender and domestic violence. This is a difficult topic because there is a monumental difference between protecting the rights of minorities to educate their children and insistence on basic international human rights protections. When the two are incompatible, international human rights presents values that ought to predominate. Mr. Zohrabyan criticized the articles on education by pinpointing this passage: “Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles.”<sup>36</sup> His interpretation is that the non-stereotyped gender roles referred to in the statement refer to queer and transgender people. He believes that making it mandatory to teach and provide educational materials to children, regarding sex other than the biological sexes, at an early age can cause confusion.<sup>37</sup> However, Zara

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29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. Naira Nalbandian, *Yerevan ‘Not Forced’ to Ratify Contentious European Treaty*, AZATUTYUN (Nov. 1, 2019), <https://www.azatutyun.am/a/30248404.html>.

36. Manya Israyelyan, *The Istanbul Convention: A Peril or Prospect for Armenia?*, ARMENIA WEEKLY (Jan. 31, 2020), <https://armenianweekly.com/2020/01/31/the-istanbul-convention-a-peril-or-prospect-for-armenia/>.

37. *Id.*

Hovhannisyan, coordinator of the Coalition to Stop Violence Against Women noted that the Convention does not impose any educational model for gender equality and fighting stereotypes.<sup>38</sup> The Ministry of Justice also issued a statement that assured Armenia's citizens that the "Convention does not contradict the concept of sexes or family as envisaged by the Constitution and urges society 'not to give in to manipulations.'"<sup>39</sup>

### III. THE VENICE COMMISSION AND ITS JUSTIFICATION FOR THE ISTANBUL CONVENTION

The Commission responds to the argument that there is already a satisfactory national framework in Armenia reasoning that ratification of the Convention does not affect uniformity with the Constitution of Armenia, but concerns the opportunity to have both an internal foundation and external support to safeguard human rights.<sup>40</sup> The Commission emphasized that domestic violence is widespread in all European countries, including Armenia, and as such, ratifying the Convention would greatly benefit victims.

The Convention requires States to implement specific procedures to protect women from violence and contains provisions forbidding discrimination of individuals based on sexual orientation and gender. Similarly, it provides a unique monitoring mechanism, something that already existing instruments do not have.<sup>41</sup> The unique monitoring mechanism ensures efficient implementation of the Convention. It is a two-pillar monitoring system consisting of an independent expert body, the Group of Experts on Action against Violence against Women and Domestic Violence ("GREVIO"), and a political body, the Committee of the Parties, which is composed of representatives of the Parties to the Convention.<sup>42</sup> GREVIO will evaluate and publish reports regarding legislative and other measures taken by the Parties concerning the effects of the provisions of the Istanbul Convention.<sup>43</sup> GREVIO may initiate a special inquiry procedure if

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38. *Id.*

39. *Id.*

40. CDL-AD(2019)018-e, *supra* note 16, at 14.

41. *Venice Commission: No Provisions of the Istanbul Convention can be Considered Contradictory to the Constitution of Armenia*, *supra* note 26.

42. *Workshop on the Istanbul Convention and its monitoring mechanism held in Georgia*, COUNCIL OF EUROPE (June 19, 2018), <https://www.coe.int/en/web/genderequality/-/workshop-on-the-istanbul-convention-and-its-monitoring-mechanism-held-in-georgia>.

43. *GREVIO – Group of Experts on Action against Violence against Women and Domestic Violence*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/istanbul-convention/grevio> (last accessed Dec. 19, 2019).

action is necessary to avert any serious or continuous patterns of violence that are covered by the Convention.<sup>44</sup> Further, by ratifying an international instrument, State authorities send a strong message that they are serious about protecting fundamental rights of citizens,<sup>45</sup> and presence on a global level may provide useful for absorbing different approaches to tackling violence against women and domestic violence.<sup>46</sup>

Furthermore, because there is no duty for State Parties to the Convention to legalize same-sex marriage, the Commission does not believe that there is an issue regarding same-sex marriage.<sup>47</sup> The question of same-sex marriage has been repeatedly dealt with by the European Court of Human Rights. The Court has stated that there is no European consensus regarding same-sex marriage, and it is subject to the national laws of the State.<sup>48</sup>

Under Article 3, the Istanbul Convention has laid out the “definitions” of the terms it will commonly use. The definitions were written at the outset to hopefully avoid any misconstruing of the provisions set out in the Istanbul Convention. However, that did not work out as planned. Armenia may still ratify the Istanbul Convention if these terms are used correctly:

- a. “Violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;<sup>49</sup>
- b. “Domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;<sup>50</sup>

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44. *Id.*

45. *Venice Commission: No Provisions of the Istanbul Convention can be Considered Contradictory to the Constitution of Armenia*, *supra* note 26.

46. CDL-AD(2019)018-e, *supra* note 16, at 14.

47. *Id.* at 25.

48. Grégor Puppinc, *The ECHR Unanimously Confirms the Non-Existence of a Right to Gay Marriage*, EUROPEAN CENTRE FOR LAW AND JUSTICE (June 9, 2016), <https://eclj.org/marriage/the-echr-unanimously-confirms-the-non-existence-of-a-right-to-gay-marriage>.

49. *Convention on Preventing and Combating Violence against Women and Domestic Violence*, *supra* note 7, art. 3(a) – (e), at 7-8.

50. *Id.*

- c. “Gender” shall mean the socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men;<sup>51</sup>
- d. “Gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;<sup>52</sup>
- e. “Victim” shall mean any natural person who is subject to the conduct specified in points (a) and (b).<sup>53</sup>

Surrounding this debate on the definition of “family,” the President of GREVIO responded:

The Istanbul Convention does not define family. It does not promote a particular type of family. The Istanbul Convention does not say a family consists of X, Y, Z. It does not define family at all. What the Istanbul Convention tries to do is to protect women wherever they are – whether they are at home, whether they are on the street, whether they are at work, because violence against women sadly occurs everywhere and anywhere. Now we also say that the Convention should generally apply to all women regardless of who they are—whether they are Roma women, Muslim women, irrespective of their ethnicity, their sexual orientation, if they are lesbian women, if they are heterosexual women, regardless of who they are, none of them should be excluded from receiving help and support and protection from violence against them.<sup>54</sup>

To reiterate, the Convention does not contain any definition of family, nor of partner or same-sex relationships, nor does it promote any particular form of such relationships. Therefore, the Convention does not contradict the Armenian Constitution defining marriage as a union between a woman and a man, and it does not oblige States to legalize same-sex marriage.

Lastly, in regards to the concerns of education surrounding gender and domestic violence, the Commission explains that the Convention does not interfere with the right of parents to educate their children according to their own preferences, but merely encourages States to include teaching materials on issues mentioned in the provision on school curriculum.<sup>55</sup> The provisions regarding education are as follows:

**Article 14** – Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict

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51. *Id.*

52. *Id.*

53. *Id.*

54. *See id.*

55. CDL-AD(2019)018-e, *supra* note 16, at 20.

resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education. Parties shall take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.<sup>56</sup>

**Article 16** – Parties shall take the necessary legislative or other measures to set up or support programs aimed at teaching perpetrators of domestic violence to adopt non-violent behavior in interpersonal relationships with a view to preventing further violence and changing violent behavioral patterns.<sup>57</sup>

**Article 17** – Parties shall develop and promote, in co-operation with private sector actors, skills among children, parents and educators on how to deal with the information and communications environment that provides access to degrading content of a sexual or violent nature which might be harmful.<sup>58</sup>

The reasoning behind these provisions is that violence against women and domestic violence often stem from harmful gender stereotypes and prejudices that are a part of people’s attitudes, convictions and behavioral patterns, and these attitudes, convictions and behavioral patterns are shaped very early on in life. The continuation of gender stereotypes in education limits the growth and progression of natural talents and abilities of girls and boys. “It will have a huge impact on their educational and professional choices, as well as their life opportunities.”<sup>59</sup>

Education is essential because it effects significantly how boys and girls think about themselves, their peers, and what behaviors are appropriate when interacting with the opposite sex. The education of our youth begins in educational institutions, both in formal and informal settings, and they should be taught to believe that gender-based discrimination and violence against women are unacceptable.<sup>60</sup> Change can happen through educational capacity, and that is where the Istanbul Convention seeks to stimulate values of gender equality, mutual respect, non-stereotyped gender roles, awareness about gender-based violence and the need to counter it.<sup>61</sup> Teaching children about

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56. *Convention on Preventing and Combating Violence against Women and Domestic Violence*, *supra* note 7, at 12.

57. *Id.*

58. *Id.* at 13.

59. *Istanbul Convention: Questions and Answers*, COUNCIL OF EUROPE, <https://rm.coe.int/istanbul-convention-questions-and-answers/16808f0b80> (last accessed: Dec. 18, 2019).

60. *Id.*

61. *Id.*

such values helps them become respectful and equal citizens. It does not affect them in their sexual orientation or gender identity.<sup>62</sup>

#### IV. ARGUMENTS THAT FAVOR THE ISTANBUL CONVENTION AS EXPRESSED BY THE VENICE COMMISSION AND REFUTING THE ETHNO-NATIONALIST APPREHENSIONS

In response to the argument made by opponents of the Convention that there is already a national framework in Armenia, the Commission believes in external support as well as an internal foundation to support human rights. With such widespread concern surrounding domestic and gender-based violence, ratification of the Convention would benefit all parties involved.

The Commission could point to an actual occurrence that took place right next to Armenia, of how beneficial the ratification of the Convention is. Women in Georgia, Armenia's neighboring country, experienced similar abuses. The Ministry of Internal Affairs in Georgia had reported that "in the first four months of 2017, the ministry issued 752 restraining orders," however many women's rights organizations claim that these restraining orders have proven ineffective.<sup>63</sup> Due to the ongoing and highly publicized violence on women, Georgia was urged to ratify the Convention.<sup>64</sup> On May 19, 2017, Georgia became the 23<sup>rd</sup> state to ratify the Convention.

Recently, Equality Now, a non-governmental organization that advocates for the protection of women and girl's rights, wrote an article that shed light on an issue affecting the portrayal of a survivor of sexual violence by a Georgian TV channel.<sup>65</sup> The article mentioned that "a woman was allegedly subjected to physical violence and attempted rape by her male boss," who was part of the City Council in Tbilisi, Georgia.<sup>66</sup> The woman was exposed in her interview—she was probed about her experience, which violated ethical, gender-sensitive, and human rights based standards that are guaranteed by the Convention.<sup>67</sup> These violations included:

"Examining the survivor's moral character, commenting on her attire at the time of the assault, enquiring whether she had had a previous intimate relationship with the abuser, confronting her with degrading comments from

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62. *Id.*

63. *Georgia Ratifies Istanbul Convention*, OC MEDIA (May 5, 2017), <https://oc-media.org/georgia-ratifies-istanbul-convention/>.

64. *Id.*

65. *Portrayal of Sexual Violence in Georgian Media*, EQUALITY NOW (Oct. 9, 2019), [https://www.equalitynow.org/georgia\\_media\\_sexual\\_violence](https://www.equalitynow.org/georgia_media_sexual_violence).

66. *Id.*

67. *Id.*

social media and other sources, and intimations about whether she provoked the perpetrator.”<sup>68</sup>

These violations are accusations dressed as questions, posed to a sexual violence survivor, and Equality Now identified these as deeply rooted and harmful stereotypes<sup>69</sup> that examine the behavior of the victim rather than looking at the actions and behavior of the alleged perpetrator. This often leads to denial of justice to victims and discourages women from reporting sexual violence.<sup>70</sup>

In Article 17, the Convention encourages private sectors to implement policies and guidelines to “prevent violence against women and enhance respect for their dignity”.<sup>71</sup> Equality Now urges the TV channel to abide by the standards of the Convention and believes that the potential for awareness and social change is enhanced by the media and the social power they have in Georgia.<sup>72</sup> This unfortunate situation is why the ratification of the Convention in Armenia will benefit victims of gender violence and discrimination.

To address the following concerns of the opponents, it is critical to concentrate on the Istanbul Convention itself and how you cannot analyze violence against women without addressing gender equality issues as well. With that in mind, there are some points to tackle so as to not create confusion. First, the recognition of same-sex marriage is not in the Istanbul Convention and it does not affect national laws on marriage in any way.<sup>73</sup> Second, the word “gender” does not replace the terms “women” and “men,” nor does the Istanbul Convention promote any “gender ideology.”<sup>74</sup> Third, men and boys who experience violence are not excluded in the Istanbul Convention.<sup>75</sup> The provisions on domestic violence can be applied to them as well. However, the word “gender” is used in the Istanbul Convention to emphasize that women are more likely to experience violence because they are women.<sup>76</sup> Lastly, a “third gender” is not introduced nor is there an obligation to recognize it. The states are only required to protect victims’

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68. *Id.*

69. *Id.*

70. *Id.*

71. *See Convention on Preventing and Combating Violence against Women and Domestic Violence, supra* note 7, art. 17.

72. *Portrayal of Sexual Violence in Georgian Media, supra* note 65.

73. *Istanbul Convention: Questions and Answers, supra* note 59.

74. *Id.*

75. *Id.*

76. *Id.*

rights without discrimination or any grounds, including sex, race, religion, language, sexual orientation or gender identity.<sup>77</sup>

The Prime Minister of Armenia, Nikol Pashinyan, had indicated the government's intention to guarantee the quick ratification of the Istanbul Convention by the Armenian Parliament.<sup>78</sup> However, he was quickly met with resistance and backlash by conservative groups and individuals, who objected to the Convention's definition of gender and believe that it "paves way for introducing transsexual or transgender as separate categories and legalizing same-sex marriage."<sup>79</sup>

Some members of the government have continued to push for ratification. Vladimir Vartanian, a senior member of the Prime Minister's government,<sup>80</sup> has insisted that the Armenian parliament is not facing pressure from the Venice Commission to ratify the Istanbul Convention. Vartanian insisted that the Convention does not "obligate states to legalize same-sex marriages or adoptions of children and will not reflect in any way on issues relating to promotion of a non-traditional sexual orientation."<sup>81</sup>

Related to Vartanian's opinion, the definitions stated above were written at the outset to hopefully avoid any misconstruing of the provisions set out in the Istanbul Convention. However, that did not work out as the drafters had hoped. If these terms are understood accurately, Armenia may still have a chance to ratify the Istanbul Convention.

Conversely, in Bulgaria, they have interpreted the terms differently, and as a result Bulgaria has chosen to not ratify the Convention.<sup>82</sup> On July 27, 2018, the Bulgarian Constitutional Court voted 8 to 4 to declare the Convention unconstitutional.<sup>83</sup> In February 2018, parliament members requested a ruling on the Istanbul Convention's compatibility with Bulgaria's Constitution, amid claims and warnings that it could lead to "questioning traditional values of Bulgarian society."<sup>84</sup> The opponents of the Convention in Bulgaria also believed that the instrument was a "trojan horse" that was intended to introduce a "third sex" and same-sex marriage.<sup>85</sup> The

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77. *Id.*

78. Nalbandian, *supra* note 35.

79. *Id.*

80. *Id.*

81. *Id.*

82. Georgi Gotev, *Istanbul Convention 'unconstitutional' in Bulgaria*, EURACTIV (July 27, 2018), <https://www.euractiv.com/section/future-eu/news/istanbul-convention-unconstitutional-in-bulgaria/>.

83. *Id.* at 1.

84. Hillary Margolis, *Speak Out to Protect Bulgaria's Women*, EURONEWS (Oct. 10, 2018), <https://www.hrw.org/news/2018/10/10/speak-out-protect-bulgarias-women>.

85. Gotev, *supra* note 82, at 2.

Constitutional Court declared that “the Convention’s use of ‘gender’ as a social construct contravenes Bulgaria’s Constitution, which specifies a binary understanding of ‘sex’—male and female—that is ‘determined at birth.’” Despite the Bulgarian Constitution’s protection against sex-based discrimination, the court says this “does not mean equal treatment of both sexes because biological differences must be taken into account.”<sup>86</sup>

This decision by the Bulgarian Constitutional Court is a prime example of why Armenia should not interpret the words of the Convention but take them at face value. The Istanbul Convention does not mandate states to take actions to recognize various groups of persons nor to grant them any distinctive status on the basis of their gender identity. It merely confirms that gender identity ranks among the barred grounds of discrimination. This means that an individual may not be denied protection against violence or cannot have the status of victim because of his or her gender identity. This perspective seems to be quite well-suited with the Constitution of Armenia’s provisions on universal equality before the law and the prohibition of discrimination. The same can be said for sexual orientation—the Convention does not force a progressive responsibility on states which do not acknowledge the reality of a legal right for persons belonging to a sexual minority to aggressively initiate such a concept in their own national legal framework.

If we take a look at the concepts presented and compare the Istanbul Convention and Armenia’s Constitution, we can see that they have numerous similarities.

**Gender:** Article 30 of the Constitution of Armenia guarantees that “women and men shall have equal rights.”<sup>87</sup> The Istanbul Convention, which includes gender-based violence, is aimed at also achieving this end goal and seeks to modify destructive gender stereotypes. Thus, it is fully in line with Armenia’s constitutional directive of equality.

**Gender identity:** As previously stated, the Istanbul Convention does not require States to take any measures to grant people of sexual minorities any special legal status, but simply confirms that gender identity ranks among the prohibited grounds of discrimination. This guideline, compared to Article 28 and Article 29 of the Constitution of Armenia, seem to be completely fitting. Article 28 states that “everyone shall be equal before the law”<sup>88</sup> and Article 29 states that “[a]ny discrimination based on sex, race, skin color, ethnic or

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86. Margolis, *supra* note 84.

87. *Armenia’s Constitution of 1995 with Amendments through 2015*, CONSTITUTE (Aug. 12, 2019) [https://www.constituteproject.org/constitution/Armenia\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Armenia_2015.pdf?lang=en).

88. *Id.*

social origin, genetic features, language, religion, worldview, political or any other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited.”<sup>89</sup>

**Sexual orientation:** This term refers to individuals who are heterosexual and members of a sexual minority, such as lesbians, gays, bisexuals and transsexuals (LGBT). The Convention refers to sexual orientation under Article 4 (Fundamental rights, equality and non-discrimination).<sup>90</sup> Though the Armenian Constitution does not specifically include LGBT equality, Article 29 prohibits discrimination generally. However, the Convention highlights prohibition of discrimination on a broader and more universal basis.<sup>91</sup>

**Same-sex marriage:** This term has been the cause of political turmoil in Armenia, but it has been misconstrued because the Convention does not refer to homosexuals nor does it refer to marriage, except in Article 37, which criminalizes the intentional conduct of forcing an adult or child into entering a marriage.<sup>92</sup>

There are similar guarantees of equality between both the Istanbul Convention and the Armenian Constitution, thus there seems to be no contradiction.

Finally, in confronting the issues surrounding the Convention and education, Article 14 of the Convention gives States large discretion in deciding to what extent and in which manner they will educate their population. The reasoning behind Article 14, 16, and 17 in the Convention is that violence against women and domestic violence often stem from harmful gender stereotypes. Removing gender stereotypes does not mean overturning all traditions and customs. Many customs or beliefs from generation to generation are important in shaping our identity and maintaining a connection to our roots and ancestors.<sup>93</sup> However, some customs and traditional practices are harmful to women, and may put them at a higher risk of violence. The objective must be to end the stereotypes affecting women and men that are used to validate such toxic customs.<sup>94</sup> Such toxic traditions tend to stem from within one’s own household and from society’s

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89. *Id.*

90. *Convention on Preventing and Combating Violence against Women and Domestic Violence*, *supra* note 7, art. 4.

91. *Armenia’s Constitution of 1995 with Amendments through 2015*, *supra* note 87, art. 29.

92. *Convention on Preventing and Combating Violence against Women and Domestic Violence*, *supra* note 7, art. 37.

93. *Istanbul Convention: Questions and Answers*, *supra* note 59, at 9.

94. *Id.*

indifference to it. In an interview, Hasmik Gevorgyan, of the Women’s Support Center in Armenia, stated that “fundamental steps are necessary to change society’s mentality and stereotypes—as long as we don’t see [violence] as a crime, and we say that, well, this is the traditional Armenian family, whoever doesn’t use violence doesn’t change anything.”<sup>95</sup> There is tremendous work to be done to raise awareness about changing attitudes, we have to start from the schools.”<sup>96</sup> In the same vein as Hasmik Gevorgyan’s statements, regarding change and achieving change through education, Japan, a civil law country, has a nearly perfect law for prevention of spousal violence and the protection of victims.<sup>97</sup> Japan takes steps in training and educational activities needed to deepen understanding of the human rights of victims, the distinctive characteristics of spousal violence, etc.<sup>98</sup> To prevent spousal violence and protect victims, the state and local governments encourage education and measures that deepen the understanding among the public, and it provides necessary support to private entities that are engaged in activities designed to prevent spousal violence and protect victims.<sup>99</sup> They not only encourage education among the public, but provide education to the victims themselves regarding counseling, advice, and social assistance.<sup>100</sup>

On the opposite end of the spectrum, there was significant impact on the education sector by the Bulgarian Constitutional Court ruling.<sup>101</sup> Following the decision, “the Bulgarian Academy of Sciences announced it would halt work on a program to support teachers in addressing gender inequality. The Education and Science Ministry had already reportedly stopped a school-based survey that addressed gender, violence, and stereotypes.”<sup>102</sup> The ruling even spilled over into Poland, where Poland’s ruling party threatened to withdraw from the Istanbul Convention because it endangered traditional Polish culture and values, including women’s “natural role” in society.<sup>103</sup> Additionally, another neighboring country felt the ripple effects of Bulgaria’s decision—Hungary’s ruling Fidesz party moved to ban gender studies in

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95. Gohar Abrahamyan, *Domestic Violence: An Imperfect Law and Enduring Stereotypes*, EVN REPORT (Nov. 15, 2018), <https://www.evnreport.com/raw-unfiltered/domestic-violence-an-imperfect-law-and-enduring-stereotypes>.

96. *Id.*

97. See Research Committee on Society of Cooperative Way of Life, *Law for the Prevention of Spousal Violence and the Protection of Victims*, HOUSE OF COUNCILLORS, [https://www.wewonline.org/pdf/lawcompilation/Japan-prevention\\_violence.pdf](https://www.wewonline.org/pdf/lawcompilation/Japan-prevention_violence.pdf) (last visited Dec. 19, 2019).

98. *Id.*

99. *Id.*

100. *Id.*

101. Margolis, *supra* note 84.

102. *Id.*

103. *Id.*

higher education.<sup>104</sup> The consequences surrounding the decision not to ratify the Istanbul Convention will affect every area of Armenia's government and society as it has in countries like Bulgaria, Poland, and Hungary.

Nonetheless, Article 14 of the Istanbul Convention gives States broad discretion in deciding to what extent and in which manner they will educate their population about the matters covered by the Convention.<sup>105</sup> Values such as human dignity, respect for human rights and fundamental freedoms, and equality of all, including equality between men and women, are declared in the Constitution of Armenia, and these ideals connect with the principles stated in the Convention. Thus, there is no contradiction between the Convention and the Constitution of Armenia.

## V. CONCLUSION

Gender-based violence and domestic violence as a form of discrimination against women is one of the most concerning human rights issues globally. Irrespective of its causes, domestic violence is one of the major obstacles to protect women's rights and achieve gender equality. Based on various advanced international human rights laws and instruments that have been implemented, domestic violence and gender-based violence can by no means be deemed a private issue anymore. The atrocities that have plagued women for hundreds of years should come to an end. Through the ratification and implementation of the Istanbul Convention, we would be one step closer to that goal.

All forms of domestic and gender-based violence should be condemned and perpetrators should be persecuted, as indicated by the Istanbul Convention. State actors are obliged to take appropriate measures to prevent the violence, protect victims and persecute perpetrators. A state's positive obligation to protect women from domestic and gender-based violence is part of customary international law, which provides several mechanisms for victims of domestic and gender-based violence and that hold State actors responsible for the failure to protect their rights.

After gaining its independence from the Soviet Union, the Republic of Armenia has voluntarily signed and ratified several significant human rights conventions which oblige the State to treat individuals under its jurisdiction according to international standards. Although the documents submitted to international human rights bodies indicate the readiness of the Government of the Republic of Armenia to comply with its international obligations, the

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104. *Id.*

105. *Convention on Preventing and Combating Violence against Women and Domestic Violence*, *supra* note 7, at 12.

current situation proves that not much progress has been registered concerning domestic and gender-based violence so far. Moreover, the lack of governmental support to victims of domestic and gender-based violence, the lenient sentences for perpetrators, the lack of gender sensitivity of representatives of law enforcement bodies and the judicial system, and the incomplete and defective implementation of programs and projects aimed to improve conditions of victims, reveal that Armenia is quite far from total compliance with international standards for combating domestic violence. Thus, as requested by Rustam Badasyan, the Commission investigated and prepared a thorough opinion on whether Armenia would benefit by the ratification of the Istanbul Convention.

The Commission composed its opinion to help Armenia assess the compatibility of the Istanbul Convention with its Constitution and contribute to the political debate on the ratification of the Convention. The belief of several Armenian ethnonationalists that (1) there is already a national framework in Armenia to combat violence against women, (2) the Convention would result in legislative changes that would infringe on the national constitution of the country regarding same-sex marriage, and (3) education regarding gender and domestic violence, have been properly addressed and cross-examined with the Convention.

There are no provisions in the Istanbul Convention that could be said to contradict the Constitution of Armenia. The main commitment of the Convention is to prevent and combat any form of violence against women and domestic violence, which already follows from the Armenian Constitution and many other human rights treaties to which Armenia is a party. While the ratification of any treaty is an individual act of the State, the Commission appropriately concluded that there are no provisions in the Convention that could be said to contradict the Constitution of Armenia. Minister of Justice Rustam Badasyan, who applied for an advisory opinion by the Commission, stated that the Armenian Ministry of Justice has received the opinion by the Commission and will discuss it, after it has been translated into Armenian.<sup>106</sup> However, the process is not only proving to be a battlefield in the political arena, but has trickled into the public sector as well. On November 1, 2019, a rally was held near the Armenian parliament against the ratification of the Convention.<sup>107</sup> The rally took place because the

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106. Stepan Kocharyan, *Armenian Government to discuss Venice Commission's advisory opinion on Istanbul Convention*, ARMENPRESS (Oct. 29, 2019, 3:07 PM), <https://armenpress.am/eng/news/993335.html>.

107. *Combating Violence Against Women vs. National Values – Armenians protest ratification of Istanbul Convention*, JAMNEWS (Nov. 1, 2019), <https://jam-news.net/combating-violence-against-women-vs-national-values-armenians-protest-ratification-of-istanbul-convention/>.

Armenian Parliament discussed the ratification of the Convention with the senior officials of the Council of Europe in attendance.<sup>108</sup> The head of the “Voila” initiative, announced that their rallies will continue if the National Assembly of Armenia does not listen to the voice of its citizens and goes against their opinion and ratifies the Convention.<sup>109</sup> The activists join the views of many opponents of the Istanbul Convention that are convinced that the Convention threatens traditional Armenian values and culture.<sup>110</sup>

Armenia is not the only country that has had discord surrounding the ratification of the Istanbul Convention. “Latvia, Poland, Lithuania, Liechtenstein, Hungary, United Kingdom, Moldova, Czech Republic, Ukraine and Armenia are among the Council of Europe member states which have signed—but not yet ratified—the Convention. Bulgaria has declared it totally unconstitutional, with Russia and Azerbaijan not having signed and ratified it at all.”<sup>111</sup> Greece and Croatia are among the countries that have recently ratified the Istanbul Convention, but the ratification was not taken easily by their citizens.<sup>112</sup> In Croatia, thousands of citizens marched in the streets to protest the ratification and voiced opinions of the opposition that they are against same-sex marriage and the “third gender.”<sup>113</sup> For the same reasons, the Convention also sparked controversy in several other Council of Europe member states, Bulgaria and Slovakia; both countries rejected it last year.<sup>114</sup>

The main reasons surrounding the conflict within these countries who have yet to ratify is the same as those of Armenia—the terms used in the Istanbul Convention have been taken out of context and twisted until what is left is terminology that does not fit within the ideologies and customs of the countries. Only through intelligent discussion can Armenia become the progressive country that other countries look to and consider when debating if they should ratify the Istanbul Convention. Thus, if we look past terms such as “gender” or “sexual orientation” and focus on the main goal of the Istanbul Convention, I genuinely believe that Armenia will make the appropriate decision for the growth and empowerment of its country and ratify the Istanbul Convention and work toward equality for all.

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108. *Id.*

109. *Id.*

110. *Id.*

111. Amalya Arakelyan, *Demonstrations, discord, unconstitutionality: How do Council of Europe member states react to the Istanbul Convention?*, TERT.AM (Nov. 18, 2019, 7:07 PM), <https://www.tert.am/en/news/2019/11/18/Istanbul-convention/3143089>.

112. *Id.*

113. *Id.*

114. *Id.*